



# Legal Alert

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## PROPOSED AMENDMENTS FOR WIND POWER PLANTS

On 19 April 2021, an amendment to the Law on Investments in Wind Power Plants (so-called the Anti-Wind Energy Law) and certain other laws (the "**Project**") was entered into the list of legislative and programme works of the Council of Ministers.

According to the published assumptions, the Project is to facilitate investments in onshore wind power plants, while preserving the rights of residents to participate in the process of these investments and to solve the problem of housing construction in the vicinity of these power plants. The potential effect of the passing of the Project may be the increase of the number of investments, which in the current legal state cannot be completed.

### MAIN PROJECT OBJECTIVES

The Project does not change the basic principle of locating wind farms only on the basis of a Local Spatial Development Plan („LSDP”), including the 10H rule, i.e. prohibition to locate a power plant if there are residential buildings or forms of nature conservation within the radius equal to 10 times the height of the power plant. However, the amendment concerns the obligation to prepare or amend a LSDP for a given power plant, as this obligation will only concern the area of the projected impact of the power plant, and not - as in the current legal status - the entire area designated as 10H.

The Project also intends to make the 10H rule more flexible, by giving more competences with respect to determining the location of wind power plants to particular municipalities, as part of the planning procedure for amending the LSDP, developed for new power plants. In this respect, LSDP will be able to specify a changed minimum distance to the nearest residential building, taking into account the so-called absolute safety distance specified in the Project. Similarly, maintaining the absolute safety distance will be required for the new residential buildings in relation to the existing wind power plant.

According to the planned version of the Project, exception from the 10H rule in LSDP will be possible after extended public consultations. The procedure of presenting the act to the public and accepting residents' comments is to be specified. An obligation will also be introduced to conduct additional public consultations with the participation of residents, regarding the determination of the boundaries of areas designated for the construction of wind farms in the municipality.

The final distance from residential buildings will be verified and determined by the competent Regional Director for Environmental Protection (“RDOŚ”), within the procedure for issuing an environmental decision, on the basis of an environmental impact report. The Project is intended to enable the issuance of detailed provisions on guidelines for RDOŚ and communes in the area of research and determination of impacts of wind power plants.

The Project will also introduce additional obligations regarding technical operations necessary to ensure safe operation of the most important elements of the power plant. In this respect, the Project is to introduce an obligation to periodically certify companies and employees carrying out maintenance of these technical elements, and to create a register of entities authorised to perform such maintenance.

The planned date for the adoption of the Project by the Council of Ministers is Q2 2021.

### GUARANTEE IN THE POLISH OFFSHORE WIND ACT

Significant changes for the implementation of offshore wind farms are introduced by the draft Act of 15 April 2021 amending the Energy Law and certain other acts. The Act contains provisions introducing a new possibility of securing the fulfilment of the obligation to produce electricity generated in an offshore wind farm (or a part thereof) within a specified period of time and introduce it to the grid for the first time. The security will be possible in the form of a bank or insurance guarantee for a shorter period than currently, i.e. for no less than two years, provided that the generator makes a declaration of commitment to extend it for each subsequent period.

For further details on the new regulations, please do not hesitate to contact us.



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