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Legal Alert

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Material amendments to the Offshore Wind Act

Polish government presented and publicly consulted the draft amendments to the laws relevant to offshore wind farms, among others Offshore Wind Act and Offshore Location Act. While the proposed changes are still at an early legislative stage (the legislation may come into effect in mid-2025), they address a range of important issues, including i.e. the support system, the permitting process, and labor regulations. The most significant proposed changes are as follows:

1. **Sale of electricity during commissioning**
   The proposal allows the sale of energy within the day-ahead, intraday, and balancing markets during the technological commissioning (before issuance of the license) up to 12 months following the ION but without right to the CfD settlements. This would clarify on the commissioning power sale which was not sufficiently clear under the hitherto regulation.

2. **Auction participation for phase no. I OWFs**
   OWFs incentivized within the phase no. I of the support system would be allowed to participate in auctions (phase no. II) with respect to the unused capacity. Participants would also be allowed to submit two separate auction bids for two OWFs located within the same area outlined in Annex 2 of the Offshore Wind Act, provided the OWFs have separate power outputs.

3. **Sharing offshore substations**
   The amendment would allow multiple OWFs to share the same offshore substation or power output facilities. However, metering systems must be implemented to track energy production from each farm and the investment state aid granted to such offshore substation shall be deducted (pro rata to generation) from the relevant strike price guaranteed under the CfD.

4. **Coverage of negative balance during redispatch**
   The proposed amendment ensures that during market-based redispatching, when the TSO does not guarantee full power output, the investor can cover the negative balance via the Settlement Operator. This would compensate for any production reductions resulting from redispatching as long as the settlement price for redispatching is not equal to the price specified in the bid for energy reduction.

5. **Micro-relocations of foundations**
   The proposal allows for the relocation of offshore wind turbine foundations or substations within a radius of up to 50 meters (without having to change the permits obtained), subject to notification to the competent maritime office director.

6. **Clarifications on investment phasing**
   The draft introduces a more favorable method for calculating the adjusted price that forms the basis for negative balance payments – calculated on a pro-rata basis, which will be beneficial from the point of view of phasing the OWF.

7. **Preliminary certificate**
   The President of ERO will be entitled to issue a preliminary auction admission certificate, provided that the environmental decision is delivered before the auction takes place. This solution will accelerate the process of obtaining auction admission certificates.

8. **Limits in indexation of support obtained in phase no. II**
   The proposal states that if the inflation target is exceeded, the indexation adjustment for investors from phase no. II will be limited to the state inflation target level (t may shift part of the inflation / cost of capital risk to the investor).

9. **Extension of permit validity**
The duration of a key permits for OWFs and offshore cables (OLLs and cable location permits) would be extended to 30 years from the date on which the concession for OWF became final.

10. **Extension for design compliance certificate**
The deadline for obtaining a certificate of design compliance would be extended to before the start of construction, rather than prior to notification of the start date (which will allow changes to the construction project to be made without multiple revision to the certificate).

11. **Changes in safety zones**
The proposal includes changes to safety zones, applying them separately to each OWF component, with a minimum distance of 150 meters.

12. **Compensation for shipowners**
The draft outlines the procedure for calculating compensation for shipowners previously involved in fishing activities within the investment areas (flowing through the area covered by the OWF).

While the proposed solutions as generally favorable for the investors, some aspects still fail to resolve certain issues, leading to regulatory uncertainties.

Should you have any questions to the above, please do not hesitate to contact us.

Contact us!

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