

## Position of the Union of Entrepreneurs and Employers on the draft amendment to the Distance Act

The draft act presented by the Ministry of Development, Labour and Technology whose aim is to amend the act on investments in wind farms and some other acts (hereinafter: the Distance Act), liberalising to a certain extent the assumptions regarding the location of wind farms, is in fact a step in the right direction.

In said document, the liberalisation largely refers to the so-called “10H rule” – which is mandatory and according to which wind farms must not be located within a shorter distance from buildings and selected forms of nature reserves than 10 times the height of the turbine with raised blades. This means that the minimum distance from residential buildings for a modern wind farm with a maximum turbine height of 150-180 metres is approx. 1.5-1.8 kilometres.

The proposed amendment is a turning point in the government’s approach to the issue of the Polish energy sector transformation by allowing investments in onshore wind energy – currently the cheapest and fastest, in terms of investments, green energy source.

The growing supply deficit of green energy is a serious threat to the development of the entire Polish economy, thus also to the position of Poland in Europe. However, thanks to efficient and effective investments in onshore wind farms as well as large-scale solar sources, we can significantly reduce this deficit, providing the Polish industry with the necessary amount of cheap green energy. Moreover, a further development of these energy sources, along with the development of offshore wind farms, will positively affect the creation of Poland’s hydrogen economy.

With the above-mentioned facts in mind, the Union of Entrepreneurs and Employers would like to present feedback in the form of a series of comments which, in our opinion, will allow for increased effectiveness of the introduced regulations and thus their more frequent use by business.

### **I. Maintaining the “10H rule” as the administratively preferred distance**

Unfortunately, the provisions of the draft act do not eliminate or soften the fundamental problem that has been present for years in the investment process in the field of onshore wind energy, i.e. conflicts within local communities related to such investments. Leaving “10H” unchanged as the administratively preferred distance will still constitute a significant investment barrier, since local governments – fearing conflicts between residents and local stakeholders – will cautiously approach the determination of closer distances when adopting local plans for investments in wind energy.

### **II. No simplified procedure for the so-called “repowering” process**

Repowering refers to the process of replacing older machinery with next-gen turbines that have higher efficiency or higher installed power, resulting in an increase in net energy production. Importantly, the proposed regulations do not include simplified procedures for replacing wind turbines.

Facilitating the repowering process could increase the present-day supply of green energy by at least 20% in a way that is almost cost-free for the Polish economy. This could subsequently translate into an increase in green energy supply by up to 10 TWh (terawatt-hours) annually.

Therefore, we recommend introducing a relevant provision to the draft act which would stipulate that, in the case of replacement of devices with new ones (with higher environmental parameters or greater efficiency), a separate administrative procedure will be provided, which will constitute a significant simplification compared to the standard process.

### **III. Locating onshore installations near industrial plants**

The presented draft Distance Act should be supplemented with provisions enabling or facilitating investments in renewable energy installations (in this case onshore wind farms) near industrial plants where the dominating landscape has an industrial character, and the construction of wind turbines would not adversely affect the aesthetic or environmental values of the surroundings.

Simplification of the investment process in post-mining, post-industrial or industrial areas would considerably accelerate the development of wind energy in Poland, and would also enable

large domestic investors to quickly increase power from renewable energy sources (RES) for their needs, without incurring unnecessary costs.

For this purpose, it would be reasonable to introduce specific provisions to the Distance Act, which would exclude industrial development areas from the procedures introduced both by the Distance Act and envisioned in the consulted project. Furthermore, it is worth considering including in Art. 4 an exception to the obligation to keep the distance specified in the regulations in the case of construction of a wind farm in industrial areas.

An unambiguous exclusion of investments carried out in areas where industry is located from the scope of the regulations of the Distance Act would translate into a faster and more effective achievement of CO<sub>2</sub> reduction targets. One of the consequences of introducing such an exemption should also be the lack of the obligation to include and consult wind farms to be located in industrial areas in local spatial development plans.

An additional obstacle to the execution of investments in wind farms generating electricity for the needs of industry is laid down in Art. 35 sec. 1 of the Act of 7<sup>th</sup> July 1994 Construction Law: the obligation to examine the compliance of a construction project with the local spatial development plan (hereinafter: LSDP) or with the land development conditions decision. The provisions contained in these documents often make it impossible to erect met masts used for wind measurements, necessary for examining the conditions prevailing at the site of the planned construction.

Henceforth, it is reasonable to supplement the above-mentioned provision with a regulation stating that the requirement referred to in this provision does not apply to technical infrastructure used to measure wind in industrial areas.

#### **IV. Definition of a direct line in energy law**

In the opinion of the Union of Entrepreneurs and Employers, one of the barriers to the development of renewable energy is the definition of a direct line contained in Art. 3 (11) (f) of the Energy Law of 10<sup>th</sup> April 1997. The restrictive concept of a direct line requires adjustment to the requirements of Directive (EU) 2019/944 of the European Parliament and of the Council of 5<sup>th</sup> June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (“Internal market in electricity” replacing the “Energy Efficiency Directive”).

Pursuant to Art. 2 (41) of the Internal market in electricity Directive, “direct line” means either an electricity line linking an isolated generation site with an isolated customer or an electricity line linking a producer and an electricity supply undertaking to supply directly their own premises, subsidiaries and customers;

Pursuant to Art. 7 sec. 1-3 of the Internal market in electricity Directive:

1. Member States shall take the measures necessary to enable:
  - a. all producers and electricity supply undertakings established within their territory to supply their own premises, subsidiaries and customers through a direct line, without being subject to disproportionate administrative procedures or costs;
  - b. all customers within their territory, individually or jointly, to be supplied through a direct line by producers and electricity supply undertakings.
2. Member States shall lay down the criteria for the grant of authorisations for the construction of direct lines in their territory. Those criteria shall be objective and non-discriminatory.
3. The possibility of supplying electricity through a direct line as referred to in paragraph 1 of this Article shall not affect the possibility of contracting electricity in accordance with Article 6.

In light of the above, the “insular” nature of the connection between an isolated producer and an isolated customer resulting from the Polish law seems to be a disproportionate and unjustified condition in the case of energy-intensive companies operating in a continuous system. The specificity of the operation of such plants requires having an emergency power supply, securing the necessary equipment in production installations, which may be of key importance for the company’s safety. It is a real barrier that cannot be overcome when trying to conclude contracts with renewable energy producers based on the institution of a direct line.

The provisions of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11<sup>th</sup> December 2018 on the promotion of the use of energy from renewable sources (“RED II”) with regard to the definition of a renewable electricity purchase contract (on the basis of which a natural or legal person agrees to purchase renewable electricity directly from an electricity producer), have not yet been transposed to the Polish legal system, which also hampers the low-carbon transformation.

## V. Duration of individual stages of the approval process of a new LSDP

Provisions specifying the course and manner of conducting public consultations accompanying the processes of establishing or changing local spatial development plans, necessary to carry out investments in the area of onshore wind farms, are cited repeatedly in the draft act. The proposed regulations define the minimum duration of each stage of the approval process of the new LSDP and the accompanying public consultations, but do not specify the maximum time. Indication of the aforementioned maximum duration of determining the LSDP could standardise the process of changes and allow for more precise estimates of the time necessary to obtain permits for the construction of a wind farm. In our opinion, this could significantly facilitate the entire investment process, and be as a result a considerable incentive for investors.

## VI. Investor relations with local communities

Currently, there are instances when local government authorities, fearing the reaction of the local community, refuse to cooperate with the investor in a non-public manner. In order to guarantee the transparency of information on investment plans for wind farms in a given commune (a Polish territorial unit), the investor should be allowed to communicate with the local community through official information channels.

Although in the current legal order there are no obstacles for an investor to run an informational and promotional campaign for a potential investment in a commune, it is advisable that the information process takes place within the framework of administrative and legal institutions. Therefore, it is proposed to establish an application path in the provisions of the Distance Act for the commencement of procedures constituting the process of locating wind farms. This should be done by means of a document in the form of an application within the meaning of Art. 64 of the Code of Administrative Procedure (CAP), announced in the form of notification by public announcement (Art. 49 CAP). In the application, the investor would provide information on the planned location of the wind farm along with documents determining the environmental impact.

Information through official commune channels will contribute to increasing the community's trust in the investor. A well-informed community will be more willing to even try to discuss adopting a resolution to proceed with the preparation (or update) of the LSDP, taking into account wind farms. The investor will also have the opportunity to inform about the projected environmental impact of this investment.

## **VII. Raising the threshold of built-up area for the purposes of qualifying the project as an undertaking with a potentially significant impact on the environment**

Pursuant to § 3 sec. 1 (54) of the Regulation of the Council of Ministers of 10<sup>th</sup> September 2019 on projects that may have a significant impact on the environment, in connection with Art. 59 sec. 1 (2) of the Act of 3<sup>rd</sup> October 2008 on the provision of information about the environment and its protection, and public participation in environmental protection and environmental impact assessments, photovoltaic installations with a built-up area of more than 0.5 ha require an environmental impact assessment, and thus obtaining a decision on environmental conditions.

In this context, we recommend considering raising the threshold of built-up areas for the purposes of qualifying the undertaking as a project that can have a potentially significant impact on the environment, and thus subject to an obligatory study on issuing a decision on environmental conditions (§ 3 sec. 1 (54) of the Regulation of the Council of Ministers of 10<sup>th</sup> September 2019 on projects that may have a significant impact on the environment, Journal of Laws 2019 item 1839) – from the currently applicable values, i.e. not less than 0.5 ha in areas covered by forms of nature protection and not less than 1 ha in other areas, up to: 1 ha in areas covered by forms of nature protection and not less than 2 ha in other areas.

At the same time, we make a reservation that the proposed solution should include the maintenance of tools for verification by competent authorities of the need to conduct a procedure regarding the decision on environmental conditions, and to possibly conduct an environmental impact assessment, even if the revised thresholds are not exceeded.

## **VIII. Locating renewable energy installations on grade 4 agricultural land**

Due to the current legal conditions, grade 4 agricultural land is largely used for the construction of photovoltaic installations. Inscribing grade 4 agricultural land in Art. 4 (1) of the draft act would significantly simplify the future investment process for photovoltaic farms with an installed electrical capacity of no more than 1000 kW, due to the exemption from the need to conduct a study of land use conditions and directions. This in turn would have a direct impact on shortening the time of investment execution.

## Summary

In the opinion of the Union of Entrepreneurs and Employers, the proposed act ought to, first and foremost, eliminate all investment barriers related to the location and operation of onshore installations. This will allow for the restoration of confidence in state policy towards renewable energy sources, which was significantly damaged as a consequence of the introduction of the Distance Act in its current wording in 2016.

One of the major barriers to wind farms investments is the lengthiness of administrative proceedings. Therefore, in view of the Union, the target model for issuing administrative decisions regarding the investment process should include one "investment permit", which will integrate the issues of environmental impact assessment and construction law procedures.

The successful removal of the above-mentioned problematic issues will indeed lead to a dynamic development of renewable energy sources, which will in turn trigger the entire Polish economy to develop and grow, as onshore wind energy has all the necessary potential to be a remedy to both the climate and economic crisis.