

The permit to erect and exploit artificial islands, installations and equipment in Polish maritime areas

The course of administrative procedure

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What is the legal basis for this procedure?

- The legal basis for the procedure regarding the issuance of the permit to erect and exploit artificial islands, installations and equipment (Pszw) in maritime areas is constituted by the act of March 21, 1991 *on the maritime areas of the Republic of Poland and maritime administration* (consolidated text: Dz. U. [Journal of Laws] of 2003, No. 153, item 1502, with further amendments) (“UOM”).

Why is it necessary to obtain the Pszw for an OWF?

- PSZW should be obtained because, according to UOM, it is such type of permit, which grants to the entities listed in this permit the right to exploit the Polish maritime area in terms of purposes stated in the permit. Nevertheless, it is not the permit, which grants the right to execute the investment.
- In case of lack of the spatial development plan for internal waters, territorial sea and the exclusive economic zone (this is the current situation) the PSZW is issued by the Minister of Infrastructure (“MI”). If such plan becomes effective, PSZW will be issued by the Director of an appropriate Maritime Office (“UM”).
- [More information on page 20 of the Guide.](#)

Are there any other permits, stated in the UOM necessary to be obtained apart from the PSZW?

- PSZ is the only permit for OWF, which is listed in UOM.
- As for the seabed cable, there are more documents to be obtained:
 - the decision permitting the laying and maintaining of the seabed cables and pipelines in Polish exclusive economic zone (issued by the MI after receiving an opinion from the Minister of the Environment).
 - the permit to lay and maintain the seabed cables and pipelines in internal waters and territorial sea (issued by the director of the appropriate maritime office)
- [More information on page 20 of the Guide.](#)

What is the course of the procedure for the issuance of the Pszw for an OWF when only one application for the given location was submitted (1)?

1. Submission of the application for the issuance of the Pszw in the Ministry of Infrastructure.
2. Initiation of the procedure.
3. Announcement in the Public Information Bulletin of the Ministry about the possibility to submit other applications for the issuance of PSZ regarding the body of water covered by the first application. The announcement should contain information on:
 - the subject of the decision, which should be issued in this case;
 - location specified by the geographical coordinates;
 - the surface of the body of water in which the project covered by the application is to be executed;
 - body responsible for the issuance of the permit;

What is the course of the procedure for the issuance of the Pszw for an OWF when only one application for the given location was submitted (2)?

- possibility to submit other applications for the issuance of PSZW within 60 days from the date of publishing in the Public Information Bulletin,
 - criteria for the assessment of the applications;
 - major criteria for the assessment of applications.
4. Request for the opinions regarding the permit from the Ministers in charge of: the Economy, Culture and Cultural Heritage, Fisheries, Environment, Internal Affairs and in charge of National Defence.
 5. The above listed authorities issue the opinions within the period not longer than 90 days from the date of receiving the motion (failure to issue the opinion within the said period shall be treated as lack of reservations).
 6. Issuance of the PSZW (deadlines according to the Polish Code of Administrative Procedure).
- **More information on page 22 of the Guide.**

Refusal to issue the PSZW for an offshore wind farm

- One is refused to obtain the PSZW, if its issuance threatens:
 - ✓ the marine environment and its resources;
 - ✓ the interest of the national economy;
 - ✓ the defence and security of the state;
 - ✓ the safety of marine shipping;
 - ✓ the safety of marine fisheries;
 - ✓ the safety of air traffic;
 - ✓ the submarine archaeological heritage or
 - ✓ the safety associated with the research, recognition and exploitation of mineral resources of the seabed and the interior of the earth underneath.

What is the course of the procedure for the issuance of the Pszw for an OWF, when more than one application for the given location was submitted (1)?

1. Submission of the application for the issuance of the PSZW in the Ministry of Infrastructure.
2. Initiation of the procedure.
3. Announcement in the Public Information Bulletin of the Ministry about the possibility to submit other applications for the issuance of PSZ regarding the body of water covered by the first application.
4. Request for the opinions regarding the first application from the Ministers in charge of: The Economy, Culture and Cultural Heritage, Fisheries, Environment, Internal Affairs and in charge of National Defence (90 days to issue the opinion).
5. Submission of a complete application (or applications) for the issuance of the PSZW regarding the body of water, which was indicated in the first application.
6. Request for the opinions regarding the second application.

What is the course of the procedure for the issuance of the Pszw for an OWF, when more than one application for the given location was submitted (2)?

7. MI shall inform the applicants, who have lodged complete applications within the required period, about the initiation of the determination procedure;
8. The applicants, who have lodged complete applications within the required period, shall be requested to submit within 21 days the information and documents enabling the determination, whether the applicants have satisfied the following criteria:
 - possibility to assign the body of water for the purposes listed in the application (the Ministry of Infrastructure, when assessing the project in terms of this criterion, should consider the opinions issued by the Ministers in charge of: The Economy, Culture and Cultural Heritage, Fisheries, Environment, Internal Affairs and in charge of National Defence. If the decision is negative, the MI may issue a decision to refuse to issue the PSZW before the completion of the determination procedure).

What is the course of the procedure for the issuance of the Pszw for an OWF, when more than one application for the given location was submitted (3)?

- permit validity periods, proposed by the applicants (including the date of commencement and completion of the construction and exploitation of the planned projects),
- methods of securing the financial means for the payment of the 10 % of the fee (payable within 90 days from the day on which the PSZW became final),
- methods of financing the planned projects, taking into account own financial means, credits, loans and proposed additional financing of the investment from public means,
- possibilities to establish a team of skilled workers, create an organizational and logistics potential, which shall enable the execution of the planned projects,
- the contribution of the planned projects to the performance of EU and national policies within the industry sector.
- [More information on page 25 of the Guide.](#)

What is the course of the procedure for the issuance of the Pszw for an OWF, when more than one application for the given location was submitted (4)?

9. The assessment and publication of the determination procedure results in the office and in the Public Information Bulletin of the Ministry of Infrastructure, with an indication of those applicants, who have reached the minimum level for qualification, according to the number of gained points, in a descending order. There are three possible results of the said procedure:

- ✓ the issuance of the permit for the selected entity (who has reached the minimum level for qualification and the highest number of points), not sooner than within 14 days from the date of publishing the results of the proceedings,
- ✓ decision that the procedure inconclusive in case, where none of the applicants reached the minimum level for qualification,
- ✓ invalidation of the procedure (ex officio or upon the application of the participant of the proceedings, lodged within 14 days from the publication of results of the said procedure), if the provisions of law or the interests of the participants to the competition were grossly infringed.

What is the course of the procedure for the issuance of the Pszw for an OWF, when more than one application for the given location was submitted (5)?

- If the entity selected in the determination procedure withdraws from the procedure to obtain the PSZW fails to pay the 10% of the fee or in case of the occurrence of hazards specified in the act (to the marine environment and marine resources) the permit shall be granted to the applicant, who gained the next highest number of points within the proceedings.
- The determination procedure cannot be longer than 4 months from the date of submitting the last opinion from the ministers in charge of: the Economy, Culture and Cultural Heritage, Fisheries, Environment, Internal Affairs and in charge of National Defence.

Appeal procedure within the determination procedure (1)

1. MI gives the applicants the possibility to inspect the documentation regarding the determination procedure, in which in particular:
 - the major application assessment criteria within the determination procedure were selected, from among the set of criteria mentioned in the act,
 - number of points were determined for each criterion,
 - the minimum level for qualification was established.
2. The appeal procedure is initiated by submitting an application for the invalidation of the determination procedure due to a gross infringement of law or the interests of the participants. The application for the invalidation of the determination procedure may be submitted by the party to the determination procedure within 14 days from the publication of the results of the said procedure.

Appeal procedure within the determination procedure (2)

3. MI may also invalidate the determination procedure ex officio, due to the same reasons.
 4. MI issues a decision on the invalidation of the determination procedure (positive or negative).
 5. The participants to the determination procedure have the right to lodge (within 14 days from the date of receiving the decision) the request to the MI for the revision of the case.
 6. After exhausting the said appeal procedure the participant of the determination procedure has the right to lodge a complaint to the Voivodeship Administrative Court in Warsaw.
 7. Invalidation of the determination procedure constitutes the basis for the resumption of the procedure regarding the issue of the Pszw.
- [More information on page 23 of the Guide.](#)

PSZW - basic information (1)

- Pszw specifies:
 - ✓ type of project,
 - ✓ location (specified by the geographical coordinates),
 - ✓ specific technical parameters of the project,
 - ✓ detailed terms and conditions resulting from separate provisions.
- PSZW is issued for the period necessary to erect and exploit the OWF. However, it cannot exceed 30 years (under certain conditions the permit may be extended by 20 years).
- PSZW terminates, if within 6 years from the issuance of the PSZW the applicant failed to obtain the construction permit for the entire project or for a part of the OWF (this period may be extended by 2 years, if the investor made all efforts required by law in order to obtain the construction permit).

PSZW - basic information (2)

- The PSZW expires, if within 3 years from the day on which the decision regarding the building permit became final, the erection of the OWF did not commence.
- The PSZW expires, if within 5 years from the day on which the erection commenced, the exploitation of the OWF did not commence.
- PSZW may expire, if the erection and exploitation of the OWF is contrary to the PSZW conditions, and additionally a financial penalty may be imposed.
- [More information on page 32 of the Guide.](#)

Fees associated with the PSZW (1)

- For the issuance of the PSZW for an OWF the following fees are required:
 - 300 calculation units, called the Special Drawing Right, specified by the International Monetary Fund.
 - an additional amount of 1% of the value of the planned project, divided into separate instalments:
 - 10% of the total amount of the payment within 90 days from the day on which the PSZW became final,
 - 30% of the total amount of the payment within 30 days from the day on which the OWF construction permit became final,
 - 30% of the total amount of the payment within 30 days from the day on which the exploitation of the PSZ commenced,
 - 30% of the total amount after 3 years from the day of making the third payment,

Fees associated with the PSZW (2)

- The value of the planned project is calculated for the purpose of the determination of the additional fee, taking into account the market prices for the equipment and services necessary to execute the investment, as for the day of submitting the application for the issuance of the PSZW.
- The act introduces the mechanism of verification of the paid fee after the completion of the construction process. Before paying the fee, which is due upon the commencement of the exploitation of the wind farm, the owner of the PSZW presents to the Minister of Infrastructure the information on the actual value of the executed project. The amount of the remaining two payments will be determined on the basis of that information.
- [More information on page 31 of the Guide.](#)