

Legal framework for renewable energy projects in Poland

1. Renewable energy in Poland
 2. Relevant law
 3. What is renewable energy?
 4. Certificates of origin
 5. Licensing
 6. Connection to the grid
 7. Sale of energy generated from RES
 8. Transmission priority of electric energy generated from RES
 9. Tax benefits and subsidies
-

1. Renewable energy in Poland

- 1.1. Power production in Poland is still based on traditional energy sources like coal and lignite and only a small percentage of energy is generated by hydroelectric plants, mostly located on rivers. Renewable energy is only beginning to be used on a major scale, with wind farm projects being implemented by municipalities, as well as developers. In recent years the consciousness of the environmental harms caused by conventional power has grown in Poland and the membership in the European Union has created an additional impulse giving rise to the restructuring of the Polish energy sector. The notion of renewable energy sources ("**RES**") is gaining a clear recognition within Poland's energy and environmental policies.
- 1.2. Despite the fact that demand for electric energy in Poland is still much smaller than in the countries of western Europe, the growth in both electricity production and consumption, remains stable. In recent years an increase in the significance of the RES can be seen. For example, in 2009 the RES generated 253.352 TJ, which accounted for 9.0% of the aggregate

amount of energy, whereas in 2013 this value rose to 357,537 TJ, which constituted 11.9% of the entire amount of produced energy. In 2013 most RES was derived from biomass, which accounted for 80.03% of all RES. Other sources included: liquid biofuel (8,2%), water (2,46%), biogas (2.12%), wind (6.05%), heat pumps (0.33%), geothermal heat (0.22%), sunlight (0.18%) – all data quoted after the Main Office of Statistics (GUS).

- 1.3. Development of RES is one of the priorities listed in the document called Energy Policy until 2030, adopted by the Government on 10 November 2009. It provides for mechanisms that are intended to encourage the development of RES power plants, such as:
- exemption of the green power from excise tax;
 - green certificates and the relevant mechanisms supporting green power producers;
 - tax support tools;
 - support of RES projects from the EU and environment protection funds.

Most of these mechanisms have already been implemented.

The need to maintain the above tools has been confirmed in the National Action Plan With Regard to RES, adopted by the Government on 7 December 2010.

- 1.4. Development of RES is also listed as a priority in the document of the Ministry of Economy called "Polish Energy until 2050", which is due to be finalized following the UNFCCC COP 21 climate change conference in December 2015.
- 1.5. In accordance with the objectives of the European Union as defined in the Directive of the European Parliament and Council Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, by 2020 Poland should reach a 15% share of electricity generated from RES in the gross electricity consumption. This target has been confirmed in the National Action Plan With Regard to RES, which is meant to encourage investment in RES.

2. Relevant law

- 2.1. One of the basic legal acts related to the energy sector is the Energy Law of 10 April 1997.
 - 2.2. In March 2015 a new Law on Renewable Energy Sources ("RES Law") was introduced into the Polish legal system. From that moment it constitutes the basic regulation on renewable energy sources and comprehensively sets out the legal framework for doing business in this sector. However, it is worthwhile noting that the entry into force of the RES Law is spread in time and its full applicability will only be possible from 1 January 2016. In particular, the provisions of Chapter 4 containing regulations concerning the auction system, the feed-in tariffs, as well as certificates of origin, all enter into force starting from 2016.
 - 2.3. The system of certificates of origin (so-called green certificates) is specifically defined in the Regulation of the Minister of Economy of 18 October 2012 on the detailed scope of obligations to obtain and present for redemption certificates of origin, the substitute fee, purchase of electricity and heat from renewable energy sources and the obligation to confirm the data on the amount of electricity generated from a renewable energy source.
 - 2.4. Technical requirements regarding the connection to the grid and operation of power plants using RES are comprised in the Regulation of the Minister of Economy of 4 May 2007 on detailed conditions of functioning of the electric energy system.
-

3. What is renewable energy

RES is a renewable, non-fossil energy source including wind power, solar power, aerothermal, geothermal or hydrothermal energy, hydropower, sea waves, sea currents and tidal energy, as well as energy from biomass, landfill biogas and agricultural biogas and bioliquids.

4. Certificates of origin

- 4.1. The certificate of origin is a document confirming that electric energy has been generated from renewable sources. These certificates - often called "green certificates" - are issued by the President of the Energy Regulatory Authority ("ERA") at the request of energy producers made through the

operator of the power system in which the given energy source operates.

- 4.2. One of the mechanisms set up by the Energy Law and confirmed by the RES Law in order to promote the production of renewable energy is the circulation of certificates of origin. The market players, including industrial recipients, energy companies, the end users who are members of the commodity exchange, as well as the stock exchange clearinghouses and the commodity brokerage houses, engaged in the production of electric energy or trading and selling that energy to end users connected to the grid on the Polish territory have a choice between:
- obtaining of such certificates and applying for their redemption at the ERA, or
 - payment of a so-called substitution charge (buy-out price) calculated in accordance with a formula provided for by the Energy law.

The above obligation is deemed fulfilled if in a given year the energy company reaches a 20% share of the total volume of electric energy generated, whether as a result of redeeming certificates of origin certificates of origin for agricultural biogas or the payment of the replacement fee. The share is calculated as the ratio of the energy produced to the energy purchased in the course of the company's business.

- 4.3. Certificates of origin are issued by the President of ERA to energy enterprises producing electric energy derived from RES, confirming – inter alia – the amount of renewable energy produced over a certain period of time. The certificates are issued by the President of ERA upon an application of the energy enterprise within 14 days of the date of receipt of the application. The application needs to be submitted via the local electricity system operator, within 45 days of the day ending the period when the electric energy, which the application concerns, was produced. The whole procedure is subject to the Administrative Procedure Code regarding the issue of certificates.
- 4.4. The rights attached to the certificates of origin constitute tradable commodities. The rights materialize at the moment the certificate of origin is first registered to the account of the relevant register maintained by the commodity exchange, and are vested in the person or entity in whose name that account is kept. The trading system in the certificates of origin is operated by the Towarowa Giełda Energii commodity exchange, which

maintains a so-called Green Certificate Register. An entry in the register is subject to a one-off fee multiplied by the number of kWh. The amount of the fee is published yearly by the President of ERA and in 2015 it equals 300,03 per 1 MWh. On the other hand, the above coefficient has been provided for in the RES Law and shall enter into force from 1 January 2016.

5. Licensing

Business activity in the area of production of energy generated from RES requires a license issued by the President of ERA. Subjects generating electricity in micro installations, or small installations generating energy from agricultural biogas or bioliquids are exempt from the obligation to obtain a licence.

5.1. The license is granted to entities (or individuals) which:

- are incorporated (or have residence) in an EU member state or EFTA member state being a signatory of the agreement on the European Economic Area, or in Switzerland,
- has sufficient financial funds or is able to document the capacity to obtain such funds,
- ensures employment of personnel having adequate qualifications, as provided for by the Energy law,
- has obtained a relevant zoning decision.

5.2. On the other hand, a license shall be denied to applicants:

- subject to liquidation or bankruptcy,
- who in the last 3 years lost their license or were removed from the register of a regulated activity for reasons enumerated in the Freedom of Business Activity Act,
- have been sentenced for crimes related to the activities regulated by the Energy law.

5.3. Licenses are granted for a definite time, between 10 and 50 years, unless an applicant moves for a shorter license.

5.4. The grant of the license for a business activity in the area of energy is

subject to the stamp duty in the amount of PLN 616. Additionally, annual fees are payable to the President of ERA by the license holders. The fees are calculated as a multiplication of the yearly revenue generated from the licensed activity and a coefficient, which – with regard to production, storage, transmission, distribution and trade in electric energy, heat or gas fuels - is set at 0,0006.

- 5.5. Energy companies engaged in the production of electricity from RES, with a total electrical capacity not exceeding 5 MW are exempt from the license fee and annual fees, payable by the license holders.
- 5.6. Energy production in micro installations may qualify either as business activity or as a so-called prosumer activity. As mentioned above, micro installations and small installations as well as agricultural biogas and bioliquids producers are exempt from the obligation to obtain a license. On the other hand the obligations of such installations include the following:
 - informing the power operator of the planned date of connecting to the grid, location and type of the installation, as well as its capacity;
 - business activity concerning the generation of electric energy from a small installation (within the meaning of the RES Law) requires an entry in the register of energy producers in small installations;
 - depending on how a particular activity involving the production of electric energy from agricultural biogas is qualified (i.e. whether as a business or prosumer activity), it requires an entry in the register of agricultural biogas producers or in the producers register;
 - business activity concerning the generation of energy from bioliquids requires an entry in the register of bioliquids producers.

6. Connection to the grid

- 6.1. One of the measures introduced to support investments in RES is a reduction in the fees payable in respect of connection to the grid; currently, only small installation operators can benefit from reduced fees. The connection fee is to be reduced by 50% with regard to those energy enterprises generating electric energy from RES, whose electric energy capacity does not exceed 5 MW, as well as those sources of energy which

cogenerate electricity (combining power and heat) of less than 1 MW of electric capacity.

The above does not apply to microinstallations, which are exempt from fees concerning the connection to the grid.

7. Sale of energy generated from RES

- 7.1. The Energy law provides for an obligation on the part of energy enterprises whose activity consists in the generation of or trade in electricity, which sell electricity to customers using it for their own needs in Poland, to purchase the electricity generated using RES. Therefore, so-called official energy sellers are obliged to purchase all electric energy generated from RES interconnected to the grid located within the area of operations of such a seller. Official energy sellers are defined in the Energy law and can be generally described as entities licensed to trade in electric energy, providing so-called comprehensive services to household customers.
- 7.2. The new RES Law provides for a special producer category, a so-called prosumer, i.e. a person who both consumes and produces energy. According to the RES Law, a natural person who does not conduct a business activity and who produces energy in a micro installation for their own purposes has a right to sell the energy it has not utilized. Such an activity does not qualify as business activity. Obviously, the sale of the energy is possible only when the installation is connected to the grid.
- 7.3. The RES Law uses the notion of the "concerned seller" who is obliged to purchase energy generated from renewable sources. This obligation is valid for 15 years from the time the installation is put into service. The above solution is meant as a guarantee for those investing in renewable energy sources. The relationship between the producer and the concerned seller depends on whether the installation was put into service before or after 1 January 2016, as well as whether the producer qualifies as the prosumer or is a business entity within the meaning of the relevant provisions.

The above provisions enter into force on 1 January 2016.

- 7.4. The purchase obligation also operates with regard to heat energy. Based on the Energy law, energy enterprises dealing in heat energy are obliged to purchase heat generated from RES interconnected to the grid located within the area of operations of such a seller, to the extent not exceeding

the demand of the customers interconnected to that grid. In this respect the advantages, which under the Energy law are mostly afforded to the producers of electric energy generated from RES, in this particular case are extended to the producers of heat.

- 7.5. The purchase of the electric energy may take place using the auction system, which is destined for the entities using public aid. The auctions should be organised by the Government at least once per year and are meant to support the energy producers who, in return for the public aid received, are ready to offer energy at appropriately reduced prices. The maximum aid is provided for by the RES Law. Separate auctions are foreseen for installations having the total capacity of up to 1 MW and those over 1 MW. Except for micro installations benefiting from prosumer regulations, the auction model will be mandatory for those installations which generate energy for the first time after 1 January 2016 and will remain as an option for the installations active before that date.
- 7.6. The price of electric energy generated from RES, as purchased by official distributors, is predetermined. Before the RES Law entered into force, this price was fixed and was calculated each year as an amount equal to the average market price of the electric energy in the preceding year, determined pursuant to specific provisions of the Energy law. The price was calculated and published by the President of ERA each year and in 2014 it amounted to 163.58 PLN/MWh.

Pursuant to the RES Law, the above rules will still apply with regard to business entities. On the other hand, newly built micro installations will benefit from feed-in tariffs, as follows.

New installations of up to 3kW capacity, using:

- a) Hydropower
- b) wind energy on land
- c) solar power

- benefit from a fixed tariff of 0.75 PLN per 1 kWh, which will remain in force as long as the 300 MW capacity threshold is not reached; they can also be changed by a regulation issued by the Minister of Economy.

Other fixed tariffs apply with regard to new installations having

the capacity between 3kW and 10 kW, depending on the source of energy:

- d) agricultural biogas – PLN 0.70 per 1 kWh
- e) biogas derived from raw materials originating from landfills – PLN 0.55 per 1 kWh
- f) biogas derived from raw materials originating from sewage treatment plants – PLN 0.45 per 1 kWh
- g) hydropower – PLN 0.65 per 1 kWh
- h) wind energy on land – PLN 0.65 per 1 kWh
- i) solar energy – PLN 0.65 per 1 kWh

The above prices will remain in force as long as the 500 MW capacity threshold is not reached; they can also be changed by a regulation issued by the Minister of Economy.

The above provisions of the RES Law concerning the feed-in tariffs enter into force on 1 January 2016, however, legislative works are underway aimed at amending the provisions already in 2015.

8. Transmission priority of electric energy generated from RES

According to the Energy law, electric energy system operators should ensure priority, within the area of their operation, to all entities providing transmission or distribution services of electric energy generated from RES or in high performance cogeneration (combining power and heat).

9. Tax benefits and subsidies

9.1. Despite various mechanisms of support applied with regard to RES, such projects remain relatively expensive. Therefore, as a consequence of Poland's favorable policies with regard to RES, investors operating in this energy sector may count on direct benefits in the form of tax benefits and subsidies, as well as EU funding.

9.2. Electric energy generated from RES is exempt from excise tax.

The exemption takes effect on the basis of redemption of the certificates of origin issued with regard to energy generated from RES.

- 9.3. Investors planning to develop RES projects can apply for subsidies from various EU funds, as well as national environmental protection funds. In particular, the EU cohesion funds are available within the Infrastructure and Environment Operational Program. There is also a possibility to acquire support from Regional Operational Programs (RPO).
- 9.4. Furthermore, the National Fund for Environmental Protection and Water Management (NFOŚiGW) offers additional funding for which RES projects can be eligible, such as the "Prosument" program. The program is addressed to individuals as well as housing co-operatives and communities holding property rights to real estate. They have a choice between obtaining a direct funding or a loan, with possible aid reaching as much as 100% of qualified costs. The "Prosument" program is destined for producers operating micro and small installations.
- 9.5. Tax payers subject to agriculture tax can reduce their tax by subtracting the costs of their investment in RES infrastructure, up to 25% of their documented investment.

* * *

If you seek advice regarding any legal aspects concerning renewable energy in Poland, you are welcome to contact the **author of this paper:**

Adam Morawski, Managing Partner

Contact details:

Tel. +48 22 250 11 22

e-mail: info@morawski.eu

The information contained in this paper is correct to the best of our knowledge and belief at the time of being published; however, it does not constitute legal advice. Legal advice can only be provided by our lawyers in respect of a concrete question.