

POLISH INCENTIVE SCHEMES FOR RENEWABLE ENERGY GENERATION

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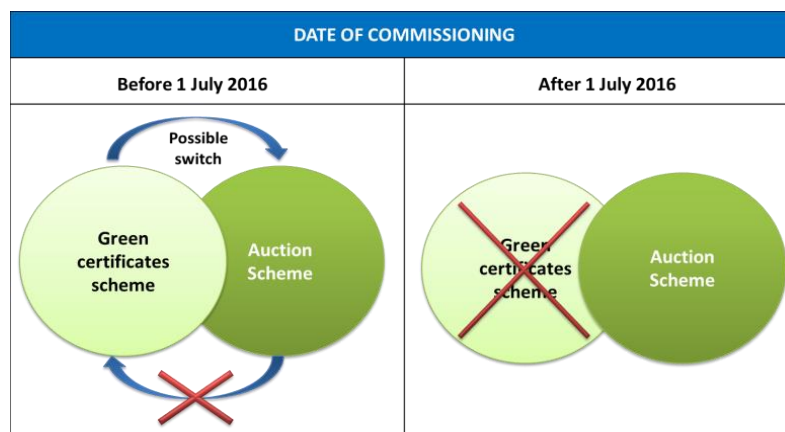


I. General overview of existing legal framework

The incentive schemes applicable to renewable energy sources are regulated in the Renewable Energy Sources Act dated 20 February 2015 (“RES Act”) and the secondary legislation issued thereupon.

[Applicability of the main incentive schemes] Under the foregoing legislation, the installations generating electricity from renewable energy sources (hereinafter “RES Installations”) may benefit from one of the following incentive schemes, depending on the date of commissioning of the installation:

- (1) **CERTIFICATE-BASED SCHEME** – applicable solely to the RES Installations commissioned by 1 July 2016;
 - (2) **AUCTION SYSTEM** - applicable to all RES Installations:
 - a) commissioned before 1 July 2016 - if the operator of the pertinent RES Installation decided to start in the auction available to such installation and give up the certificate-based incentive scheme upon winning the auction, except for the following types of RES Installations commissioned before 1 July 2016:
 - hydro power installations with total installed electric power exceeding 20 MW;
 - multi-fuel power plants which are not qualified as “dedicated multi-fuel power plants”;
 - non-CHP installations using biomass, biofuels, biogas and agricultural biogas with installed capacity exceeding 50 MWe which are not qualified as “dedicated multi-fuel power plants”;
 - CHP installations using biomass, biofuels, biogas and agricultural biogas with installed capacity exceeding 150 MWt which are not qualified as “dedicated multi-fuel power plants”.
 - b) commissioned after 1 July 2016 and upon completion of the pertinent auction,
 - c) commissioned after 30 June 2016 but before completion of the auction in which given RES installation was selected – if the entire electricity from such installation generated before completion of the respective auction was sold at the commodity exchange and/or organized market by end of December 2016 and such manner of electricity sale was notified to the President of the Energy Regulatory Office not later than 14 days before the date of commissioning;
- with reservation that the total period of support available to the RES Installation under either certificate-based or auction-based schemes cannot exceed 15 years from first generation.



II. Certificate-based incentive scheme

[General assumptions of the certificate-based incentive scheme] The certificate-based incentive scheme is based on tradable certificates of origin whereby renewable energy producers receive:

- a. **price for electricity sold at competitive market** (with the right of the renewable energy producer to sell the entire generation to the so-called “obligated supplier” at a price equal to the average electricity price in the preceding quarter which is currently equal to PLN 160.60/MWh – approx. EUR 37.80/MWh; however, starting from 1 January 2018 onwards almost all the RES Installations with installed capacity equal to or exceeding 0.5 MW (except for the biogas-fueled installations) will be deprived of the right to sell the entire generation of electricity at the regulated price to the “obligated supplier”, thus the “obligated suppliers” will most likely approach the RES operators by end of 2017 in order to re-negotiate and/or even terminate the power purchase agreements currently in force with respect to the non-biogas RES installations), as well as
- b. **price for tradable certificates of origin granted to the operator of the RES Installation** (either as the so-called “**Green Certificates**” granted for RES Installations other than those fueled by biogas or “**Blue Certificates**” granted to the biogas-fueled RES Installations), such certificates of origin to be purchased in particular by suppliers selling electricity to final consumers (or major final consumers) and thus burdened with obligation to obtain and redeem certificates of origin up to the redemption quotas specified in the law.

[Redemption quota] The redemption quotas for certificates of origin create a demand for those certificates and thus have impact on certificates market prices. The RES Acts sets forth the maximum redemption quotas for the certificates of origin (i.e. the obligatory level of certificates of origin that have to be redeemed compared to the total amount of electricity sold to the final consumers in Poland) separately for Green and Blue Certificates at the levels of: 19.35% for Green Certificates and 0.65% for Blue Certificates. However, the secondary legislation decreased that redemption quotas for 2017 to the level of 15.4% for Green Certificates and 0.6% for Blue Certificates. As a result, while the redemption quotas for Blue Certificates correspond to the maximum generation from the existing biogas-fueled power plants, the redemption quotas for Green Certificates are much below the level of supply of Green Certificates.

The certificate-based incentive scheme operates so that market price for certificates should not exceed in practice the so-called “substitute fee” (“buy-out” price) which is an alternative method of fulfillment of the obligation to obtain and redeem certificates of origin. Such substitute fee is currently equal to PLN 300.03/MWh (approx. EUR 70.60/MWh) which operates as a cap for the market price of certificates. However, in June 2017 the average-weighted market price for Green Certificates (granted to non-biogas-fueled installations) was equal to PLN 24.38/MWh (approx. EUR 5.74/MWh) which arises from the fact that the number of existing Green Certificates significantly exceeds demand for those certificates. On the other hand, the average-weighted market price for Blue Certificates in June 2017 was equal to PLN 369.57/MWh (approx. EUR 86.96/MWh) which arises from the fact that the redemption quotas for Blue Certificates correspond to the maximum generation from the existing biogas-fueled power plants.

The proposed 2017 green certificates redemption quotas do not guarantee elimination of the Green Certificates’ oversupply within the reasonable timeframes and thus one should not expect increase



of Green Certificates market prices. The market prices of Green Certificates may even decrease as a result of the draft legislation currently discussed in the Parliament which will provide for further decrease of the substitute fee related to Green Certificates (see below).

[Limitations and exclusions] The support within the certificate scheme is not available to hydro-power installations with installed capacity exceeding 5 MW. As regards the multi-fuel power plants using biomass, biofuels, biogas and agricultural biogas, other than “dedicated multi-fuel power plants”, the support is also limited by: (i) implementing cap on Green Certificates that may be obtained in each year at the level corresponding to the average annual “green generation” in the period 2011-2013 and (ii) applying further correction with special “co-efficient” set by the Council of Ministers to such certificates.

The certificates of origin are not granted to RES electricity generated in those hours for which an average market price quoted on the day-ahead market is negative for at least 6 subsequent hours.

If the price of certificates of origin quoted at the Polish Power Exchange is lower than the substitute fee for the period of more than 1 month, there will be limited possibility to pay “substitute fee” as an alternative method of the fulfillment of the obligation to obtain and redeem certificates of origin.

III. Auction-based incentive scheme

[Basic assumptions of the mechanism] Auctions are carried out at least once a year in order to select the RES Installations authorized to benefit from support in the form of:

- a. the power purchase agreement concluded with the “obliged supplier” and providing for sale of electricity for the price agreed within the auction – in case of RES installations below 0,5 MW; or
- b. right to compensation of the difference between: (a) the envisaged revenues from sale of the offered and actually generated electricity for the price agreed within the auction and (b) market value of the same electricity calculated based on average daily prices of electricity quoted at the commodity exchange in the day-ahead and two-days-ahead transactions – in case of RES installations with installed capacity of 500 kW or higher;

such support being limited to the maximum period of 15 years starting from commissioning of the pertinent RES installation but in any case ending not later than on 31 December 2035, save for the offshore wind installations where the support period may be extended to 31 December 2040. The maximum 15-year period of support may be further shortened by way of the regulation issued by the Minister of Energy.

[Financing] Under auction system financial sources available within the incentive scheme are collected from the final energy consumers by TSO and DSOs (so-called “RES Payers”) and then transferred through the state-controlled company named Zarządca Rozliczeń S.A. (“SO”) to the RES operators selected within the auction either directly or – in case of RES installations below 0,5MW – through so-called “obliged suppliers”.

[Clusters and energy cooperatives] The RES Act also established new forms of cooperation eligible to benefit from the auction-based incentive scheme, i.e.:

- a. “cluster” which is defined as an agreement between entities (entrepreneurs, communes, scientific units etc.) covering cooperation with respect to generation, balancing, distribution and trade in renewable and non-renewable energy within one distribution network with voltage lower than 110



- kV within an area not exceeding the territory of one powiat, it being specified that the cluster will be authorized to conduct business activities regulated by the 1997 Energy Law (i.e. generation, distribution and trade in energy) based on the license granted to an entity appointed as a “coordinator of the cluster”; and
- b. “energy cooperative” which will be established as cooperative within the meaning of the Polish Cooperative Law conducting business activities in:
- generation of electricity in RES installations of capacity not exceeding 10MW, and/or generation of biogas in RES installations with capacity not exceeding 40 million cubic meters per year, and/or generation of heat in CHP RES installations with thermal capacity not exceeding 30 MWt; as well as
 - balancing, distribution and trade in electricity, biogas and/or heat,
- for own use of the energy cooperative and its members interconnected to the defined distribution network with voltage lower than 110 kV and/or gas distribution network and/or central heating network within an area of rural and rural-urban communes.

[Abroad RES installation] Subject to number of pre-requisites (i.a. prior conclusion of the intergovernmental agreement between Poland and the state in which the respective foreign RES installation is located, providing for mutual availability of incentive schemes in each country to RES installations located in both countries), the auctions will be available to the RES installations located abroad, it being however specified that the maximum volume of electricity generated abroad and purchased within Polish auction may not exceed the threshold defined in regulation issued by the Council of the Ministers and in any case such threshold not exceeding 5%.

[Pre-qualification to the auction] “Pre-qualification procedure” is established to pre-qualify entities authorized to submit offers within the auction:

- a. pre-qualification criteria aimed at selection of reliable investors with feasible RES projects that meet the criteria for the incentive scheme;
- b. pre-qualification certificate authorizes to participate in auctions launched generally not later than 12 months after pre-qualification (but not later than validity period of the permits obtained for the pertinent RES project);
- c. pre-qualification procedure shall not apply to RES installations commissioned before 1 July 2016, whose operators are required to submit the declaration of participation in auction scheme instead.

The offers submitted during auctions shall be accompanied by statements in which RES installation operators declare *inter alia* that:

- the RES installation does not use: (a) wood other than “energetic wood” (Pol. ‘drewno energetyczne’), (b) biomass contaminated in order to acquire higher calorific value, (c) fossil fuels (in case of installation incinerating biomass) - in electricity generation process;
- the maximum cap of state aid is not to be exceeded in case of selection of the offer;
- the minimum share of local biomass (i.e. originally collected/produced in the distance specified by the Minister of Energy by way of secondary legislation; in any case not exceeding 300 km from the installation) in the total amount of biomass provided to the RES installation is not exceeded.



[Main auction rules] Auctions are carried out based on the following basic assumptions:

- a. the auctions for the renewable energy are carried out separately within the following “technology” baskets:
 - i. electricity generated in the RES installations with installed capacity $\leq 1\text{MW}$ and load factor exceeding 3504 MWh/MW/annum irrespective of the technology used;
 - ii. electricity generated in the RES installations with installed capacity $\leq 1\text{MW}$ using biodegradable waste fraction (waste incineration plants);
 - iii. electricity generated in the RES installations with installed capacity $\leq 1\text{MW}$ and load factor exceeding 3504 MWh/MW/annum and CO₂ emission not exceeding 100 kg/MWh;
 - iv. electricity generated by the participants of the so-called “cluster” in the RES installations with installed capacity $\leq 1\text{MW}$;
 - v. electricity generated by the participants of the so-called “energy cooperative” in the RES installations with installed capacity $\leq 1\text{MW}$;
 - vi. electricity generated using exclusively the agricultural biogas in the RES installations with installed capacity $\leq 1\text{MW}$;
 - vii. electricity generated in the RES installations with installed capacity $\leq 1\text{MW}$ not qualified under the baskets i) –vi) above;
 - viii. electricity generated in the RES installations with installed capacity $> 1\text{MW}$ and load factor exceeding 3504 MWh/MW/annum irrespective of the technology used;
 - ix. electricity generated in the RES installations with installed capacity $> 1\text{MW}$ using biodegradable waste fraction (waste incineration plants);
 - x. electricity generated in the RES installations with installed capacity $> 1\text{MW}$ and load factor exceeding 3504 MWh/MW/annum and CO₂ emission not exceeding 100 kg/MWh;
 - xi. electricity generated by the participants of the so-called “cluster” in the RES installations with installed capacity $> 1\text{MW}$;
 - xii. electricity generated by the participants of the so-called “energy cooperative” in the RES installations with installed capacity $> 1\text{MW}$;
 - xiii. electricity generated using exclusively the agricultural biogas in the RES installations with installed capacity $> 1\text{MW}$;
 - xiv. electricity generated in the RES installations with installed capacity $> 1\text{MW}$ not qualified under the baskets viii) –xiii) above;

the auctions within the abovementioned baskets should be carried out separately for electricity generated in RES installations commissioned before 1 July 2016 and after that date;
- b. the Council of Ministers is obliged to issue secondary legislation allocating total volumes and values of electricity that may be purchased in given year in each basket;
- c. the offer which is not selected in given basket may be sold in auction carried out for the next basket whereas the sequence of the auctions carried out for respective baskets will be determined by the Council of Ministers (e.g. if the offer qualified under basket (i) is not selected within the auction carried out for this basket, it may compete within the auction launched subsequently for another basket in accordance with time schedule provided by the Council of Ministers);
- d. selection of the RES operators is based on the criterion of the lowest unit price offered for renewable energy up to the total volume allocated to the basket and in case of the same unit price offered – based on the criterion of the time of submission of the offer; in case the remaining



- volume of energy to be sold within the auction is less than the volume specified in the next lowest offer, the remaining volume is not sold within the auction;
- e. reference prices are set for each RES technology so that all the offers providing for prices higher than the reference price shall be rejected; besides, an offer shall be also subject to rejection if the offered price increased by the unit amount of other state aid granted to the project in any form is higher than the reference price;
 - f. the fixed price for electricity agreed within the auction is binding on the parties within the whole incentive period (15-year or shorter if the Minister of Energy decides so with respect to RES installations selected within the auction in a given year) save for yearly indexation of such price with annual average index of retail prices of consumer goods and services, described by President of Central Statistical Office;
 - g. the fixed volume of purchased electricity agreed within the auction for each year is binding on the parties within the whole incentive period (15-year or shorter if the Minister of Energy decides so with respect to RES installations selected within the auction in a given year) and will be verified after each three-year settlement period and upon completion of the entire incentive period; the quantity of electricity covered by the compensation rights shall be however decreased by the volumes generated in those hours for which an average market price quoted on the day-ahead market is negative for at least 6 subsequent hours;
 - h. commissioning of the new RES installation covered by the auction should occur not later than within 48 months (save for solar energy where the deadline is 24 months and offshore wind installations where the deadline is 72 months) following the auction, such commitment to be secured with bank guarantee or money deposit in the amount of PLN 30/kW of the installed capacity.

The auction rules, in particular division into “technological baskets”, prefer the installations with stable generation profile (multi-fuel plants, hydro-power plants, hybrid RES installations covering RES Installations with both stable and unstable profile) over the technologies dependent on weather conditions. The technologies with less stable generation profile (photovoltaic, on-shore wind farms) are likely to compete exclusively in baskets specified in points a).vii) and a).xiv) above.

[Penalty for generation shortfall] If the generation from the RES Installation selected within the auction falls in any 3-year settlement period below 85% of the volume offered within the auction and accruing to such period, the beneficiary (operator of RES Installation) shall be subject to financial penalty in the amount calculated as: $0.5 * C_A * (E_{OA} - E_{WA})$, where:

- C_A - price offered within the auction for electricity generated from respective RES installation,
- E_{OA} - volume of electricity to be generated from respective RES installation within given 3-year settlement period in accordance with offer submitted in the auction,
- E_{WA} - volume of electricity actually generated from respective RES installation within given 3-year settlement period.

As a result, the financial penalty would be calculated based on the entire missing volume of electricity, including the admissible 15% shortfall.

[Penalty for inappropriate load factor assessment] If the load factor arising from the auction (basket) is not met during the support period (save for specific situations defined in the RES Act which are



outside control of the RES operator), the RES operator will be obliged to pay back the entire support received under the auction scheme.

Although the photovoltaic RES installations or on-shore wind are not formally precluded from participation in the auctions for technological baskets with load factor exceeding 3504MWh/MW/a, one may indicate the following risks concerning participation in such auctions:

- a. at the stage of applying for the certificate allowing to participate in the auction (the “Certificate”)** - the RES operator is obliged to declare whether the load factor of the RES installation will be higher or lower than 3504 MWh/MW/year and such declaration being included in the Certificate and being subject to control of the President of the Energy Regulatory Office in accordance with Art. 84 of the RES Act in terms of compliance with “the factual status”, who may potentially refuse to issue a certificate reflecting higher load factor (although this risk, at the stage of applying for certificate is rather of theoretical nature (since there is no data on actual load factor), one may not entirely rule out that ERO would try to question applicant's declaration on the envisaged load factor based on e.g. the wind forecasts included in the RES Installation documentation).
- b. at the stage of submitting offer within auction** - according to the Terms of Auction (published by ERO on 28 November 2016), the load factor is automatically calculated as the quotient of the energy offered by the RES operator in each year and the total installed capacity of the RES installation; if the envisaged generation (and thus load factor) for any of the years within the support period is lower than 3504 MWh/MW/year, the electronic system (IPA) will prevent the RES operator from submitting the offer in the auction for the particular technological basket. However, the Terms of Auction do not provide for the information whether the algorithm will take into consideration the planned aggregated generation within the whole 15-year period divided by the number of years of generation or the data for each 3-year settlement period or the load factor will be calculated for each year separately.
- c. at the stage of generation period** - according to article 83 section 3a of the RES Act, if the RES Installation, which was selected within the auction, fails to meet load factor arising from the auction (basket) within the support period, the RES operator will be obliged to return the compensation granted under the auction scheme (i.e. difference between the revenues from the sale of the actually generated electricity calculated based on, respectively, the auction price and the average daily prices of electricity quoted at the commodity exchange in the day-ahead and two-days-ahead transactions – hereinafter: “Compensation”). Nevertheless, it is ambiguous whether the load factor will be verified (i) after each year, (ii) after each 3-year settlement period, (iii) or after whole support period. It is also not crystal clear, whether the obligation to return the compensation pertains to the year in which the RES installation failed to meet load factor or to the whole support period (up to 15 years).

Thus, competing by the onshore wind farms or photovoltaic RES installations in the auctions dedicated for technologies with more stable generation, although possible, poses significant financial risk for the RES operator, if the load factor is not actually achieved.

[Sanctions] The RES Act provides for the following situations where the amount of Compensation owed to the entity winning the auction may be reduced or sanction may be imposed as a result of incompliance with the provisions of the RES Act.



Sanction	Trigger
<p>Lack of Compensation with respect to the volumes of electricity which are qualified by the President of ERO as not being subject to Compensation due to incompliance of actual status of the RES Installation with statements of the RES operator provided at the stage of the pre-qualification to the auction scheme and/or included in the auction offer*</p> <p>* Although the statutory provisions are unclear in this matter, one should assume that:</p> <p>(i) if the RES operator received the Compensation covering the volume of electricity questioned by the President of the Energy Regulatory Office, the President of the Energy Regulatory Office issues decision imposing an obligation to return the specified amount of the Compensation;</p> <p>(ii) if the RES operator has not received the Compensation covering the volume of electricity questioned by the President of the Energy Regulatory Office, the President of the Energy Regulatory Office merely qualifies, by way of a ruling (pol. <i>postanowienie</i>), the questioned volume of electricity as an amount not being subject to Compensation and thus Compensation in that respect is not payable.</p>	<p>Incompliance of actual status of the RES Installation with the statements or information provided by the RES operator at the stage of the pre-qualification to the auction scheme and/or included in the auction offer within the following scope:</p> <ol style="list-style-type: none"> 1. type or installed capacity of RES Installation; 2. declared amount and price at which the RES operator intends to sell the electricity; 3. compliance with statutory conditions enabling modernized RES Installation as well as biomass installations and hydro-installation to benefit from support system; 4. planned volume of electricity generated in the RES installation; 5. fuels used for generation of electricity (not applicable to the onshore wind farms); 6. minimum load factor.
<p>Prohibition of participation in auction scheme with respect to particular RES Installation and obligation to return the entire Compensation granted under the auction scheme</p>	<ul style="list-style-type: none"> • Failure to notify the President of Energy Regulatory Office of the level of state aid granted to the producer in the 3-year settlement period; • Aggregated revenues from sale and state aid obtained in any form whatsoever exceeds the maximum cap of state aid calculated based on reference price.
<p>Obligation to return the entire Compensation granted under the auction scheme</p>	<p>Failure to meet load factor arising from the auction (basket).</p>
<p>Penalty in amount of half the value of missing electricity volume calculated based on the auction price</p>	<p>Generation measured for the 3-year settlement period lower by more than 15% comparing to volumes offered within the auction.</p>
<p>Penalty in amount of PLN 10,000 and potentially the additional penalty imposed on the manager (pol. <i>kierownik</i>) of the energy company in amount not exceeding 300% of his monthly salary.</p>	<ul style="list-style-type: none"> • Failure to provide the President of Energy Regulatory Office with information on realization of the construction schedule (pol. <i>harmonogram rzeczowy i finansowy realizacji budowy</i>); • Failure to provide the President of Energy Regulatory Office with information on the first generation of electricity in RES installation or amount of electricity generated in the RES installation in the previous year; • Hindering the control instigated by the President of Energy Regulatory Office.



[Completed auctions] In practice, on 28 November 2016 the President of ERO published the Terms of Auction which specifies in details the next steps in the course of renewable energy auctions. Afterwards, on the basis of the Terms of Auction and rules described above 2016 RES auctions (dated 30 December 2016) and two RES auctions in 2017 (dated 29-30 June 2017) took place. The results of the particular auctions are available at <https://www.ure.gov.pl/pl/rynki-energii/energia-elektryczna/aukcje-oze/6573,Komunikaty-i-ogloszenia.html>.

Unfortunately, within 2016 auctions some of the bidders were unable to submit their offer due to technical problems with auction platform

As regards the 2016-2017 RES auctions, Polish government adopted the following secondary legislation

- a. regulation of the Minister of Energy dated 17 October 2016 concerning change of quota of electric energy covered by redeemed certificates of origin confirming generation of electric energy in renewable energy sources;
- b. regulation of the Minister of Energy dated 17 October 2016 concerning reference prices of energy from renewable sources for 2016;
- c. regulation of the Council of Ministers dated 27 October 2016 concerning maximum volume and value of electricity from renewable energy sources that may be sold within the auctions in 2016; and
- d. regulation of the Council of Ministers dated 27 October 2016 concerning order of auctions for the sale of electricity from renewable sources of energy in 2016;
- e. regulation of the Minister of Energy dated 1 December 2016 on calculation of the amount of state aid for the energy from the renewable energy source generated in the renewable energy installation;
- f. regulation of the Minister of Energy dated 16 March 2017 concerning reference prices of energy from renewable energy sources for 2017 and support periods for operators who won 2017 auctions.
- g. regulation of the Council of Ministers dated 20 March 2017 concerning maximum volume and value of electricity from renewable energy sources that may be sold within the auctions in 2017; and
- h. regulation of the Council of Ministers dated 20 March 2017 concerning order of auctions for the sale of electricity from renewable sources of energy in 2017.

The foregoing legislation has provided for the following parameters of the auctions:

Reference prices

Type of RES installation	Reference price [PLN/MWh]	Reference price [EUR/MWh]* * exchange rate at 1 EUR = 4,31PLN
Agricultural biogas ≤1MW	550	127,61
Agricultural biogas >1MW	550	127,61
Landfill biogas	405	93,97
Sewage treatment plant biogas	365	84,69
Biogas not specified above	355	82,37
Biomass in dedicated biomass combustion installations and hybrid power plants ≤50MW	415	96,29
Biomass, biofuels, biogas or agricultural biogas in dedicated multi-fuel combustion installations	325	75,41
Biomass in CHP dedicated biomass combustion installations and CHP hybrid power plants ≤50MW	450	104,41
Biomass in CHP dedicated biomass combustion installations and CHP hybrid power plants	435	100,93



>50MWe and ≤150MWt		
Waste incineration plants	385	89,33
Biofuels	475	110,21
Onshore wind farm ≤1MW	320	74,25
Onshore wind farm >1MW	350	81,21
Hydro power plants ≤1MW	480	111,37
Hydro power plants >1MW	480	111,37
Geothermal power plant	455	105,57
Solar ≤1MW	450	104,41
Solar >1MW	425	98,61
Offshore wind farm	470	109,05
Renewable hybrid power plantirrespective of the fuel used ≤ 1 MW	455	105,57
Renewable hybrid power plantirrespective of the fuel used > 1 MW	405	93,97

Auction budgets

	Type of RES installation (auction basket)	Date of commissioning and/or modernization	AUCTION 2016		AUCTION 2017	
			Maximum volume [MWh]	Maximum value [PLN]	Maximum volume [MWh]	Maximum value [PLN]
1.	Installed capacity ≤1MW + load factor exceeding 3504 MWh/MW/annum irrespective of the technology used	Commissioned by 1 July 2016	0	0	1 659 047	556 174 673
		Commissioned after completion of auction	0	0	825 000	308 182 262
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0	0	0
2.	Installed capacity ≤1MW using biodegradable waste fraction (waste incineration plants)	Commissioned by 1 July 2016	0	0	0	0
		Commissioned after completion of auction	0	0	0	0
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0	0	0
3.	Installed capacity ≤1MW and load factor exceeding 3504 MWh/MW/a and CO2 emission not exceeding 100 kg/MWh	Commissioned by 1 July 2016	1 306 870	538 297 239	1 484 764	631 329 732
		Commissioned after completion of auction	0	0	540 000	299 025 631
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0	0	0
					ALREADY COMPLETED	



	Type of RES installation (auction basket)	Date of commissioning and/or modernization	AUCTION 2016		AUCTION 2017	
			Maximum volume [MWh]	Maximum value [PLN]	Maximum volume [MWh]	Maximum value [PLN]
4.	Clusters ≤ 1MW*	Commissioned by 1 July 2016	n/a	n/a	0	0
		Commissioned after completion of auction	n/a	n/a	0	0
		Commissioned by 1 July 2016 and modernized after 1 July 2016	n/a	n/a	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	n/a	n/a	0	0
5.	Energy cooperatives (pol. spółdzielnie energii) ≤ 1M*	Commissioned by 1 July 2016	n/a	n/a	0	0
		Commissioned after completion of auction	n/a	n/a	0	0
		Commissioned by 1 July 2016 and modernized after 1 July 2016	n/a	n/a	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	n/a	n/a	0	0
6.	Installed capacity ≤ 1MW using agricultural biogas	Commissioned by 1 July 2016	2 113 887	1 262 797 422	1 149 296	683 370 550
		Commissioned after completion of auction	0	0	8 190 000	5 280 863 522
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0	0	0
7.	RES installations with installed capacity ≤ 1MW not qualified under the baskets 1)-6) above	Commissioned by 1 July 2016	0	0	0	0
		Commissioned after completion of auction	1 575 000	744 936 736	4 725 000	2 182 908 687
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0	0	0
8.	Installed capacity > 1MW and load factor exceeding 3504 MWh/MW/a irrespective of the technology used	Commissioned by 1 July 2016	0	0	10 502 338	3 768 589 370
		Commissioned after completion of auction	0	0	10 500 000	5 423 952 758
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0	0	0
9.	Installed capacity > 1MW using biodegradable waste	Commissioned by 1 July 2016	0	0	0	0



	Type of RES installation (auction basket)	Date of commissioning and/or modernization	AUCTION 2016		AUCTION 2017	
			Maximum volume [MWh]	Maximum value [PLN]	Maximum volume [MWh]	Maximum value [PLN]
	fraction (waste incineration plants)	Commissioned after completion of auction	0	0	4 644 000	2 242 015 403
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0	0	0
10	Clusters ≤ 1MW*	Commissioned by 1 July 2016	n/a	n/a	0	0
		Commissioned after completion of auction	n/a	n/a	0	0
		Commissioned by 1 July 2016 and modernized after 1 July 2016	n/a	n/a	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	n/a	n/a	0	0
11.	Energy cooperatives ≤ 1M*	Commissioned by 1 July 2016	n/a	n/a	0	0
		Commissioned after completion of auction	n/a	n/a	0	0
		Commissioned by 1 July 2016 and modernized after 1 July 2016	n/a	n/a	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	n/a	n/a	0	0
12.	Installed capacity >1MW and load factor exceeding 3504 MWh/MW/a and CO2 emission not exceeding 100 kg/MWh	Commissioned by 1 July 2016	0	0	0	0
		Commissioned after completion of auction	0	0	540 000	305 387 878
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0	0	0
13.	Installed capacity >1MW using agricultural biogas	Commissioned by 1 July 2016	2 309 382	1 365 351 905	2 118 162	1 260 181 015
		Commissioned after completion of auction	0	0	3 510 000	2 263 227 224
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0	0	0
14.	RES installations with installed capacity >1MW not qualified under the baskets 8) –13) above	Commissioned by 1 July 2016	0	0	0	0
		Commissioned after completion of auction	0	0	5 175 000	1 972 413 921
		Commissioned by 1 July 2016 and modernized after 1	0	0	0	0



Type of RES installation (auction basket)	Date of commissioning and/or modernization	AUCTION 2016		AUCTION 2017	
		Maximum volume [MWh]	Maximum value [PLN]	Maximum volume [MWh]	Maximum value [PLN]
	July 2016				
	Commissioned after completion of auction and modernized after 1 July 2016	0	0	0	0
IN TOTAL:		7 305 139	3 910 483 302	46 950 507	22 698 184 704

As regards the 2017 auctions, the justifications appended to the secondary legislation setting forth the 2017 auction budgets provide that those budgets will allow for support of the following new RES installations:

1. agricultural biogas plants:
 - a) with installed capacity ≤ 1 MW – projects with aggregated maximum capacity up to 70 MW;
 - b) with installed capacity > 1 MW – projects with aggregated maximum capacity up to 30 MW;
2. landfill biogas plants with installed capacity ≤ 1 MW – projects with aggregated maximum capacity up to 5 MW;
3. biogas plants in sewage treatment plants with installed capacity ≤ 1 MW – projects with aggregated maximum capacity up to 5 MW;
4. biomass in dedicated biomass combustion installations with installed capacity ≤ 1 MW – projects with aggregated maximum capacity up to 100 MW;
5. incineration plants with installed capacity > 1 MW – projects with aggregated maximum capacity up to 150 MW;
6. hydro power plants:
 - a) with installed capacity ≤ 1 MW – projects with aggregated maximum capacity up to 10 MW;
 - b) with installed capacity > 1 MW – projects with aggregated maximum capacity up to 10 MW;
7. solar power plants with installed capacity ≤ 1 MW – projects with aggregated maximum capacity up to 300 MW,
8. onshore wind power plants with installed capacity exceeding 1 MW – projects with aggregated maximum capacity up to 150 MW.

The proposals provided within the already adopted regulations mean that the 2016 and 2017 auctions will not mitigate current oversupply of green certificates at the market as the existing non-biogas RES Installations generating Green Certificates will not be generally allowed to switch to the auction scheme and thus reduce the Green Certificates supply as well as benefit from more stable revenues under the auction system (save for budgets to be allocated within the 2017 auctions for stable non-biogas RES installations commissioned by 1 July 2016, such installations to be able to compete for support not exceeding PLN 4 662 222 821 in total).

Until now the auction sessions with budgets dedicated to the non-biogas RES installations with installed capacity exceeding 1 MW have not been conducted. According to informal expectations of the ERO, sessions for unstable RES installations (such as onshore wind farms) with total installed capacity exceeding



1 MW, are expected in the last quarter of the year 2017. The Polish government intends the abovementioned auction sessions to be conducted in compliance with the new auction rules as described below.

IV. Feed-in tariff for micro-installations

The RES Act provides also for separate incentives addressed to the so-called “micro-installations”, i.e. RES Installations with installed capacity not exceeding 40 kW. In particular, the RES Act provides for a general feed-in tariff for micro-installations under which the “obliged suppliers” shall purchase electricity generated from micro-installations at a price equal to 100% of the average electricity market price as announced by the President of the ERO for the previous quarter, such obligation to be limited with respect to any given micro-installation to 15 years.

V. Proposed amendments to the RES Act

The existing RES incentive schemes are going to be rearranged by way of the following bills of amendments to the RES Act which are now subject to legislation process:

- (a) bill of amendments to the RES Law submitted to the Parliament by the group of its members on 12 July 2017, providing for significant decrease of the substitute fee applicable to the Green Certificates (“**MPs’ Amendments**”) - adopted by Sejm on 20 July 2017 and may enter into force in August/September 2017;
- (b) governmental bill of amendments to the RES Act announced and directed to public consultations on 28 June 2017 which provides for significant modifications of the existing incentive schemes as well as introduction of new incentive schemes (“**Governmental Amendments**”) – the Governmental Amendments result from both EC’s position vis-à-vis the RES Act and new governmental policies and was initially expected to enter into force in September 2017 but actual entry into force may be postponed.

Changes under the MP’s Amendments

The MPs’ Amendment provides that the substitute fee related to the Green Certificates shall be calculated for each year separately as 125% of the annual weighted-average market price of green certificates but not more than PLN 300.03/MWh. As the weighted-average market price of green certificates for 2016 and applicable in 2017 under Art. 47 of the RES Law is PLN 73.63/MWh. 125% of that price would be PLN 92.03/MWh instead of current substitute fee in amount of PLN 300.03/MWh which shall:

- (a) affect the Green Certificates purchase agreements which provide that the price for the certificates is calculated based on the value of the substitute fee;
- (b) encourage the buyers of the Green Certificates to undertake various actions aimed at termination of the certificate purchase agreements in which the purchase price is not directly linked to the substitute fee and much higher than the anticipated new substitute fee;



- (c) result in further decrease of the market value of green certificates (as of 20 July 2017, the PPX Green Certificates index for session transactions was PLN 32.05/MWh but may decrease due to decrease of the substitute fee).

The current wording of the MP's Amendments (which may be modified at the higher chamber of the Polish Parliament, i.e. Senat) does not specify which annual weighted-average certificate price shall be the basis for calculation of the substitute fee for given year (it may be only assumed that the substitute fee for 2017 might be calculated based on average prices in 2016 but it is not entirely excluded that it may be calculated based on lower prices in 2017). It poses further risk that some obligated entities shall assess lower market price based on 2017 weighted-average market prices which shall be much lower than 2016 prices.

Changes under the Governmental Amendments

[Broader scope of micro-installations and small installations as well as additional incentive schemes for RES installations below 1 MW] The Governmental Amendments redefine the notions of "micro-installation" and "small installation" which are generally exempted from licensing requirements. Under the Governmental Amendments, the maximum electrical installed capacity of the micro-installations shall be increased from 40 kW up to 50 kW while the maximum electrical installed capacity of the small installation shall be increased from 200 kW up to 500 kW.

Besides, the Governmental Amendments provide for additional RES incentive schemes, including guaranteed feed-in tariffs (FIT) or feed-in premium tariffs (FIP), which would be available to certain "micro-installations" and "small installations" (as defined above) as well as other RES Installations with installed capacity below 1 MW until 31 December 2035 as follows:

- (a) under the new FIT incentive scheme, the operators of the "micro-installations" and "small installations" (as defined above) using biogas and/or hydropower would be entitled to sell the unused electricity generation to the "obliged suppliers" for the price equal to 80% of the applicable reference price;
- (b) under the new FIP incentive scheme, the operators of the hydro and biogas-fueled RES Installations with installed capacity $0.5 \text{ kW} \leq P < 1 \text{ MW}$ would be entitled to sell the RES electricity to any purchaser and claim for Compensation payable by the SO in the amount equal to the difference between: (a) the product of: volume of electricity actually delivered to the grid and 80% of the applicable reference price and (b) market value of the same electricity calculated based on average daily prices of electricity quoted at the commodity exchange in the day-ahead and two-days-ahead transactions.

[Modifications in the auction system] The Governmental Amendments provides for the following changes to the existing auction scheme:

1. **[New division into technological baskets]** The auctions shall be carried out within the following technological baskets:
 - (i) installations generating electricity using: (a) non-agricultural biogas, (b) biofuels, (c) biomass in dedicated biomass combustion installations and hybrid power plants with installed capacity $\leq 50 \text{ MW}$, (d) biomass, biofuels, biogas or agricultural biogas in dedicated multi-fuel combustion installations as well as (e) biomass in CHP dedicated biomass combustion installations and CHP



hybrid power plants with installed capacity not exceeding 50 MWe or exceeding 50 MWe but not exceeding 150MWt;

- (ii) waste incineration plants;
- (iii) hydro power plants, geothermal power plant as well as offshore wind farms;
- (iv) installations generating electricity using agricultural biogas;
- (v) onshore wind farms and PV installations;
- (vi) renewable hybrid power plant irrespective of the fuel used.

- separately for installations with installed capacity up to 1 MW and above 1 MW.

2. **[2017 RES auction]** According to the Governmental Amendments, there would be the following budgets for the 2017 RES Auctions:

	Type of RES installation (auction basket)	Date of commissioning and/or modernization	AUCTION 2017	
			Maximum volume [MWh]	Maximum value [PLN]
1.	RES Installations with installed capacity ≤ 1 MW, generating electricity using: (a) non-agricultural biogas, (b) biofuels, (c) biomass in dedicated biomass combustion installations and hybrid power plants with installed capacity ≤ 50 MW, (d) biomass, biofuels, biogas or agricultural biogas in dedicated multi-fuel combustion installations as well as (e) biomass in CHP dedicated biomass combustion installations and CHP hybrid power plants with installed capacity not exceeding 50 MWe or exceeding 50 MWe but not exceeding 150MWt;	Commissioned by 1 July 2016	1 659 047	556 174 673
		Commissioned after completion of auction	825 000	308 182 262
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
2.	Waste incineration plants with installed capacity ≤ 1 MW	Commissioned by 1 July 2016	0	0
		Commissioned after completion of auction	0	0
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
3.	Hydro power plants, geothermal power plant as well as offshore wind farms with installed capacity ≤ 1 MW	Commissioned by 1 July 2016	1 484 764	631 329 732
		Commissioned after completion of auction	540 000	299 025 631
		ALREADY COMPLETED		
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
4.	RES Installations with installed capacity ≤ 1 MW generating electricity using agricultural biogas	Commissioned by 1 July 2016	1 149 296	683 370 550
		Commissioned after	8 190 000	5 280 863 522



	Type of RES installation (auction basket)	Date of commissioning and/or modernization	AUCTION 2017	
			Maximum volume [MWh]	Maximum value [PLN]
		completion of auction		
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
5.	Onshore wind farms and PV installations with installed capacity ≤ 1MW	Commissioned by 1 July 2016	0	0
		Commissioned after completion of auction	4 725 000	2 182 908 687
			ALREADY COMPLETED	
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
6.	Renewable hybrid power plant irrespective of the fuel used with installed capacity ≤ 1MW	Commissioned by 1 July 2016	0	0
		Commissioned after completion of auction	0	0
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
7.	RES Installations with installed capacity >1MW, generating electricity using: (a) non-agricultural biogas, (b) biofuels, (c) biomass in dedicated biomass combustion installations and hybrid power plants with installed capacity ≤50MW, (d) biomass, biofuels, biogas or agricultural biogas in dedicated multi-fuel combustion installations as well as (e) biomass in CHP dedicated biomass combustion installations and CHP hybrid power plants with installed capacity not exceeding 50 MWe or exceeding 50 MWe but not exceeding 150MWt;	Commissioned by 1 July 2016	10 502 338	3 768 589 370
		Commissioned after completion of auction	10 500 000	5 423 952 758
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
8.	Waste incineration plants with installed capacity >1MW	Commissioned by 1 July 2016	0	0
		Commissioned after completion of auction	4 644 000	2 242 015 403
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
9.	Hydro power plants, geothermal power plant as well	Commissioned by 1 July	0	0



	Type of RES installation (auction basket)	Date of commissioning and/or modernization	AUCTION 2017	
			Maximum volume [MWh]	Maximum value [PLN]
	as offshore wind farms with installed capacity >1MW	2016		
		Commissioned after completion of auction	540 000	305 387 878
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
10.	RES Installations with installed capacity >1MW generating electricity using agricultural biogas	Commissioned by 1 July 2016	2 118 162	1 260 181 015
		Commissioned after completion of auction	3 510 000	2 263 227 224
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
11.	Onshore wind farms and PV installations with installed capacity >1MW	Commissioned by 1 July 2016	0	0
		Commissioned after completion of auction	5 175 000	1 972 413 921
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
12.	Renewable hybrid power plant irrespective of the fuel used with installed capacity > 1MW	Commissioned by 1 July 2016	0	0
		Commissioned after completion of auction	0	0
		Commissioned by 1 July 2016 and modernized after 1 July 2016	0	0
		Commissioned after completion of auction and modernized after 1 July 2016	0	0
IN TOTAL:			46 950 507	22 698 184 704

Under the Governmental Amendments, there is still no budget under the 2017 RES Auctions for existing windfarms interested in switching to the auction scheme. Furthermore, the maximum amount and value of electricity to be sold within 2017 RES Auction within the basket specified in point 1.(v) above (onshore windfarms and PV) with installed capacity > 1 MW shall be 5 175 000 MWh and 1 972 413 921 PLN (budget unchanged vis-à-vis secondary regulation adopted this year before the the Governmental Amendments were revealed).



Besides, the remaining 2017 RES auctions will not be held in the electronic form – the offers will be submitted in paper and on CD/DVD as -xls(x) file (in case of any discrepancy, the paper document will prevail) – the time stamp obtained at delivery of the offer to the ERO office still decides on priority when two offers have the same price and thus it is highly recommended to be well-prepared for the queue at the ERO office at the day of the auction. **3. [Auction security]** The Governmental Amendments propose that the amount of security to be paid by the RES operators participating in the RES auction is increased from the current level of PLN 30/kW to PLN 60/kW of installed capacity.

4. **[Requirements for components and commissioning of the new installations]** According to the Governmental Amendments, devices installed in onshore wind power plants are to be manufactured not earlier than 24 months (previously – 48 months) before the first electricity generation in such wind power plant and the first electricity generation should occur not later than 24 months from closing of the respective RES auction session (previously – 48 months) under the pain of return of the entire support (forfeiture of the security if the).
5. **[Procedure for transfer of an auction success]** The Governmental Amendments allow for transfer of the title to the RES installation together with the auction success (and obligations resulting thereunder) upon the consent of the President of the Energy Regulatory Office, which is granted if the purchaser meets the formal criteria to operate the installation and there is no justified risk that the purchaser will not perform the obligations connected with the RES auction incentive scheme. For the period of 2 years following the acquisition of the RES installation the seller will be jointly and severally liable with the purchaser for all failures as regards the abovementioned obligations.
6. **[Simplifying the pre-qualification procedure]** According to the Draft the RES operator would not be obliged to present zoning and environmental decisions at the stage of applying for “ready for auction certificate”.
7. **[Auction schedules]** The Governmental Amendments obliges the Minister of Energy to publish in the Bulletin of Public Information the indicative schedule presenting the maximum amount and value of electricity which will be offered in the RES Auctions for the next 3 years.
8. **[Clarification of the rules on state aid treatment]** The Governmental Amendments clarify that total level of state aid granted under the auction scheme will be decreased by the investment state aid granted to the project – the operational state aid will not be taken into consideration while determining whether the offer price exceed the reference price. Furthermore, the auction price used for the purpose of settlements with the RES operator after the auction (for the purpose of payments made by the “obliged supplier” or reimbursement of the difference between the auction price and the market price of electricity) shall be decreased by the amount of the investment state aid – this will allow for better competition between projects obtaining investment state aid (previously offering relatively lower price due to the investment state aid obtained for the project) and projects not obtaining any investment state aid (previously offering relatively higher price due to no investment state aid for the project and thus less competitive in the auction).
9. **[Calculation of the load factor]** The Governmental Amendments clarify that the annual load factor of RES Installations (in the still existing technological baskets specifying minimum load factor) will be verified within three-year periods as the arithmetical average from this period and, in case of failure to achieve the load factor, the operator will be obliged to return only the support allocated to those



particular years in which the failure occurred (not for the whole support period). Moreover, the Governmental Amendments prevent from double-sanctioning for too low electricity generation and failure to achieve load factor within the support period.

10. **[Overload generation]** The Governmental Amendments clarify that the electricity production exceeding the declared maximum capacity (overload generation) of the RES installation is not taken into account when determining the total amount of electricity which was generated and sold within the support period.
11. **[Eligibility of certain existing RES installations to the RES auctions for new installations]** According to the Governmental Amendments, the RES Installations commissioned after the entry into force of the Governmental Amendments, but before the particular RES Auction takes place, may participate in such RES auction as a new installation if only the whole electricity generated in such an installation within the period preceding the RES Auction is fed into the electricity grid and sold on the commodity exchange market.
12. **[Removing the energy cooperatives]** The Governmental Amendments repeal regulations on energy cooperatives. It would also repeal the separate technological auction baskets for energy clusters and energy cooperatives.



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