

An aerial photograph of a white wind turbine standing in a rural landscape. The turbine is the central focus, with its three blades extending outwards. The surrounding area includes a green field, a cornfield, a road with a tree-lined shoulder, and a forested area in the background. The lighting suggests a bright, sunny day.

AMENDMENT

to the Act on Investments in Wind Power Plants

ONSHORE WIND FARMS

Amendment to the Act on Investments in Wind Power Plants

On 9 March 2023, the Polish Parliament adopted an awaited amendment to the Act concerning the development of onshore wind power investments in Poland. The most frequently commented change is naturally the modification of the so-called 10H rule, i.e. rule allowing (after fulfilling several conditions) the possibility to locate, build or reconstruct wind power plants at a distance of less than ten times the total height of the wind power plant from a residential building or a building with a mixed function. However, this is not the only significant amendment to the onshore legislation. We invite you to read on!

In the amendment, the legislator did not just modify the 10H rule but also introduced a whole range of additional provisions which have a real impact on the operation of the onshore wind energy sector in Poland. Therefore, the scope of the Act has been significantly extended to include not only the conditions and procedures for the location, construction and reconstruction of wind power plants, but also issues concerning the consultation process for investments with the local community, principles for the location of new residential buildings or the location, construction and reconstruction of high-voltage networks in the neighbourhood of wind power plants. In addition, the Act includes provisions on the participation of municipal residents in the benefits arising from the location of wind power plants and rules on the safe operation of devices and technical elements included in a wind power plant. The legislator has also extended legal terminology by introducing new legal definitions.

Modification of the 10H rule

Polish legislator has allowed for the possibility of locating, building or reconstructing a wind power plant at a distance of less than ten times the total height of the wind power plant from a residential building or a building with a mixed function (residential function constituting more than half of the usable area), provided that a shorter distance is permitted in the local development plan. However, this distance may in no case be less than 700 metres. Also, the location or construction of a residential building or a building with a mixed function is possible (based on a zoning permit, a decision on the location of a public

ONSHORE WIND FARMS

Amendment to the Act on Investments in Wind Power Plants

purpose investment or based on a local development plan) at a distance of no less than 700 metres.

In the case of forms of nature conservation, the lawmaker has maintained the existing obligation to keep a distance between a wind power plant and a national park (a distance equal to or greater than ten times the total height of the wind power plant), while reducing these requirements to 500 metres in the case of nature reserves. At the same time, the possibility to locate wind turbines in national parks, nature reserves, as well as in landscape parks and Natura 2000 areas was explicitly prohibited.

Distance from the electricity grid

As part of the amendment, the legislator also introduced provisions concerning the minimum distance of a wind power plant from the highest voltage power grid, including the highest voltage power substations, which are part of the transmission network. When locating, building or reconstructing a wind power plant, its distance from the highest voltage power grid should be at least three times the diameter of the rotor including blades or at least twice the total height of the wind power plant, whichever is greater. When locating, the maximum diameter or the maximum height provided for in the local development plan must be taken into account. Similar regulations respectively apply to the location, construction or reconstruction of the highest voltage electricity networks, with the exception, that the operator may request a reduction of this distance.

Rules of safe operation of a wind power plant

The provisions of Chapter 2a, concerning the rules for the safe operation of the technical components of a wind power plant, are also new. Among others, the entity operating a wind power plant with an overall height of not less than 30 metres or with a total installed capacity of not less than 100kW is responsible for compliance with these rules. Service operations and inspections may only be carried out by entrepreneurs entered in the relevant register kept by the President of the Office of Technical Inspection.



ONSHORE WIND FARMS

Amendment to the Act on Investments in Wind Power Plants

All service works should be performed in accordance with the recommendations and frequency specified in the technical and operating documentation and the wind power plant operating manual. At the same time, the Act provides the possibility for the President of the Energy Regulatory Office to impose, by way of a decision, a fine for non-compliance by the entity operating a wind power plant with the above-mentioned obligations. The amount of the penalty may not be less than PLN 10,000 and more than 5% of the revenue of the punished entrepreneur achieved in the previous fiscal year, or of the revenue resulting from the licensed activity or the activity performed based on an entry in the relevant register.

Public participation in the planning procedure

Polish legislator has also provided in the amendment provisions a detailed procedure in connection with the adoption of a local development plan allowing for the location of onshore wind power plants.

The procedure includes, inter alia, an obligation for the head of a municipality, mayor or city president to widely inform about the adoption of a resolution by the municipality council on commencing the preparation of a local plan allowing for the location of a wind power plant, specifying the form, place and deadline for the submission of the appropriate proposals. This also applies to the notification of so-called 'nearby municipalities', i.e. municipalities whose area is wholly or partly located at a distance of less than ten times the maximum total height of a wind power plant located in another municipality.

Additionally, within 30 days from the date of adopting the resolution on commencing the preparation of the local development plan, as well as during the period of presenting the draft local development plan, at least one public discussion should be organised in the form of a face-to-face meeting and at least one public discussion conducted using distance communication - in both cases with the necessity to guarantee full, active participation by all interested persons.



ONSHORE WIND FARMS

Amendment to the Act on Investments in Wind Power Plants

Share of installed power plant capacity

A significant solution for the participation of municipal residents in the benefits of locating wind investments in their municipality is the statutory possibility to take a share in the installed capacity of a wind power plant. The developer of the project (owner) will be obliged to allocate at least 10% of the installed capacity for this purpose. However, no more than 2kW of the installed capacity will be allowed per the power consumption point of a resident. In the event of greater interest from residents, the share of installed capacity will be subject to a proportional reduction.

Once the relevant agreement has been concluded and the costs of the share have been covered, the residents will acquire the status of a so-called virtual prosumer, within the meaning of the Renewable Energy Sources Act. They will be entitled to this status for a period of 15 years from the date of the first generation of electricity at the wind power plant and its injection into the electricity distribution grid. The above regulations, however, will not enter into force until 2 July 2024. Furthermore, they will not apply to investments that have obtained a building permit before that date.

The Act of 9 March 2023 amending the Act on investments in wind power plants and certain other acts has already been signed by the President on 13 March 2023 and directed for publication in the Journal of Laws. The new regulations will enter into force 30 days after the date of publication, except for the provisions concerning the virtual prosumer.

**Are you interested in this topic?
Feel free to contact us.**

CONTACT

Marek Grzywacz, Ph.D., Counsel
marek.grzywacz@ngllegal.com

Paulina Harhaj, Junior Associate
paulina.harhaj@ngllegal.com



Contact us

NGL Legal
Koszykowa 61B
00-667 Warsaw
ngl@ngllegal.com
+ 48 22 378 75 75

NGL Legal
Szkolna 1
61-832 Poznań
ngl@ngllegal.com
+ 48 61 859 58 00

