

Tomasz Bojar-Fijałkowski<sup>1</sup>

**THE EUROPEAN GREEN DEAL AND DEVELOPMENT  
OF POLISH OFFSHORE ENERGY. REMARKS ON THE ECONOMIC,  
ENVIRONMENTAL AND ENERGETICAL LAW**

**Abstract:** The text present general goals of EU "European Green Deal" which request deep changes of member state's legal and economic systems. Among main fields of transformation is energetics, which must become more "green".

Poland has long lasting history of not-developing renewable energy. Now rapid development becomes necessity as 'European Green Deal' must be effectively implemented in time-bound. Development of offshore windmills project can help Poland fulfilling EU obligation. Therefore new law regarding such investments was lately introduced. It is interesting how national legislator wants to motivate public and private investors to support the state in energetical transformation.

Worth observing new instruments occur on the field of public law, especially business law, environmental law and energetical law.

**Keywords:** business environmental law, energy law, "European Green Deal", offshore wind energy

Received: 30 July 2021; accepted: 8 August 2021

© 2021 Authors. This is an open access publication, which can be used, distributed and reproduced in any medium according to the Creative Commons CC-BY 4.0 License.

---

<sup>1</sup> Kazimierz Wielki University in Bydgoszcz, Institute of Law and Economics, Department of Administration, Bydgoszcz, Poland, ORCID: 0000-0001-6979-8207, email: tbojar@ukw.edu.pl

## **Introduction**

Climate change brings new challenges to the world. The European Union is one of the most active players in global climate action, thanks to its high standards on emissions reduction, green technologies and innovation. Community targets would remain theoretical without the concrete legislation and commitment of Member States. It is no different with the European Green Deal, which is currently being transformed from a political doctrine into actual legally binding requirements. This process is worthy of attention, both at European and national level. After all, it is the Member States that will be held accountable for achieving ambitious climate goals. In order to meet these targets, Poland must make up for lost ground and neglect in the area of renewable energy sources. Offshore wind energy offers such an opportunity, but the projects associated with it are technologically and economically demanding, and national law still lacks all the appropriate regulations.

This text analyses the correlation between the European Green Deal and wind farm development projects in the Polish part of the Baltic Sea. It aims to identify missing legislation and to assess the existing one. The author attempts to indicate the correlation between the general environmental policy doctrine of the European Union and the law regulating a number of areas of economic activity. An additional thread in answering such a question is the possible influence of the SARS-CoV-2 pandemic on this process. The dogmatic-legal analysis applied to the currently binding regulations for a fuller understanding requires also the application of the historical-legal method to earlier regulations. Their joint application will allow to indicate in which area the new law, dedicated to the implementation of the European Green Deal, at the national level is particularly needed.

The layout of the study is subordinated to this aim and the research questions. It begins with a definition and characteristics of the European Green Deal as a political doctrine of the European Union. The next part places renewable sources of energy in the assumptions of this doctrine and presents Polish experience in this field. The next part characterises offshore wind energy on the background of the whole energy sector and renewable energy. The last part presents the areas of the Polish public law, more precisely the business environmental law, that need to be adjusted and changed in order to enable effective investments in offshore wind energy. The whole is finished with conclusions and a list of sources. The study is based on national and international literature on public business law, environmental law, planning and spatial development law. Legal status on 31.07.2021.

## **Renewable energy sources for a European Green Deal**

"The European Green Deal" is the name of a broad development strategy to carry out a pro-environmental transformation of the European Union economy proposed in COM(2019) 640 final Communication from The Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions "The European Green Deal". Through it, the Community, is to

achieve ambitious goals related to the reduction of emissions, the development of innovative technologies and innovations and the protection of the environment. The aim is for the European Union to become a climate-neutral area by 2050. To do this, European legislation has already adopted Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') OJ L 243, 9.7.2021, p. 1–17. The "European Climate Law" intends to transform political commitments into legal obligations, de facto transforming the rather general and well-known idea of sustainable development into hard-law objectives and instruments. Achieving these goals will require legal interference in at least several sectors of the economy (Bojar-Fijałkowski, 2020), through:

- Investment in environmentally friendly technologies;
- Promotion of eco-innovation in industry and management;
- Introducing cleaner, cheaper and healthier modes of transport;
- Decarbonising the energy sector;
- Making buildings more energy efficient;
- Working with international partners to improve global environmental standards.

The new regulations are to include the development of alternative and ecological energy sources, but also the change in the production cycles of a wide range of products to more sustainable and environmentally friendly ones and the greening of the touristic and construction sector. The European Green Deal is now becoming the doctrine that sets the Community's objectives for the coming decades, both in terms of economic and social development. As any political doctrine, it needs to be framed, as the law is the basic instrument for implementing environmental policy (Ciechanowicz-McLean, 2009).

By September 2020, the European Commission was reviewing the EU's 2030 climate target as indicated in Regulation 2018/1999. The final determination was that greenhouse gas emissions should be reduced and removals increased so that net greenhouse gas emissions, i.e. emissions minus removals, are reduced at European Union level by at least 55% by 2030 compared to 1990 levels. "European Climate Law" makes this target binding and sets deadlines for verification of achievement by Member States, every five years. Thus, for failure to implement EU law, the European Commission is expected to initiate the standard procedure before the Court of Justice of the European Union.

In view of the experience of the SARS-Cov-2 pandemic, the issue of the "European Green Deal" is gaining additional momentum. Environmental goals have been joined by an extremely motivating economic goals in the form of rebuilding the EU economy after the pandemic. New technologies, green investments and renewable energy are to be the flywheel of economic development aimed at improving the quality of life of current and future generations. At the same time, this economy has to be not only modern, resource-efficient and competitive, but also zero-emission. The aim is also to protect the health and well-being of citizens from the risks and adverse effects of climate change. To achieve this in the energy sphere, it is proposed to focus on renewables and hydrogen simultaneously, as both are needed for deep decarbonisation. For renewables, the

objectives include an EU tender scheme for renewable electricity projects and support for national schemes co-financed by the European Investment Bank.

In Poland, the approach to renewable energy sources has evolved and has not been unambiguous, which seems to diverge from the EU assumptions and targets. On the one hand, the Act of 22 June 2016 amending the Act on Renewable Energy Sources and certain other acts (Journal of Laws 2016, item 925, as amended) seems to have had an effect today in the form of a significant increase in individual photovoltaic installations. On the other hand, the Act of 20 May 2016 on investments in wind power plants, (Journal of Laws 2020 item 981 as amended) had a wide and very negative impact on the development of wind power plants. The introduction of one rigid minimum distance from residential buildings and forms of nature conservation, referred to as the "10 H rule", which depends on the height of the windmills has de facto blocked onshore wind investments. The currently made declarations of liberalisation of this rule do not give a chance, even if they are expressly turned into regulations, to quickly stimulate the industry or to achieve satisfactory results even within a few years.

In view of the need to meet EU standards, which are already being legislated and sanctioned, and the parallel collapse of the renewable energy sector in Poland, in addition to dispersed domestic production, it is necessary to look for effective technical possibilities of increasing renewable energy sources in the Polish energy balance. Offshore wind power plants offer such possibilities.

### **Legal conditions for offshore wind energy development in Poland**

Wind power is a type of energy where the production of electricity is based on wind energy. Types of wind energy, separated according to the criterion of location, include onshore and offshore wind energy. In the overall balance of energy coming from renewable energy sources in Poland, wind energy still has the largest share. An offshore wind farm is, as indicated in Article 3 of the Act of 17 December 2020 on the promotion of electricity generation in offshore wind farms (Journal of Laws 2021, item 234, as amended) a basic installation of a renewable energy source comprising one or more offshore wind turbines, having a separate set of devices used for power evacuation only from this installation, to the place of ownership demarcation, together with other devices constituting a technical and utilitarian whole. In comparison to the onshore wind energy sector, offshore wind farms are characterised by higher efficiency of turbine operation, associated with greater stability and strength of the wind in maritime areas. What is more, turbines installed at sea can be larger and thus more effective.

Investment in offshore wind farms is, in some respects, easier than the development of other forms of renewable energy. Accumulation in several investments and compact locations simplifies implementation, especially when we are dealing with few specialized investors. Such projects, thanks to their scale, even several hundred windmills in one farm, make it possible to obtain a large volume of green energy, comparable to several million popular household installations, which will make it possible to meet the ambitious objectives of the "European Green Deal". Moreover, the

distance from the land reduces the risk of social conflicts, although does not eliminate. Natural stakeholders, who may have a negative attitude towards offshore wind farm projects, are entrepreneurs conducting tourist activities, who fear a decrease in interest of customers in seaside resorts due to windmills visible on the horizon and alleged noise from them. The second group of concerned stakeholders are fishermen, for whom the process of implementation of such investments will make it difficult for them to sail their vessels, and their operation may exclude specific fisheries or lengthen the route to reach them. At the same time, such investments are very expensive and the necessary technologies are not yet known in Poland.

More than a decade ago, Ciechanowicz-McLean (2009) wrote that business environmental law is this research area of public law, which combines environmental law with public business law through a number of common issues concerning those conducting business activity, especially entrepreneurs, but also the state, and the elements of the environment and the environment used by them as a whole by means of legal and economic instruments, especially from the field of administrative, financial and international law (Ciechanowicz-McLean & Bojar-Fijałkowski, 2009). The example of greenhouse gas emission allowance trading given at that time was than quite isolated. Today, this direction seems to dominate among the legal regulations on the use of the environment and its elements. The notion of business environmental law, which was defined at that time, also includes the widely developed regulations on circular economy (Gregson et al., 2015; Winnans et al., 2017; Geissdoerfer et al., 2017; Bukowski, 2016; Bojar-Fijałkowski, 2018] and precisely those on renewable energy sources, including offshore wind energy.

The basic condition for the development of offshore wind energy is the admissibility of such investments according to the spatial planning and development plans. The general law on spatial development may be defined as the norms regulating the principles and mode of shaping and conducting the spatial policy, determining the purpose of particular areas for particular purposes, and its basic source is the Act of 27 March 2003 on spatial planning and development, (Journal of Laws 2021, item 741, as amended). Bąkowski (2018) mentions in this context also, the so-called separate regulations, in a special way clarifying or changing the general regulation according to the principle "lex specialis derogat legi generali", speaking about the regulations on spas and spa treatment, geological and mining law, nuclear law, environmental and nature protection law, water law and regulations on the maritime areas. Nowadays, extremely important, for planning and spatial development activities, are also the so-called special laws introducing separate, particularly favorable rules in the case of specific public investments, which the author notes with sadness evaluating the increase in the number of these regulations, a specific inflation, in the Polish legal system very negatively [Szewczyk, 2020]. As Bojar-Fijałkowski (2018a) notes, the fact of creating exceptions in the system of law common for all should be assessed negatively, especially when the legislator begins preparations for his own investment by adopting a special law for it, which happens all too often.

For investments in offshore wind farms important will be regulations of maritime areas, including primarily the Act of March 21, 1991 on maritime areas of the Republic of Poland and maritime administration (Dz. U. 2020 item 2135 with later amendments). While planning and development of land areas is not regulated by the European Union law, planning and development of maritime areas is. Hence, introduced by Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning, (OJ L 257, 28.8.2014, p. 135–145), the obligation imposed on Member States with regard to maritime planning. It is worth noting that prior to the entry into force of the EU regulation, Polish national legislation only provided for the optional possible, and not obligatory, adoption of maritime spatial plans. Probably, if it were not for the obligation imposed by Directive 2014/89, spatial development plans for Polish maritime areas would not have been created soon, if at all (Bojar-Fijałkowski, 2019).

Development of various forms of use of the Polish maritime areas justifies the necessity of creation of spatial management plans for them. Apart from sea transport of ships and large passenger ferries, the traffic of small vessels is developing dynamically: yachts, tourist boats, including those specializing in fishing tourism. Fishing is still carried out in these waters, although it is restricted by catch limits set by European Union bodies. At the same time, the Baltic Sea is full of shipwrecks sunk during the World War II, as well as ammunition and chemical weapons. At the same time pipelines and gas pipelines, such as the German-Russian Nord Stream I and Nord Stream II, are being laid on its bed, although outside the Polish maritime area. Poland itself is also implementing major infrastructure projects on and in the vicinity of its maritime areas, requiring access routes and generating increased vessel traffic, such as the gas port with the LNG terminal in Świnoujście or the dredging of the Vistula Spit. Several oil and gas drilling platforms and a military marine training ground in Drawsko Pomorskie should also be mentioned. On the basis of the adopted and pending spatial development plans for Polish maritime areas there is a possibility to locate a dozen or so wind farms with a total capacity of 12 gigawatts in the Polish Baltic Sea. Currently, investors have paid for concessions to build 9 farms with a total capacity of 8 gigawatts.

Crucial for the creation and development of offshore wind energy in Poland are regulations specifying the principles and conditions for the preparation and execution of investments in the construction of offshore wind farms, as well as mechanisms and instruments supporting the production of electricity in offshore wind farms established by the Act of 17 December 2020 on the promotion of electricity generation in offshore wind farms. This law has been eagerly awaited by investors and their numerous cooperators, including local communities, who see economic opportunities for themselves in the supply of goods and services. Not only technical, environmental and legal aspects, but also economic aspects will be important for the realization of offshore wind energy investments. This activity combines all of them, which places it in the area of interest of economic environmental law. Hence, the act covers the following areas:

- Rules for the application for the right to cover the negative balance by the generators of electricity in offshore wind farms, which will determine the profitability of such investments;
- Rules for the application for issuing the decision on the right to cover the negative balance for the producers of electricity in offshore wind farms;
- Rules of participation in the auction of energy for the producers of energy from the offshore wind farms;
- Rules of settlement of the negative balance;
- Technical grid connection rules;
- Plan for the participation of local materials and services, whose appropriate participation in the project will be a "sine qua non" condition for obtaining the negative balance assistance.

The last of listed comes from the British law, where it is called "local content", and is widely known around the world (Tordo et al., 2013), but this is the first time, when the Polish legislator announces minimum limits for investments in goods and services from the local suppliers. Already announced investments in offshore wind farms and accompanying infrastructure are to amount even to 12 billion euro, which may constitute a significant driving force for the regional economy, ports, local governments, tourism and transport, both at the stage of implementation and operation, planned for 30 years.

The act also includes general obligations of the electricity producer in an offshore wind farm and references to the applicable acts of construction law, administrative and administrative proceedings for offshore wind farms, as well as references to the applicable acts of the power grid. The act also deals with the issues of taxes on offshore wind farms, public procurement for the execution of these investments, issues of construction, operation and decommissioning of offshore wind farms. The act also includes the issues of legal liability and administrative fines for acts or omissions on the grounds of this regulation. At the same time, the legislator resigned from an extraordinary shortening of deadlines, non-standard assignment of jurisdiction to public administration bodies or exemption from certain procedures. This should be assessed positively, especially when the previous experience of the Polish public administration in the role of an investor in environmentally questionable infrastructure projects is recalled (Bojar-Fijałkowski, 2017).

In view of the lack of clear energy solidarity in the European Union to date, both the "European Green Deal" and the consequent need to develop renewable energy sources, on a micro-scale of domestic photovoltaic installations and on a maritime wind energy scale, should be regarded as a good and necessary steps.

## Conclusions

The above study allows to the following conclusions and "de lege ferenda" postulates:

1. The "European Green Deal", a hitherto established political doctrine, is becoming common law. What is more, the European Union legislator, where it is still possible, is pushing standards and limits for the reduction of greenhouse gas emissions. The implementation of the "European Green Deal" will affect many branches of law and many areas of activity, mainly business activity.
2. By 2030, emission of greenhouse gases in the European Union is to be reduced by at least 55% compared to 1990. In order to achieve this, the EU legislator is preparing a number of regulations, but also sources of funding for green innovative investments. These measures are being accelerated by the SARS-CoV-2 pandemic and the desire to use the "European Green Deal", beyond the climate sphere, to stimulate and rebuild the EU economy.
3. A key place among the instruments for the implementation of the above assumptions is occupied by renewable energy. Poland has been very negligent in developing renewable energy sources, and it is only in the last few months that legislators have been trying to make up for this.
4. At the moment in Poland we can observe great interest in individual investments in photovoltaic installations. However, it is difficult to imagine a return to the development of onshore wind energy which was de facto abandoned in 2016. In order to try to achieve the ambitious goals set by the European Union, it is necessary to take action in the area of offshore wind energy.
5. The basic condition for the execution of investments in offshore wind farms in the Polish part of the Baltic Sea is the admissibility of such investments according to spatial development plans. Appropriate plans for maritime areas are currently being adopted. Such a requirement was imposed on by the European Union with the Directive 2014/89. It is possible that without the EU obligation to adopt them, such plans would never be created.
6. Crucial for the creation and development of offshore wind energy in Poland will be the regulations specifying the rules and conditions for the preparation and execution of the investment, as well as mechanisms and instruments supporting the production of electric energy in offshore wind farms. The applicable law was shortly announced. It covers all the necessary scopes of regulation, but one will be able to say about their effectiveness only after they become implemented in practice.
7. Given the lack of energy solidarity in the European Union, at least so far, both the "European Green Deal" and the consequent need to develop renewable energy sources should be regarded as a good but difficult steps to take. In Poland's circumstances, the only way to meet the requirements that are currently being set out seems to be the development of offshore wind energy.



## References

- Act of 17 December 2020 on the promotion of electricity generation in offshore wind farms. Journal of Laws 2021, item 234, as amended.
- Act of 20 May 2016 on investments in wind power plants. Journal of Laws 2020 item 981 as amended.
- Act of 22 June 2016 amending the Act on Renewable Energy Sources and certain other acts. Journal of Laws 2016, item 925, as amended.
- Act of 27 March 2003 on spatial planning and development. Journal of Laws 2021, item 741, as amended.
- Act of March 21, 1991 on maritime areas of the Republic of Poland and maritime administration (Dz. U. 2020 item 2135 with later amendments).
- Bąkowski T. (2018). Planowanie i zagospodarowanie przestrzenne polskich obszarów morskich (*Spatial planning and development of Polish maritime areas*). Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk.
- Bojar-Fijałkowski T. (2017). Environmental Hard Cases in Poland. Shall Vistula Split Become Second Rospuda Valley?, In: I. Jancarova, J. Dudowa (ed.). Sustainable development and conflicts of interests in nature protection in Czechia, Poland and Slovakia, Masaryk University, Brno, pp. 117–138.
- Bojar-Fijałkowski T. (2018). Gospodarka o obiegu zamkniętym jako model rozwoju Unii Europejskiej – wyzwania dla wybranych sektorów (*Circular economy as a model of European Union development – challenges for selected sectors*). In: M. Królikowska-Olczak (ed.), Sektory infrastrukturalne – problematyka prawna (*Infrastructure sectors - legal issues*), C.H.Beck, Warszawa, pp. 33–43.
- Bojar-Fijałkowski T. (2018a). O specustawach w polskim systemie prawa na wybranych kazusach – uwagi krytyczne (*On special laws in the Polish legal system based on selected case studies – critical remarks*), Studia Bydgosko-Lwowskie, Prawo – Samorząd Terytorialny – Gospodarka, vol IV.
- Bojar-Fijałkowski T. 2019: Environment and its protection in spatial planning of Polish sea areas - selected issues, 6th Geographic Information Systems Conference and Exhibition "Gis Odyssey 2019", pp. 20-26.
- Bojar-Fijałkowski T. (2020). Implementacja założeń gospodarki o obiegu zamkniętym na pograniczu publicznego i prywatnego prawa gospodarczego (*Implementation of circular economy assumptions at the borderline between public and private economic law*). In: M. Dumkiewicz, K. Kopaczyńska-Piecznika, J. Szczotka (ed.). Sto lat polskiego prawa handlowego. Księga jubileuszowa dedykowana Profesorowi Andrzejowi Kidybie. Tom II (*One hundred years of Polish commercial law. Jubilee Book Dedicated to Professor Andrzej Kidyba. Volume II*), Wolters Kluwer, Warszawa, pp. 1198–1208.
- Bukowski Z. (2016). Gospodarka o obiegu zamkniętym a prawo ochrony środowiska (*Circular economy and environmental law*). In: T. Bojar-Fijałkowski (ed.), Sprawiedliwość ekologiczna w prawie i praktyce (*Environmental justice in law and in practice*), Fundacja Rozwoju Uniwersytetu Gdańskiego, Gdańsk, pp. 45–54.

- Ciechanowicz-McLean J. (2009). Prawo i polityka ochrony środowiska (*Environmental law and policy*). Wolters Kluwer, Warszawa.
- Ciechanowicz-McLean J., Bojar-Fijałkowski T. (2009) (ed.). Gospodarcze prawo środowiska (*Business environmental law*), Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk.
- COM(2019) 640 final Communication from The Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions "The European Green Deal" of 11.12.2019.
- Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning, (OJ L 257, 28.8.2014, pp. 135–145).
- Geissdoerfer M., Savaget P., Bocken N., Hulting E.J. (2017). The Circular Economy – A new sustainability paradigm? *Journal of Cleaner Production*, vol. 143, pp. 757–768.
- Gregson N., Crang M., Fuller S., Holmes H. (2015). Interrogating the circular economy: the moral economy of resource recovery in the EU. *Economy and Society*, vol. 44, no. 2, pp. 218–243.
- Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1–17).
- Szewczyk M. (2020). Ustawy dotyczące konkretnych inwestycji (*Investment-specific laws*). In: T. Bąkowski (ed.), *Specustawy inwestycyjno-budowlane (Investment and construction special acts)*, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk.
- Tordo S., Warner M., Manzano O., Anouti Y. (2013). *Local Content Policies in the Oil and Gas Sector*, The World Bank, Washington D.C.
- Winnans K., Kendall A., Deng H. (2017). The history and current applications of the circular economy concept. *Renewable and Sustainable Energy Reviews*, vol. 68, part 1, pp. 825–833.