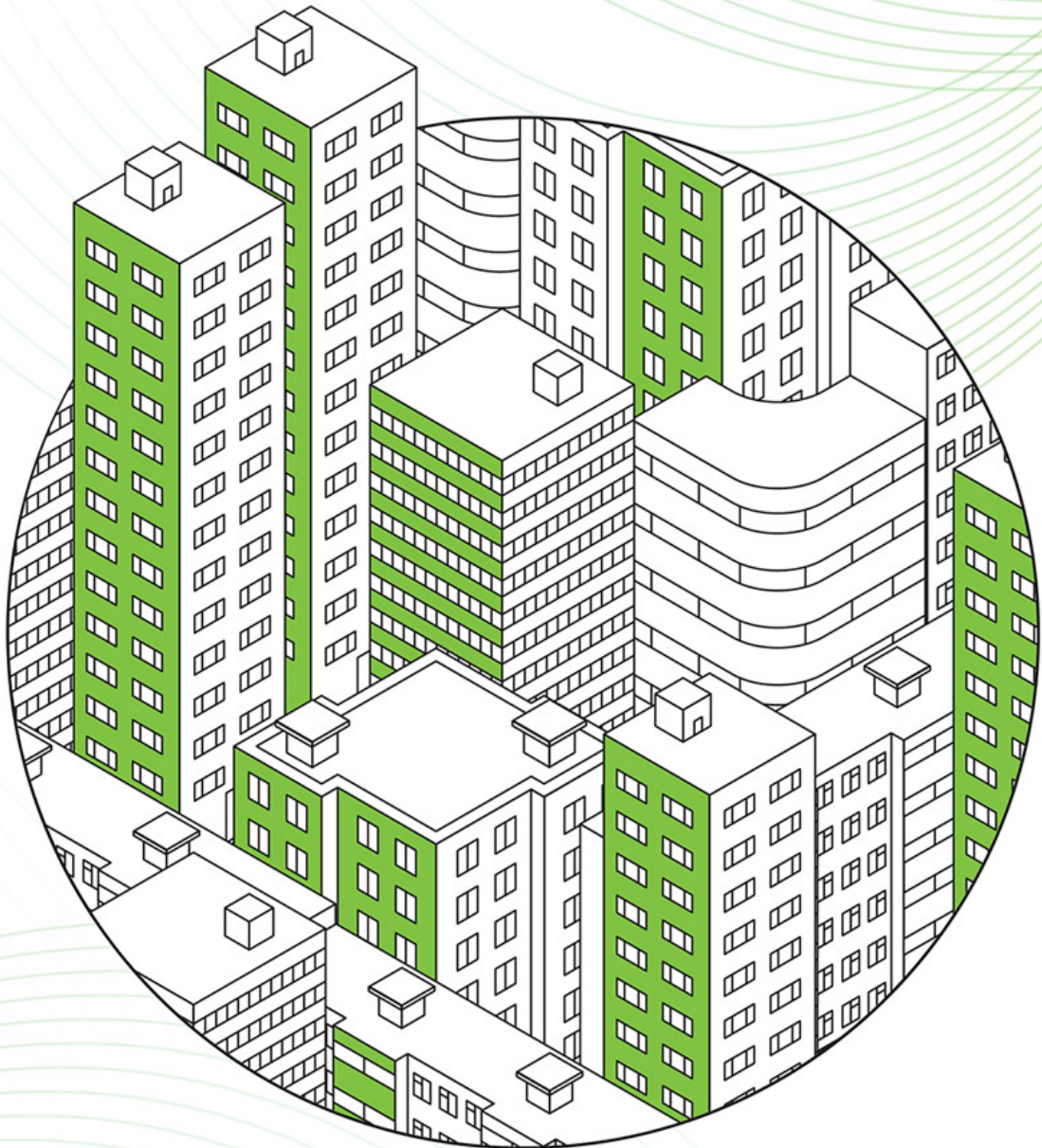


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# Changes in regulations regarding wind farms: new tasks for local authorities

As of 3 April 2023, the Act of 9 March 2023 amending the Act on investing in wind farms and certain other acts came into force (henceforth: the "Act"). The amendments have raised considerable controversies in mass media and resulted in a political discussion.

Under the amendments, the statutory requirements regarding the minimum distance of a wind farm from a residential building or a mixed-use facility have been maintained. Thus, the distance cannot be less than ten times the total height of the windmill structure (the "10h principle"), measured up to its highest point, including the rotor and blades. However, under the amendment, the local spatial plan can determine another distance between the

wind farm and a residential building, not less, though, than 700 metres, considering the range of the farm's influence, among others based on the results of analyses carried out as part of planning procedures, noise measurement, strategic assessment of environmental effects, motions, comments, arrangements and approvals (including those of neighbouring municipalities), outcome of consultations with inhabitants and local conditions.

Further, the amendment has introduced changes regarding the location of residential buildings in proximity of wind farms, as well as determining the distance between the farms and protected areas (natural reserves) and the highest voltage grid. The amendments also indicate how consultations with local communities regarding the location of wind farms should proceed and the share of such communities in benefits of such location.

## New definitions introduced as part of the amendments

The amended Act has introduced new definitions (Article 2.3 to 2.10 of the Act), which must be considered by municipalities in the course of spatial planning, issuing administrative decisions and determining the amount of real property tax. The most important ones include:

- The total height of a windmill (the new item 3 added in Article 2 of the Act): under the new definition, the distance from a wind farm to other facilities is measured from the ground level to the highest point of a windmill, including the maximum elevation of the rotor blade. The definition confirms that the construction part of the wind farm,

such as the foundation and the windmill tower, qualify as a structure under the Construction Law of 7 July 1994, while technical equipment, including the propeller and generator, does not qualify as a structure, which means it is not charged with the real property tax;

- Adjacent municipality (the new item 5 added to Article 2 of the Act): the provision states that if the municipality area, in whole or in part, is located at a distance less than ten times the total height of a wind farm located in another municipality, the municipality qualifies as "adjacent" based on the 10h criterion.

If several municipalities are located at the 10h distance, even if they are not adjacent to the one where a wind farm is located, all of them qualify as adjacent municipalities;

- Under the amendments, the highest voltage grid includes not only the existing connections, but also the projected ones.

### **Obligations a municipality must fulfil when designing the local spatial plan**

In the amended Act, the principle of locating wind farms based solely on local spatial plans has been maintained. The distance measuring approach has been determined in the new Article 5 of the Act, including exceptions regarding the highest voltage grid and protected areas (natural reserves). The principle provides for including the propeller in the calculation of the minimum distance from a wind farm to prevent its protruding beyond the minimum distance measured. When developing a local spatial plan, a municipality must indicate places where wind farms may be located and borders of protection zones for land development and use, so as to propellers do not protrude beyond the minimum distance measured. No wind farms can exist beyond the designated

area since no environmental decisions or construction permits will be issued for facilities that do not meet the criteria determined in the Act. The amended Article 15.3.3a of the Act clarifies that the areas intended for investments in renewable energy sources, along with protection zones as determined in the local spatial plan, must be located within areas designated for such investments in line with the study of spatial planning conditions and directions applicable to the area. Moreover, upon the effective date of the amendment, the obligation to adopt a spatial plan will include the entire area within a municipality where a wind farm construction is planned, located at the statutory distance (Article 4.1 of the Act). The justification of a resolution on the commencement of the preparation

of a spatial plan providing for a wind farm location should be supplied with calculations of its maximum height, the diameter of rotor with blades and the maximum number of such wind farms as determined in the plan.

The amended Act introduces an obligation to obtain an opinion of the adjacent municipality/town/city mayor if a local spatial plan includes a wind farm location. The obligation applies to adjacent municipalities located at a distance from 700 metres to 10h from the planned wind farm location. The adjacent municipality/town/city mayor in charge of issuing such opinion must announce the planned issue date at least 30 days in advance, and then publish the contents in line with statutory provisions.

### **The minimum distance from residential buildings: easing the 10h principle**

Bearing in mind the importance of housing construction, the lawmakers have decided it needed separate regulations. The minimum distance of a wind farm from residential buildings will be determined based on consultations and the strategic assessment of environmental effects, which is obligatory for the preparation of local spatial plans. The same absolute

minimum distance will be binding for the construction of other residential buildings in proximity of the existing wind farms. The minimum distance applicable to the location of residential buildings in proximity of a wind farm is at least 700 metres. Therefore, the 10h principle will not apply to the construction of residential buildings near the existing wind farms.

The minimum distance from a wind farm to residential buildings may differ depending on a municipality, or even on the area within the same municipality, but in no event can it be shorter than 700 metres. If an existing residential building is remodelled or refurbished, or the use of its part is changed, the minimum distance criterion does not apply.

### Minimum distance from power grid and protected areas (natural reserves)

In order to prevent adverse effects of wind farms on the highest voltage power grid, the minimum distance has been introduced. The minimum distance must be at least equal to three times the maximum diameter of the rotor with blades, or at least two times the maximum total height of the wind farm, whichever of these figures is higher. Wind farms constructed prior to the effective date of the new regulations regarding the distance from the power grid are subject to certain limitations. They can

only undergo refurbishment or other necessary maintenance procedures provided they do not increase their capacity or adverse environmental effects. When issuing administrative decisions regarding refurbishment or maintenance, the minimum distance conditions as determined in the new Article 4a of the Act are not considered.

Changes have been introduced regarding the location of wind farms near protected areas (natural reserves). Wind farms

cannot be located in national parks, reserves, landscape parks and areas qualified as Natura 2000; the minimum distance obligation has been maintained in relation to national parks (the 10h principle) and reserves (the minimum distance of at least 500 metres).

### Obligation to carry out a public debate and provide benefits for inhabitants

The flexibility provided to municipalities when determining the minimum distance from wind farms results in additional obligations to consult, such as organising public debates. Under the new regulations, a municipality must organise such debates for the interested inhabitants to participate. The purpose of such debates is to make sure that decisions on the location of wind farms include needs and interests of local communities. Parties obliged to participate in public debates regarding the location of a wind farm under a local spatial plan include municipality authorities, the investor (if any) and representatives of the municipality's planning and architectural committee.

The obligatory public debate on projections and assumptions of the local spatial plan is to provide information on the planned investment scope, details and subsequent stages of the planning and environmental procedure to the inhabitants of the municipality who may be affected by the existence of the wind farm.

Further, the amended Act provides solutions aimed at ensuring the participation of local communities in benefits of the location of a wind farm in their proximity. Under the new regulations, an investor building such wind farm are obliged to spend at least ten percent of its installed capacity for the municipality inhabitants to allow them

gaining the status of a virtual prosumer. Owing to the amendments, all inhabitants of such municipality who consume electricity in their households will be able to conclude an agreement with the investor in line with the Act on renewable energy sources to gain the status of a virtual prosumer.



### **New principles vs already issued permits and processed notifications**

Under the amended Act, construction permits regarding residential buildings issued prior to 23 April 2023 will remain valid. Procedures of gaining construction permits or decisions on environmental conditions commenced prior to the date shall be regulated by the prior version of the Act.

Further, notifications of the construction of single-family houses whose impact area entirely fits the plot(s) of their design remain valid, provided the competent administrative authorities did not file an objection prior to 23 April 2023. The pending procedures regarding these facilities must be completed in accordance with the unmodified version of the Act.

Importantly, proceedings regarding decisions on the development conditions or on the location of public purpose investment for residential buildings commenced but not completed prior to 23 April 2023 are ruled by the amended Act.

Please note that the new provisions of Article 9 allow locating a wind farm based on the existing local spatial plan being in force before the effective date of the amendments. This means that the existing spatial plans may be used to determine a wind farm location without the necessity to make any amendments, provided that the minimum distance of at least 700 metres from residential buildings is kept.

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