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Baltic Sea  
Offshore Wind Farm  
Investment Guide

AUGUST 2020



# Contents

1. The offshore wind energy market in Poland.....	4
2. The offshore support system in Poland – key rules .....	9
3. First phase of the support system.....	12
4. Competitive auctions – second phase of the support system.....	15
5. Timeframe for the execution of the project within the support system.....	18
6. Transfer of rights and obligations – sale of the project .....	22
7. Financing of the support .....	24

Dear Readers,

Wind energy is not only a stable and low-carbon energy source, but above all the technology of the future. Offshore wind energy is an opportunity for the Polish and European energy sector to obtain energy using infinite wind resources in the most favourable conditions. The Baltic Sea may become a base for Poland's leap into a bright future.

Taking into account the global struggle with climate change, the fate of the energy sector is in a large part determined at the international level. The leader in this sphere is the European Union. The Member States undertook to increase energy production from renewable sources. Within 10 years, the share of RES in the European Union is to increase from 20 to 32%. The transformation of the power system is a strategic opportunity for Poland in particular. The domestic production of fossil fuels is inadequate to meet the energy needs of the country in the 21st century. A solution to secure the system is to use an easily accessible way of clean energy production – offshore wind.

Apart from the undoubted environmental benefits, the development of offshore wind farms can bring many economic advantages. The offshore industry may add up to 60 billion PLN to the GDP by 2030, while investors may contribute PLN 15 billion to the state and local government budget by 2030. Companies operating in Poland are already able to provide about 50% of the components needed to build farms, and thanks to the right investment policy this level may be much higher. Investment in offshore is hence a powerful opportunity for the development of the Polish economy.

The development of offshore wind energy takes place in Poland in an atmosphere of cordiality and shared interests between the government, industry investors and other stakeholders. The signing of the “Letter of Intent on cooperation in the development of offshore wind energy in Poland” by representatives of the Government of the Republic of Poland and representatives of investors and the maritime industry, including the Polish Wind Energy Association, could serve as an example. The signing of the “Polish Offshore Sector Deal” or the “Declaration of Cooperation for the Development of Offshore Wind Energy in Poland” will be the next step. All this means that investments in the Polish offshore wind energy sector are not burdened with a particular political risk.

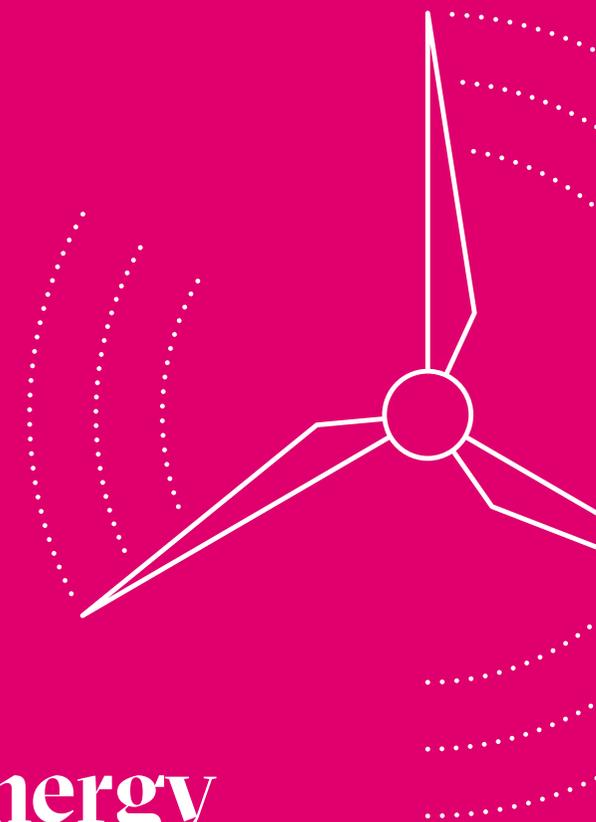
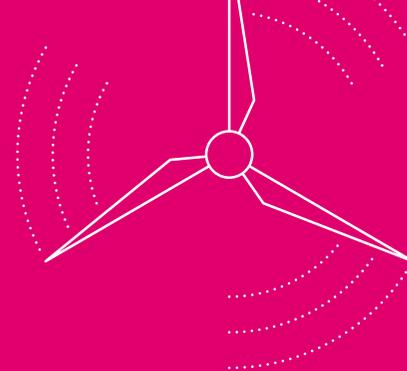
This guide is intended to bring all interested parties closer to the support system designed for offshore investments. We hope that it will prove useful in answering key questions concerning this sector.



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# 1. The offshore wind energy market in Poland



## Development of the offshore market in Poland

Offshore wind energy is the most important technology for further development of the renewable energy sources market in Poland. The draft governmental strategic document – Polish Energy Policy until 2040 – indicates that the development of the offshore wind energy market is a strategic objective of the Polish energy policy.

Representatives of the energy industry confirm that the first wind farms, in the Polish exclusive economic zone in the Baltic Sea, will start producing energy already in 2025. What is important is that offshore wind energy will contribute to the development of the local supply chain, which will significantly affect the economic development of Poland. The development of the offshore market will significantly reduce the emission of carbon dioxide into the atmosphere, thus meeting the climate targets set within the European Union, including the 21–23 share of RES as the declared contribution of Poland towards the EU-wide target of 32%.

## The dynamics of the development of offshore wind energy in Poland

Around 10 developers will be involved in the preparation of offshore wind farm projects, thereby ensuring an appropriate level of competitiveness. There will be at least three wind turbine suppliers on the market. A competitive supply chain is expected to be established

for floating and fixed platforms, cables and substations, installation vessels and service and maintenance providers. Both Polish and foreign ports in the Baltic sea region also prepare their capabilities for the take-off of offshore wind investments. Some will provide installation and service and maintenance assistance, while others will focus on one or the other depending on the given location and regional demand.

## Developers

Developers preparing projects of offshore wind farms in Poland have a renowned and established position in the energy market. They include both domestic and foreign companies. Projects will be financed from public and private funds. It seems that cooperation with developers may take on a multi-faceted character and seriously strengthen the market position of Polish entrepreneurs as investments in offshore wind farms require several years of project planning and implementation.

There are eight advanced offshore wind farm projects that are currently being developed in the Polish part of the Baltic Sea. For two projects, grid connection agreements have already been concluded:

- “Bałtyk Środkowy III” belonging to Polenergia and Norwegian Equinor
- “Baltica 3” belonging to PGE

In total, these two projects have concluded grid connection agreements with a capacity of approximately 2.2 GW.



Six further projects received grid connection conditions for a total capacity exceeding 5.7 GW. These are:

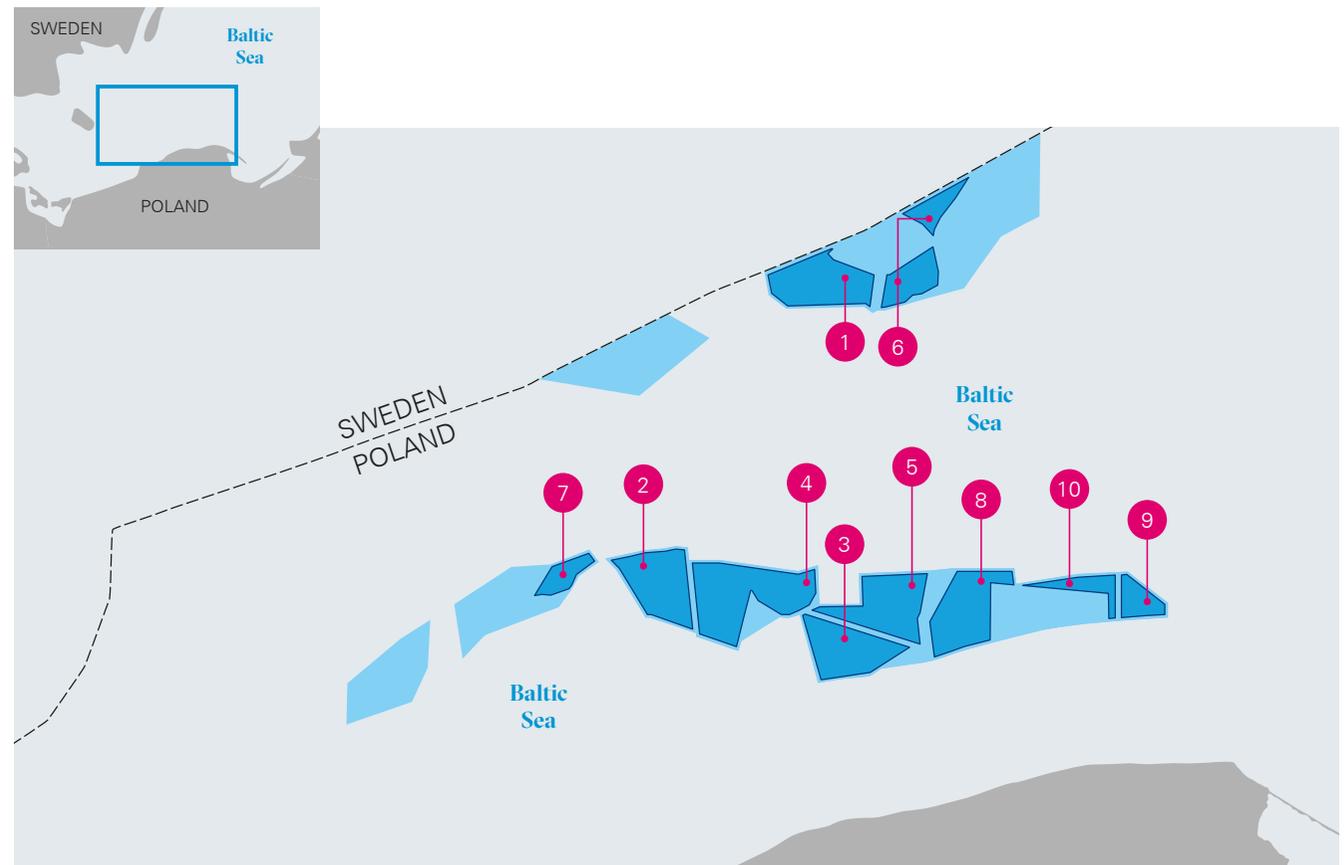
- “Bałtyk Północny” and “Bałtyk Środkowy II” belonging to Polenergia and Equinor;
- “Baltica 1” and “Baltica 2” developed by PGE;
- “Baltic Power” developed by Orlen;
- “FEW Baltic-2” belonging to RWE.

The list of projects with the assigned area in the Baltic Sea is presented in the table below. The map below also shows the location of wind farms in the Polish part of the Baltic Sea.

no	project	area	GCC*/GCA**
1	Polenergia/Equinor – Bałtyk I	128 km <sup>2</sup>	1 560 MW (GCC)
2	Polenergia/Equinor – Bałtyk II	122 km <sup>2</sup>	240 MW (GCA)
3	Polenergia/Equinor – Bałtyk III	116 km <sup>2</sup>	1 200 MW (GCA)
4	PGE Baltica 2	189 km <sup>2</sup>	1 498 MW (GCC)
5	PGE Baltica 3	131 km <sup>2</sup>	1 045 MW (GCA)
6	PGE Baltica 1	108 km <sup>2</sup>	900 MW (GCC)
7	FEW Baltic-2 (RWE)	42 km <sup>2</sup>	350 MW (GCC)
8	PKN Orlen – Baltic Power	131 km <sup>2</sup>	1 200 MW (GCC)
9	EDPR – B-Wind	42 km <sup>2</sup>	200 MW
10	EDPR – C-Wind	49 km <sup>2</sup>	200 MW

\* Grid Connection Condition

\*\* Grid Connection Agreements





### Investment costs

The costs of investment in offshore wind farms are lower than a few years ago. According to data for 2018, the construction of offshore wind farms may cost on average around 2.5 million EUR/MW, while in 2015 the CAPEX of such investments was still on average 4.5 million EUR/MW.

The fall in investment costs now allows for the construction of much larger wind power capacities at the same cost as was recorded in the wind sector a few years earlier. The data shows a growing economic benefit from investments in the offshore sector.\*

### Forecast of the offshore wind farm market development

According to forecasts prepared by the Polish Wind Energy Association, the target potential for development of offshore wind farms by 2050 is 28 GW:

- The first offshore wind farms should be built by 2025;
- By 2030 the capacity of Polish offshore wind farms should be 10 GW;
- By 2040, their capacity should amount to 20 GW.

Setting ambitious targets is particularly important for suppliers and sub-suppliers of offshore wind farm components, who need a precise project schedule to make the necessary investments in their production facilities.

Achieving market development objectives is possible with effective corresponding action by investors, suppliers and the government sector.

\* Source: [www.gramwzielone.pl](http://www.gramwzielone.pl)

### Local supply chain for offshore

The development of offshore wind energy requires the support of component suppliers and sub-suppliers. According to Polish Wind Energy Association analyses, companies operating in Poland can supply the vast majority of components needed to build onshore wind farms. There are hundreds of companies operating in Poland capable of involvement in the supply chain for offshore as well. Some entrepreneurs are already suppliers of goods and services for offshore projects implemented outside of Poland. There are also entrepreneurs on the market who are not currently involved in wind energy, but their product range, production potential or resources allow them to assume that and after adjusting their business profile they could provide goods and services for this market.

### Challenges for the offshore market

As regards investments in offshore wind farms in the Polish part of the Baltic Sea, five basic challenges stand out. Overcoming these is a prerequisite for the development and economic success of Poland.

### Regulatory challenges

Offshore success in Poland must be preceded by the correct legislation. As a positive step in this direction one should read the signing of the "Letter of Intent on Cooperation in the Development of Offshore Wind Energy in Poland" at the initiative of the Government Plenipotentiary for RES, Ireneusz Zyska. The key challenge remains the adoption of a dedicated Act on promoting electricity generation in offshore wind farms.

## Ensuring support for investments

Ensuring stability in terms of offshore investments will allow the accelerated development of RES in Poland. It is necessary to create a support system, consisting of:

- the initial phase (without the auction procedure),
- the auction phase.

## Grid development

Poland needs to strengthen its interconnection capacity in cooperation with the countries of the region. Investments in transmission infrastructure are necessary for the connection of offshore wind farms – both in the near and long term.

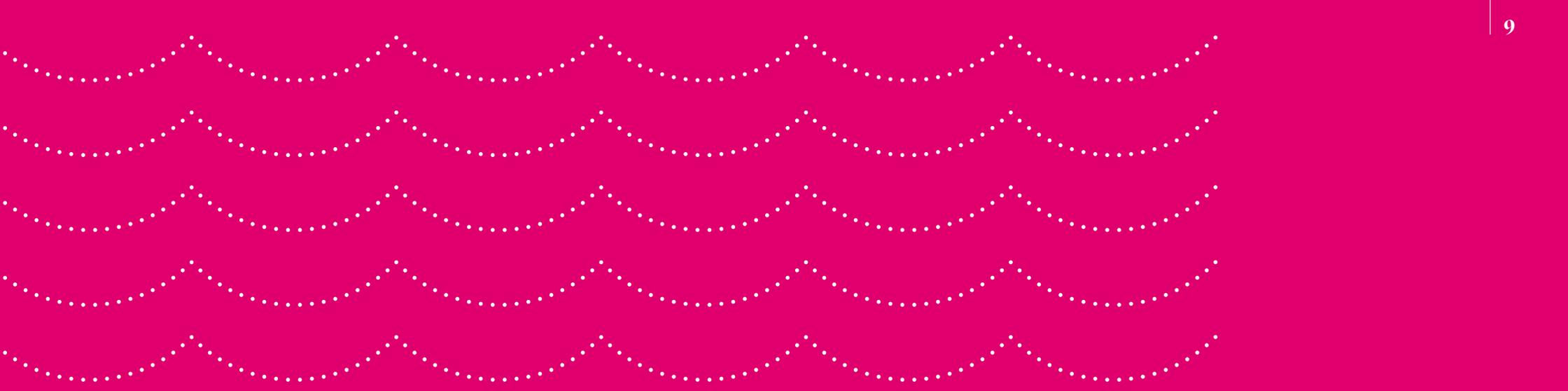
## Creating a stable supply chain

Key suppliers for investments in offshore wind farms are, in particular, wind turbine suppliers, assembly and installation contractors as well as suppliers of ships and components for port construction. In Poland, we have a number of cable and power equipment manufacturers who can supply materials and equipment for the construction of offshore wind turbine connection networks.

## Reduction of negative effects on the environment

As a society, we must be aware of the environmental impact of offshore wind installations. To know this, we need comprehensive research on the subject conducted at the stage of environmental impact assessment. Identified negative impacts should be eliminated, if possible, and in any case compensated for. It is also worth mentioning that the environmental impact of offshore wind installations can be positive. For example, offshore installations support the development of artificial reefs.





## **2. The offshore support system in Poland – key rules**

## Targeted support for OWF

The auction support system, operating since 1 July 2016 on the basis of the Act of 20 February 2015 on Renewable Energy Sources (the “RES Act”), is currently not suitable for the realities of investments in the offshore wind energy sector. It is enough to point out that offshore wind farms are placed in one auction basket with installations using bioliquids, hydropower and geothermal energy for electricity generation, and it is clear that changes – especially dedicated offshore legislation – are necessary. Initial investment expenditure, the scale of the projects and the limited number of available locations provided good grounds to create a separate support system dedicated exclusively to offshore wind farms. Separation of the entire offshore wind farms sector from the current system and its comprehensive regulation in this single act is a beneficial solution for investors, as it significantly improves the transparency of regulations in comparison to existing solutions and thus reduces investment risks.

As such, the draft Act on the promotion of electricity generation in offshore wind farms, published in July 2020, sets out in detail an investment support system - in the form of the right to cover a negative balance (CfD). Settlement of the negative balance will take place on similar terms to the currently functioning auction support system for onshore RES installations, with the difference that in the case of offshore wind farms the support system will be divided into two phases. The phases will differ in terms of how projects entitled to cover the negative balance will be selected.

### First phase of the support system

In the first phase, the right to cover the negative balance will be obtained on the basis of an administrative

decision issued by the President of ERO at the request of the investor, for the most advanced projects located within the areas indicated in the annex to the Act on promotion of electricity generation in offshore wind farms. Priority for granting the right to cover the negative balance will be determined by the order in which complete applications with attachments are submitted. Moreover, each of the decisions issued in the first phase of the support system will require a decision of the European Commission on the compatibility of this public aid with the EU internal market. The total installed electric capacity of offshore wind farms for which the President of ERO may issue a decision on granting the right to cover the negative balance in the first phase, may not exceed 5.9 GW. The President of ERO’s granting of support in this phase may take place on 30 June 2021 at the latest.

### Second phase of the support system

The second phase of the support system will be based on the formula of competitive auctions, where the right to cover the negative balance will be available to producers who will obtain a certificate of admission to the auction and produce electricity in the offshore wind farm for the first time after the auction session has been closed. The first two auctions will take place in 2025 and 2027, each with a maximum total installed electric capacity of 2.5 GW of offshore wind farms that may be awarded the right to cover the negative balance.





### Payments for the producers

Both in the first and second phase, funds to cover the negative balance will be paid out by Zarządca Rozliczeń S.A., a special-purpose State Treasury company which acts as a settlement operator, tasked to collect funds to cover and settle the negative balance. The negative balance is the difference between the value of electricity sales in a given month (calculated on the basis of the electricity exchange prices) and the value of that electricity calculated at the prices indicated in the decision (the first phase of support system) or the offer that won the auction (the second phase of support system). This price is subject to annual adjustment by the average annual consumer price index defined by the President of the Central Statistical Office.

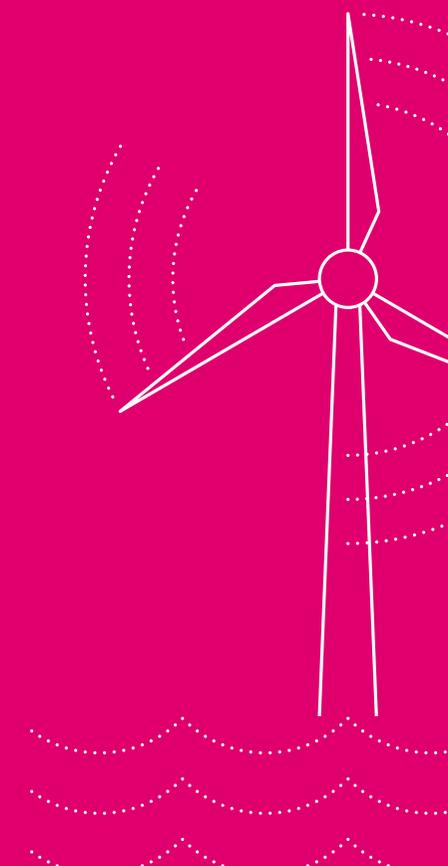
### Period of support

The maximum period of support in which producers will be able to use the right to cover the negative balance will be 25 years from the first generation and introduction to the grid of electricity generated in an offshore wind farm or a part thereof on the basis of a concession granted. The supported energy is the product of 100 000 hours and the installed capacity of the farm.

### Contract for difference

The right to cover the negative balance takes the form of a so-called two-sided contract for difference. In other words, when market prices of electricity exceed the prices specified for producers in the system, they are obliged to return the surplus. The settlement period is one month and during those periods the generated surplus (positive balance) is settled with the future negative balance. Only when the accumulated balance is positive for the whole calendar year, is its returned to Zarządca Rozliczeń S.A.

### 3. First phase of the support system



### What is the essence of phase one?

Under the first phase of the support system for offshore wind farms, support will be provided on the basis of individual administrative decisions on granting the producer the right to cover the negative balance, issued by the President of ERO. The possibility of issuing a decision will be limited to the total capacity of all installations amounting to 5900 MW, as well as to the indicated maritime areas determined on the basis of geocentric geodetic coordinates included in the annex to the Act. In order to apply for a decision, the producer will establish a collateral for the President of ERO either in the form of a bank/insurance guarantee or a deposit of 60 PLN for each 1 kW of capacity.

### How to qualify to phase one?

The President of ERO will issue decisions based on the producer's complete application submitted not later than 31 March 2021. The order of granting the right to cover the negative balance will be determined by the order of submission of complete applications with attachments (first come, first served). The most important information and documents required to be submitted or attached to the application are:

- installed electrical capacity (not greater than that resulting from the permit to erect artificial islands);
- location of the offshore wind farm together with the information that it is located within the areas determined on the basis of the geocentric geodetic coordinates indicated in the annex to the Act (with a map confirming that fact) and the location of the grid connection point(s) specified in a connection agreement;
- producer's commitment to generate and introduce electricity to the grid for the first time after obtaining the concession, within 7 years from the date of the President of ERO's decision to grant the right to cover the negative balance;

- grid connection agreement;
- final permit to erect artificial islands;
- schedule of works and expenditures;
- plan of the materials and services supply chain;
- technical and economic description showing an incentive effect;
- form with information presented when applying for public aid together with financial statements for the last 3 years.

Importantly, in the first phase of the support system it will not be required to attach a decision on environmental conditions for an offshore wind farm to the application.

### How the amount of support is determined?

The price of electricity, which constitutes the basis for payment of the negative balance, will be specified in the decision of the President of ERO. However, the President of ERO will not have any discretion in this respect. The price will be determined on the basis of the provisions of the regulation issued by the Minister in charge of climate issues. In determining the price, the Minister will be obliged to take into account, among other things, operating costs and additional investment costs incurred during the operation phase, investment costs incurred during project preparation and construction of the offshore farm (including costs related to power take-off), as well as justified return on capital.

Considering the European Union regulations on public aid and the scale of the given projects, the payment of the negative balance will be possible only after the European Commission has issued a decision on the compatibility of individual aid for a given project with the EU internal market. The Commission's decision will be issued upon notification made by the President of the Office for Competition and Consumer Protection. The notification procedure may begin no earlier than

after the issuance of the decision on environmental conditions for a given offshore wind farm project.

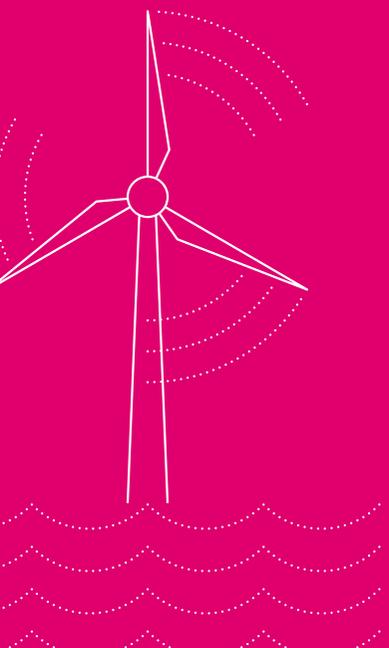
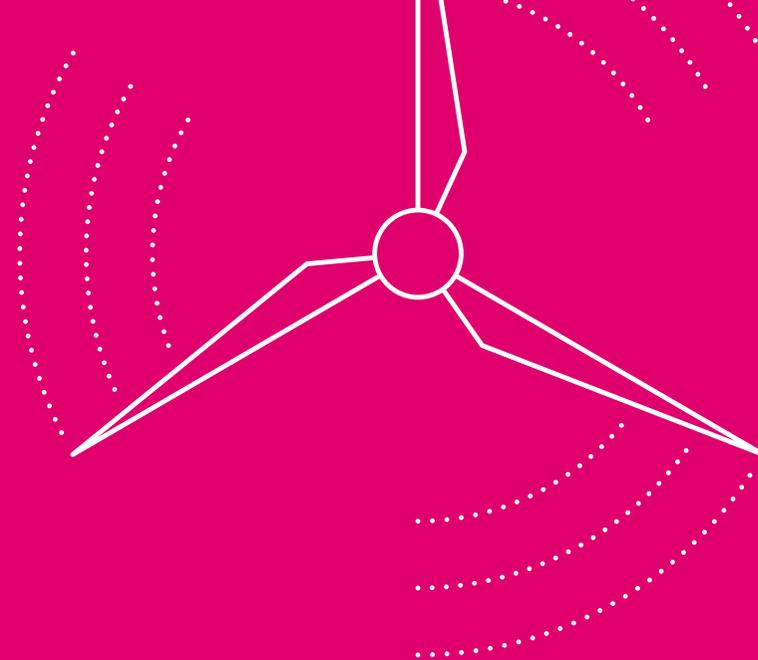
### Is the support grant subject to changes?

A mechanism is provided for to amend the decision of the President of ERO on granting the right to cover the negative balance. The amendment may result in reducing the installed capacity or adjusting the amount of support to a level enabling a positive decision of the European Commission (EU public aid law does not allow for obtaining excessive support). The right to cover the negative balance may also be waived if the price

resulting from the Commission's decision is lower than that resulting from the decision of the President of ERO.

What is more, there are solutions provided for the case of significant changes in the material and financial parameters of an offshore wind farm project, already after the European Commission's decision. Under such circumstances, if it is necessary to change or issue a new decision on environmental conditions and to increase the IRR for the project by at least 1 percentage point in relation to the IRR indicated in the Commission's decision, the producer may apply to the President of ERO for a price update. Such an update may only take place before the commencement of construction works.





## **4. Competitive auctions – second phase of the support system**



### When will the auctions be held?

The organisation of the auction has been entrusted to the President of ERO. Importantly, both the dates of conducting the auctions in the initial period, as well as the maximum total installed capacity of offshore wind farms that may be granted the right to cover the negative balance have been established beforehand. It is therefore proposed that the auctions take place in the following years:

- 2025 – setting the maximum volume of installed electricity capacity at 2.5 GW;
- 2027 – also 2.5 GW, however if in 2025 the winning offers do not cover the entire volume of electrical installed capacity offered at the auctions, the difference will increase the volume offered in 2027;
- 2028 – however the auction will be carried out only if the full volume of capacity offered at the auction in 2027 remains unused and amounts to at least 500 MW.

At the same time, it is envisaged that auctions may also be carried out in years other than those indicated above, if the Council of Ministers so decides.

The guarantee that the auctions will be held on the specified dates together with an indication of the volumes of installed capacity of offshore wind farms that may be granted the support, is to encourage investors to make investment decisions. Consequently, this might allow Poland to achieve a 21–23% share of RES in gross final energy consumption by 2030, in accordance with the draft document “Energy Policy of Poland until 2040 – strategy for development of the fuel and energy sector”. At the same time, Poland’s National Energy and Climate Plan for 2021–2030 foresees the creation of about 3.8 GW of capacity in offshore wind power plants by 2030.

### How to qualify a project for participation in the auction?

Ready-to-build offshore wind power projects may participate in the auction, if:

- they hold a certificate of admission to participate in the auction, and
- a deposit of 60 PLN (~14 EUR) for each 1kW of power has been paid or an equivalent bank or insurance guarantee has been established.

Obtaining a certificate of admission to the auction is preceded by a pre-qualification procedure conducted by the President of ERO. Investors need to prove that they have ready-to-build installations, i.e. that the following criteria have been met:

- they hold a grid connection promise or a concluded grid connection agreement;
- the investment holds a final environmental impact decision and a valid permit to erect artificial islands in Polish maritime areas for projects located in the exclusive economic zone;
- a schedule of works and expenditures for the construction has been presented and
- a plan of the materials and services supply chain is attached.

Moreover, the producer attaches to the application for issuing the certificate of admission to the auction the information specified in the regulations issued pursuant to art. 37 par. 6 of the Act of 30 April 2004 on the procedure in matters concerning public aid.

After meeting the pre-qualification criteria, the President of ERO issues the certificate of admission to the auction within 45 days. This certificate remains valid for 36 months from the date of its issue.

### How does the auction proceed and who wins?

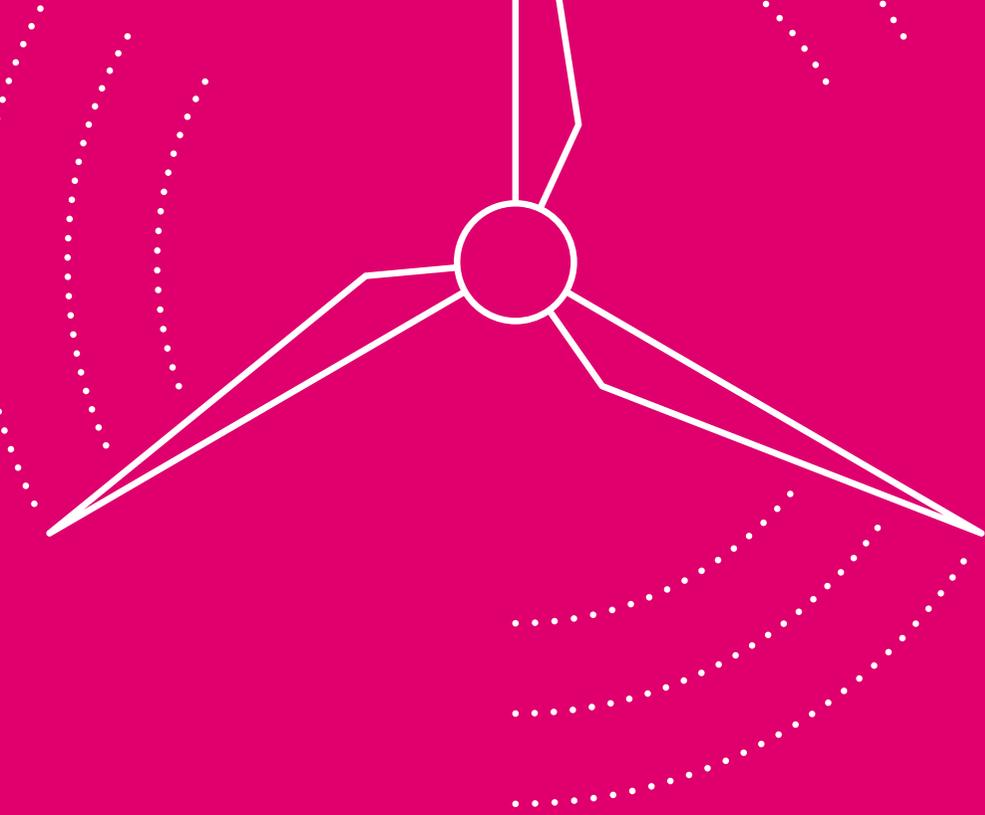
The date of the auction is announced by the President of ERO no later than 6 months before the date of its opening. Due to limited supply of projects, all offshore wind farms, regardless of their technical parameters, will compete in one auction basket. The bidder – a potential producer – must submit an offer covering the estimated amount of electricity expressed in MWh that the producer plans to generate in the offshore wind farm and introduce into the grid in order to obtain coverage of the negative balance, as well as the price in PLN/MWh, at which the bidder agrees to sell the electricity on the basis of a contract for difference (CfD). Support is granted to producers offering the lowest price for electricity generated at the offshore wind farm. If several bidders offer the same lowest electricity price, the order of the offers is decisive. The offers of the winning producers may not exceed in total 100% of the total installed capacity of the offshore wind farms specified in the auction announcement and 90% of the total installed capacity of the offshore wind farms covered by all offers. This second limit is intended to ensure that offers remain competitive even with a small but sufficient to carry out auction for a number of projects, i.e. at least 3.

A mechanism to regulate a situation when the next participant's offer exceeds the remaining installed capacity covered by the auction is provided for. If the conditions set out in the Act are jointly met, the offer may still guarantee the right to cover the negative balance despite exceeding the installed electrical capacity provided for a given auction. In such a situation, the amount of installed capacity by which the auction limit has been exceeded shall be reduced by the maximum amount of installed capacity for which the right to cover the negative balance in a subsequent auction may be obtained.

The President of ERO immediately after the closing of the auction session should inform the public on:

- the results of the auction (i.e. inter alia, the producers whose offers won the auction, their exact prices, the installed capacity of individual offshore wind farms covered by those offers and planned dates of first generation of electricity) or
- the reasons for the annulment of the auction.

An auction may be annulled only if all offers have been rejected or the auction could not be carried out for technical reasons.



**5.**  
**Timeframe for the execution  
of the project within the  
support system**

### The age of the offshore wind turbine equipment

Restrictions related to the age of the equipment that may be part of an offshore wind turbine will apply. Offshore wind farms applying for admission to the support system may not include turbines made of equipment produced earlier than 72 months before the date of generation of the electricity from such equipment for the first time, or which were previously depreciated within the meaning of the accounting regulations by any entity.

Category of renewable installation	Equipment not older than
Onshore wind	33 months
Photovoltaics	24 months
Offshore wind	72 months
Biomass	42 months

### The period of time to generate and introduce electricity into the grid after obtaining a concession, and the possibility to change it

The basic obligation of a producer who obtained a decision of the President of ERO to grant the right to cover the negative balance or won an auction for the sale of electricity from RES (the second phase of the support system) is to generate and introduce into the grid for the first time electricity generated in an offshore wind farm or a part thereof within a specified period of time. For offshore wind farms this deadline is 7 years from the date of the European Commission's decision on the compatibility with the internal market of public aid granted to the producer by way of a decision in the first phase of the support system or from the date of closing the auction

session for the producers using the second phase of the support system. In both cases, such a producer should hold a concession for electricity production.

There will be a possibility to extend the deadline for fulfilling this obligation. With respect to the first phase of the support system, a producer may submit an application to the President of ERO to extend the 7 year deadline for the first generation of electricity, if events specified in the Act occur. The Act includes in the above sudden, unpredictable and independent of the producer's intent situations whose effects could not be prevented or counteracted with due diligence, or other significant events, actions or omissions of third parties or administrative bodies, preventing the producer from executing the offshore wind farm investment in accordance with the schedule of the works and expenditures, as well as actions or omissions of the TSO/DSO. The deadlines are extended by the time necessary for the execution of the investment, not longer than the time of delays caused by the aforementioned events and their effects.

A similar possibility was also foreseen for producers benefiting from the second phase of the support scheme. In justified cases, a producer whose offer won the auction may apply to the President of ERO for consent to extend the 7 year deadline for the first generation and introducing electricity from an offshore wind farm into the grid.

Category of renewable installation	Deadline to produce electricity
Onshore wind	33 months from the auction closure date
Photovoltaics	24 months from the auction closure date
Offshore wind	7 years from the auction closure date
Biomass	42 months from the auction closure date



Failure to generate electricity within the deadlines to which the producer concerned has committed itself does not result in the total loss of support. In such a situation, the right to cover the negative balance is vested in the producer who will inform the President of ERO not later than 12 months before the lapse of the above-mentioned deadlines about the inability to meet the obligation to generate and introduce the electricity generated in the offshore wind farm to the grid within the specified deadlines. Then, within 24 months from the date of expiry of these deadlines, such a producer should generate and introduce the electricity into the grid. The loss of support then takes place only in relation to the amount of electricity corresponding to the installed capacity not put into use.

### **Specific provisions on connection conditions and grid connection agreements for offshore wind farms**

Specific regulations concerning the connection of an offshore wind farm to the grid will apply, different from the general rules for connecting RES installations to the grid provided for in the Energy Law Act. One of such solutions is the obligation of the authority to issue, instead of connection conditions, a connection promise for entities intending to use the support system. Connection conditions, in turn, are issued to those entities which do not decide to participate in the support system provided for in the Act. In both cases, only entities holding a permit to erect artificial islands in Polish maritime areas may apply for a promise of connection or connection conditions.

In order to benefit from the first phase of the support system, it is necessary to present a concluded grid connection agreement of an offshore wind farm to the transmission or distribution system together with an application for a decision on the right to cover the

negative balance. In the justification it is indicated that the submission of this document ensures that only the most advanced projects take part in the first phase of the support system. In turn, in order to qualify for the auction, either the connection promise or grid connection agreement of the offshore wind farm must be attached.

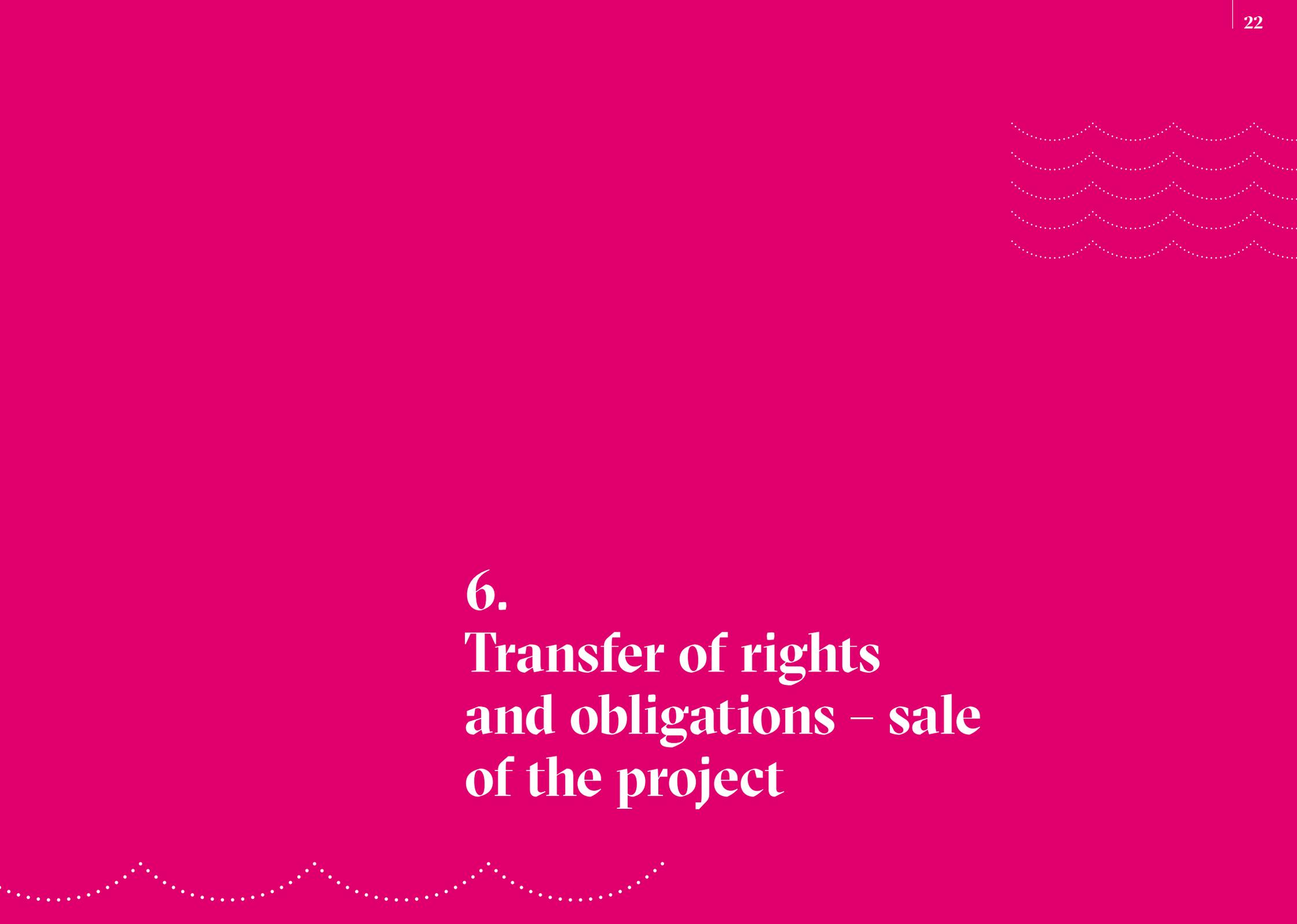
The connection promise is valid for 2 years from the date of its delivery, subject to the possibility of its extension by 2 years on the basis of an application of the producer submitted to the relevant TSO/DSO no later than 2 months before the expiry of the period of validity of the connection promise. Unlike the connection conditions, the promise of connection of an offshore wind farm does not constitute an obligation for the power company to conclude a grid connection agreement. As of the date on which the entity holding a valid connection promise is granted the right to cover the negative balance, the connection promise becomes the connection conditions valid for 2 years from the date of the granting of this right (subject to the possibility of extending this period).

The grid connection agreement specifies the date of realisation of the grid connection and the date of first delivery of electricity generated in the RES installation to the grid. For a RES installation using offshore wind energy to generate electricity, the deadline may not be later than 10 years from the date of conclusion of the grid connection agreement. However, it may not expire earlier than 7 years after the right to support has been obtained (respectively after the European Commission's decision on the approval of public aid or the date of closing the auction session) plus a possible extension of the deadline for delivery of electricity for the first time. Within 90 days from obtaining the support, the deadline for first-time delivery of electricity specified in the grid connection agreement is adjusted by the parties to this requirement.



As a principle, failure to deliver electricity within the deadline specified in the grid connection agreement constitutes a statutory basis for termination of this agreement by the TSO. However, the operator may not terminate the grid connection agreement if the failure to deliver electricity to the grid for the first time was due to, among other things, force majeure/ a natural disaster or the technical failure of an offshore wind turbine or power system failure. If the failure to deliver electricity for the first time within the deadline was due to other reasons, the operator is entitled to terminate the grid connection agreement, but not earlier than after an ineffective lapse of the additional deadline not shorter than 24 months (unless the producer being the connected entity agrees to terminate the agreement before that deadline).

Although the producer is generally responsible for the construction of the connection of the offshore wind farm to the national power system, should the producer sell a set of equipment used for the offtake of electricity from the offshore wind farm to the place of ownership delimitation, a pre-emption right will be vested in the TSO (i.e. PSE) under the rules set out in detail in the Act.



## **6. Transfer of rights and obligations – sale of the project**

The transfer of the right to cover the negative balance resulting from the decision of the President of ERO to grant support or the winning of an auction is permissible only upon the subsequent acquisition of the ownership of the installation to which this right pertains.

Before concluding the agreement transferring the ownership, the consent of the President of ERO is needed to transfer the rights and obligations of the producer on the basis of a consistent application submitted by the producer transferring the ownership and the purchaser of the offshore wind farm.

The application is accompanied by the schedule of works and expenditures for the construction of the installation together with the purchaser's declaration on the acquisition of the rights and obligations of the producer. For the consent of the President of ERO, the right to cover the negative balance together with the duties of the producer are transferred to the purchaser of the offshore wind farm on the day of its acquisition.

Alternatively, it is also permissible to acquire the right to cover the negative balance by purchasing shares in the company realizing such an installation.

## 7. Financing of the support

Proper functioning of the support system, both in the first and second phase, requires first of all the provision of adequate funds to cover the negative balance and the operation of the settlement operator, i.e. Zarządca Rozliczeń S.A. The draft Act makes use of the existing principles of providing financing for the support system for installations of renewable energy sources on land, which has already proved its worth under the RES Act. Thus, the funds necessary to cover the negative balance will be provided by means of the RES fee collected by the TSOs through DSOs.

DSOs charge the RES fee mainly to end users directly connected to the network, i.e. households. Consequently, the financing of the support scheme is independent of the State budget. The rules of calculating the RES fee are set out in the RES Act. DSOs calculate it as a product of the RES fee rate and the amount of

electricity consumed by the end user. In turn, the RES fee rate, whose calculation rules are also provided for in the RES Act, is determined by the President of ERO and published in the ERO Public Information Bulletin by 30 November each year. The RES fee funds collected in this way are to be kept on the dedicated bank account of Zarządca Rozliczeń S.A. If the amount of funds on the RES fee account turns out to be insufficient to cover the negative balance, Zarządca Rozliczeń S.A. is obliged, among other things, to incur debt to cover it.

Zarządca Rozliczeń S.A is an important guarantor of the stability of the support system, hence the legal regulations clearly define the nature of its activity, the possibility of investing and using the accumulated funds, the obligation to allocate the profit exclusively for financing its activity, the ban on selling or encumbering shares, and the ban on reducing the share capital.

The Polish Wind Energy Association (PWEA) is a non-governmental organization, established in 1999, to support and promote the development of wind energy in Poland. PWEA is an association of around 100 leading wind energy companies active on the Polish market: investors, developers, turbine and component manufacturers. PWEA groups key industry players from abroad, as well as Polish entrepreneurs, investors, producers and service providers across the entire onshore & offshore wind supply chain.

Main areas of PWEA activity are:

- participation in consultations of legislative regulations, strategies, policies and sectoral programs and taking action to implement new legal regulations fostering wind energy development in Poland;
- direct cooperation with the ministry in charge of economy, the environment as well as other ministries directly or indirectly related to energy and renewable energy sources;

- cooperation with European Union institutions;
- cooperation with Polish and European Parliament MPs;
- promotion of wind energy and knowledge about the technology;
- increasing social and political awareness concerning wind energy;
- participation in national and international industry conferences as an expert on wind energy in Poland.

PWEA is a member of the WindEurope and Polish Committee of World Energy Council.



DWF Poland currently consists of over 100 professionals. As a team, we have been providing legal services in Poland since 1991.

Our lawyers have extensive experience in providing comprehensive legal services for private companies, international corporations and state-owned entities. Our achievements are widely recognized by our clients, peers and market participants as well as leading international rankings.

The Warsaw office key practices include energy, environment, construction and infrastructure, corporate and commercial law, mergers and acquisitions, capital markets, real estate, banking, finance and restructuring, intellectual property, dispute resolution, competition and regulatory, tax and employment, gaming and gambling as well as public procurement/government contracts.

We are a law firm focused on complicated, precedent-setting, unique cases and transactions. This requires knowledge, experience, skills and the ability to act fast. We are proud of our participation in the biggest and most complex disputes and transactions on the Polish and European markets. We also offer

our clients specialized expertise in sectors such as conventional and innovative energy, industrials, nuclear power, mining, transport, aviation, aerospace and defence, the film industry, media, TMT and outsourcing.

Our lawyers are regularly recommended by independent international rankings, such as Chambers Global, Chambers Europe, Legal 500, IFLR1000 as well as WTR100 and Managing IP. Our lawyers actively participate as speakers at key sector conferences, seminars and workshops on, inter alia, environmental, energy, construction, litigation and arbitration law issues.

### Innovative Energy Practice

Our Warsaw Office has a distinctive, full-size, comprehensive practice devoted entirely to innovative energy. It is one of the most recognized RES practices on the Polish market, and a one-stop-shop for clients active in that sector.

We assist in all legal matters related to the RES sector, including investment projects (development, transactions, environmental issues), day-to-day operations, as well as disputes. We have been involved in acquisitions and development of a vast number of solar and wind projects, both onshore and offshore.

The Department is also renowned for advice in regulatory matters. We assist sector chambers and organizations, as well as individual clients, in solving complex regulatory matters and building their position on sectoral issues. For example, we support clients in a number of energy regulatory disputes before the

President of the Energy Regulatory Office (ERO) and the Court of Competition and Consumer Protection.

Our lawyers assist the Polish Wind Energy Association (PWEA), strengthening the organization's efforts with respect to issues concerning the support scheme for renewables in Poland and the EU. Lawyers from the Warsaw Office are also involved in works of the Offshore Taskforce of the PWEA in which they help to work out proposals for the regulatory environment for offshore wind.





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