POLAND: WINDS OF CHANGE IN THE ACT ON WINDFARMS

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I. THE POLISH PIVOT

Renewable energy continues to gain market share and represents an increasing percentage of the world’s energy supply. In 2016, the world added enough renewable energy with the capacity to power every house in the United Kingdom, Germany, France, and Italy.\(^1\) Wind farms produce a substantial 34% of this additional renewable energy.\(^2\) Moreover, the energy produced by wind in the European Union (EU) doubled from 2010 to 2015\(^3\) and is the strongest performer in terms of growth.\(^4\) However, wind energy development is in danger of disappearing in Poland.\(^5\)

The Polish wind market was one of the strongest performers in 2016, second only to Germany’s performance.\(^6\) However, this trend of growth will almost inevitably reverse with the passage of the Act on Windfarms. The Act on Windfarms sets the minimum distance required between a wind power plant and residential buildings, forests, or national parks at ten times the height of a wind power plant,\(^7\) which in effect amounts to two kilometers.\(^8\) Critics of this “anti-windfarm” law say the statute excludes 99% of Polish land from wind farm development.\(^9\) Moreover, the Act on Windfarms redefined “wind power plant” such that the owners of existing plants will be subject to an increased real estate tax.\(^10\) Clearly, the Act on Windfarms discourages development of windfarms. The Act on Windfarms will do this by geographically restricting areas in which wind farms can be built. The remaining sites for wind farms will not be ideal and the cost of maintaining and operating the existing wind farms with increase.

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\(^2\) Id.
\(^6\) Id.
\(^8\) Press Release, supra note 5.
\(^9\) Press Release, supra note 5.
\(^10\) Act on Windfarms, supra note 7.
Despite ongoing climate change, Poland’s national government prioritizes coal production. Energy Minister Krysztof Tchorzewski stated that the government wants “energy security in Poland to be guaranteed by Polish coal production.”\textsuperscript{11} However, this prioritization of coal often conflicts with EU energy laws and the general EU policy favoring renewable, sustainable, and secure energy sources.\textsuperscript{12} The Act on Windfarms was supported by the Polish government as part of its pivot to prioritize coal production rather than expanding renewable energy sources.

Principally, the Act on Windfarms may conflict with the Directive on the Promotion of the use of Energy from Renewable Sources (Renewable Energy Directive). The Renewable Energy Directive established an overall EU policy promoting the use of renewable sources for energy production.\textsuperscript{13} The Renewable Energy Directive requires the EU, as a bloc, to fulfill at least 20\% of its total energy needs with renewables by 2020 and all EU countries to use renewable sources for at least 10\% of their transportation fuels.\textsuperscript{14} Poland must produce 15\% of its energy needs from renewable sources by the 2020 target year under the Renewable Energy Directive.\textsuperscript{15}

In 2016, Poland produced 11\% of its energy from renewable sources.\textsuperscript{16} There is now increased doubt as to whether Poland will be able to meet this fifteen percent obligation in light of the Act on Windfarms passage and other factors,\textsuperscript{17} and whether the Act on Windfarms conflicts with the framework established by the Renewable Energy Directive.

This Note will determine whether the Act on Windfarms violates the Renewable Energy Directive, and in particular Article 13 of the Renewable Energy Directive. In so doing, this Note will outline the procedures and methods the Commission uses to ensure member countries are conforming to the Renewable Energy Directive, analyze interpretations of the Renewable Energy Directive, and determine what, if any, defenses Poland would have to uphold its Act on Windfarms.


\textsuperscript{14} \textit{Id.}


II. THE ACT ON WINDFARMS AND ITS IMPLICATIONS

As previously discussed, the Act on Windfarms sets the minimum distance between forests, national parks, and residential districts and new windfarms that can be built at ten times the distance of the height of the wind turbines.\(^{18}\) Denmark is the only other EU country that uses an offset distance in its regulatory scheme, but Poland’s is the largest offset distance required in the EU.\(^{19}\) The Act on Windfarms also increases the tax burden for wind farm generators starting from 2017 onward. This tax increase is expected to weaken the growth and profitability of the wind energy sector by making operation costlier.\(^{20}\) The Polish government has taken a prohibitive stance toward wind farms to the point of excluding further development in the country by requiring what amounts to an almost impractical offset distance from common zones.

The Polish government points to concerns for the noise caused by the turbines, the shadow flicker effect, the probability of sleep disruption, and a myriad of other health factors as the rationale for its restrictive regulation on windfarms.\(^{21}\) However, the underlying policy is likely that the Polish government wishes to favor the development of biofuels and continue to rely on its existing coal-firing plants for its electricity needs.\(^{22}\)

Should this law continue to go unchallenged, as it has for over a year, it will be an example to other like-minded countries who wish to exclude an entire industry to prioritize existing sources of energy. Therefore, the Act on Windfarms could undermine the EU’s energy policy, interests, and existing legal framework on energy.

III. THE RENEWABLE ENERGY DIRECTIVE

A. Reasons for the Renewable Energy Directive

The Renewable Energy Directive was a response to both practical and aspirational concerns that confront the EU. Both the practical and aspirational

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\(^{18}\) Act on Windfarms, supra note 7.


goals of the Renewable Energy Directive are extremely important to the EU and explain the Commission’s consistent enforcement of the Directive.

Essentially, the EU is extremely dependent on imported energy to satisfy its demands, especially with the downturn of domestic production of hard coal, crude oil, natural gas, and nuclear energy.23 This trend generally predominates among the most populous member states.24 The one exception to this trend being Poland, whose domestic coal reserves are still substantial.25 This Polish exception likely explains Poland’s slow transposing of the Renewable Energy Directive into national law.26 The Renewable Energy Directive was a response to this increased reliance on imported energy, especially from Russia.27 Moreover, this emphasis on renewable energy would allow the EU to become a global player in the industry, spur job growth, and achieve energy security.28

The Renewable Energy Directive also reflected EU concern over climate change and greenhouse gas emissions reaching perilous levels.29 The Renewable Energy Directive was part of the EU’s effort to comply with international emission agreements, including the Kyoto Protocol.30 Thus, the Renewable Energy Directive allowed the EU to take the initiative on climate change.

The Act on Windfarms serves to undermine both of the EU’s asserted purposes for the Renewable Energy Directive. Practically speaking, the EU commitment is undermined by Poland’s de facto illegalization of a renewable energy source and the Act on Windfarms weakens the EU’s potential global leadership in the development and implementation of renewable energy sources. Moreover, EU leadership on climate change is also undermined. Poland, the bloc’s sixth-largest country in terms of population,31 refocused its interest on coal without care for reducing its emissions in the short or long term.

24 Id.
25 Id.
26 See infra note 51.
27 EUROSTAT, supra note 23.
29 Id.
B. Effect and Obligations Under the Renewable Energy Directive

The Renewable Energy Directive sets out the percentage of energy that must come from renewable sources by 2020.32 Article 22 of the Renewable Energy Directive also stipulates that each member of the EU must submit a report to the European Commission (the Commission) every two years detailing the progress its country has made and how renewable energy is being promoted in the country.33 In addition, the Commission is empowered to propose a “corrective action”34 and refer the case to the European Court of Justice (ECJ) if necessary.35 Thus, the Commission is empowered to closely monitor Polish law and ensure that it conforms with the Renewable Energy Directive and to ensure that Poland is on track to attain its 2020 goals. However, member states are only bound to achieving the results required by the renewable Energy Directive and are left to decide the means of achieving these goals.36

In order to ensure the member states incorporate the Renewable Energy Directive into national law, the Renewable Energy Directive requires the member states to formulate a “national action plan” detailing how the member state plans to meet its binding renewable energy target under the Renewable Energy Directive.37 Moreover, each member state must submit a progress report that tells the Commission the progress and use of renewable energy.38 Thus, even in the absence of interim renewable energy goals, the Renewable Energy Directive gives the Commission a limited means of monitoring member states’ progress and a robust means of ensuring the Renewable Energy Directive is incorporated into national law through the national action plans.

Poland is required under Article 13 of the Renewable Energy Directive to ensure any national rules regarding certification or licensing of renewable energy-using plants are “proportionate and necessary.”39 Article 13 was part of a broader scheme to “harmonise [sic] the administrative procedures” across the EU when applying or attempting to establish new energy capacities.40 Article 13 attempts to achieve this by requiring member states to ensure that

33 Id. at 41.
34 Id. at 42.
35 See infra note 50.
38 Id. at 41.
39 Id. at 42.
administrative structures and organization are “clearly coordinated and defined” and “objective, transparent, [and] proportionate.”

However, the Renewable Energy Directive left many important terms in Article 13 undefined, including the terms “proportionate” and “necessary.” Against this backdrop, the Commission and the Court of Justice of the European Union (the Court) provide limited guidance on how to interpret these terms, especially in the context of wind energy.

C. Barriers to Enforcement of the Renewable Energy Directive

It should be noted that the Commission must bring any infringement proceedings before the Court, as opposed to a private right of action by EU citizens. If the Commission suspects an infringement of the law, the Commission first sends a “letter of formal notice” detailing the observed breach and allows the member state “to present its views regarding the breach observed.” If no reply is received, the Commission then issues a “reasoned opinion” to the member state that requests the member state come into compliance with the directive at hand. The reasoned opinion often gives member states two months to comply. The last resort is for the Commission to refer the case to the Court, which may impose financial sanctions upon the member state.

This possibly lengthy process has not prevented the Commission from issuing reasoned opinions or referring cases to the Court on numerous occasions. In fact, the Commission has referred Poland to the Court on several occasions. This includes a referral in 2013 for Poland’s failure to transpose any of the Renewable Energy Directive into national law. Poland has since transposed most of the Renewable Energy Directive into national law, but has

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42 Id.
43 TFEU, supra note 36, at 160, art. 258.
45 Id.; TFEU, supra note 36.
46 Truby, supra note 28, at 700.
47 TFEU, supra note 36, at 160, art. 260.
49 This referral occurred four years after the Renewable Energy Directive was implemented.
been subject to other reasoned opinions and court referrals by the European Commission.\textsuperscript{51}

Overall, the procedural process has not deterred the Commission from ensuring member states, including Poland, are passing national law in keeping with the Renewable Energy Directive and are on track for the 2020 binding renewable energy goals.

IV. INTERPRETATIONS OF THE RENEWABLE ENERGY DIRECTIVE

A. European Case Law

To date, interpretations of the Renewable Energy Directive by the Court have been relatively infrequent.\textsuperscript{52} However, one case is particularly relevant to the question at hand. In Azienda Agro v. Regione Puglia, the Court was presented with the question of whether the Renewable Energy Directive would “preclude legislation that prohibits the location of wind turbines . . . on sites forming part of the Natura 2000 network without” a prior environmental impact study.\textsuperscript{53} The Court answered that the Renewable Energy Directive did not preclude such legislation, on the condition that principles of non-discrimination and proportionality are respected.\textsuperscript{54}

The Court also provided an interpretation of “proportional” in Article 13 of the Renewable Energy Directive. The Court stated that the “principle of proportionality referred to in Article 13 requires that measures adopted by member states in this field do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question.”\textsuperscript{55} Moreover, the Court stated that “when there is a choice between several appropriate measures” the least onerous measure should be taken “and the disadvantages caused must not be disproportionate to the aims pursued.”\textsuperscript{56} However, because the case was a preliminary question referred by the national court, the Court also stated it was for the national court to decide whether the national measure is proportionate in this instance.\textsuperscript{57} Thus, the Court did not reach the merits of whether, in its own opinion, the legislation was proportionate.


\textsuperscript{52} This is likely a testament to the success the Commission has had with reasoned opinions discussed in the previous section.


\textsuperscript{54} Id. at ¶ 75.

\textsuperscript{55} Id. at ¶ 73.

\textsuperscript{56} Id.

\textsuperscript{57} Id., at ¶ 74.
More recently, the Court addressed a contested levy on wind power plants in the region of La Mancha, Spain. The contested levy was described as a “pole tax”58 because the amount of taxes owed per wind turbine increased as the number of wind turbines located on the installation increased.59 The wind farm owners challenging the levy argued that it was incompatible with the support schemes for renewable energies under the Renewable Energy Directive.60 The Court reasoned that the definition of “support scheme”61 in the Renewable Energy Directive did not preclude a national levy implicitly.62 The Court noted that the language regarding support schemes said “[m]ember states may apply support schemes in order to achieve the share of renewable energies provided in Article 3(1) and (2).”63 Importantly, the Court noted the “pole tax” would infringe on the Renewable Energy Directive if it meant that Spain would fail to achieve the shares of renewable energy stipulated in Article 3 of the Renewable Energy Directive.64 The Court then looked to the most recent Eurostat figures to determine if a levy in a single region of Spain could possibly prevent Spain from reaching its goals under the Renewable Energy Directive and concluded that it was highly unlikely.65 The Court therefore gives considerable deference to the member states’ legislation and domestic policy by defining proportionality in general terms and stating that the member state’s course of action should merely be the least onerous method of pursuing the legitimate goals of the legislation. Moreover, the Court has interpreted that the Renewable Energy Directive only requires compliance with the energy goals found in Article 3 and the Annex66. To succeed on a challenge to a law, the person challenging must prove that the member state would fail to meet its goals if the law is permitted to continue which is an extremely high burden.

58 The name “pole tax” is likely a riff on poll taxes, where each fixed sum is levied on each individual and likely bears no relation to Texas’s “pole tax” where a $5 surcharge is levied on each visitor to the state’s strip clubs.


60 Id. at ¶ 20.

61 “Support scheme” is defined as “any instrument, scheme or mechanism…that promotes the use of energy from renewable sources” by reducing cost. The definition includes tax exemptions or reductions. Renewable Energy Directive, supra note 15, at art. 2(k).


63 Id. (emphasis in original).

64 Id., at ¶ 31.

65 Id., at ¶ 32.

66 The Annex is the annex portion of the Renewable Energy Directive.
B. European Commission Interpretation

The Commission has also interpreted what is required of member states’ authorization systems. The Commission, through external studies and its own assessments of the member states’ progress reports, indicated preference for less discretionary systems and more open, objective standards. This preference is evidenced by a renewable energy progress report written by the Commission. In this report, the Commission detailed a list of best practices that member states should undertake to have an ideal administrative system under the Renewable Energy Directive. These include: a “one stop shop” where a single administrative body receives all applications for renewable energy installations, online applications, maximum time limits for procedures, grant of automatic permission after the deadline for a response from the agency, facilitated procedures for small scale producers, and identification of geographical sites for installations.

Thus, the overall concern of the Commission is reducing uncertainty in member states’ administrative procedures rather than on which sources of energy the member states elect to focus on to comply with the Renewable Energy Directive. Considerable deference is given to the member states’ methods. Both the Court and the Commission focus on the renewable energy usage goals under the Renewable Energy Directive as the benchmark for determining whether the Renewable Energy Directive would be violated.

V. TILTING AT WINDMILLS?

As a preliminary matter, it should be noted that the previously discussed cases were preliminary questions referred to the Court by the courts of the member state. In this context, the Court has indicated the ultimate decision on whether the contested law abridges the Renewable Energy Directive lies with the national court. The Law and Justice Party of Poland (PiS) recently proposed a bill that would have mandated the immediate resignation of all the Supreme Court justices. While this bill was vetoed by President Duda, Duda then proposed a new bill that would force the retirement of nearly 40 percent

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67 Eriksen, supra note 40, at 289.
68 EUR. COMM’N, supra note 4, at 11-12. Poland, notably, lacks many of the Commission’s “best practice” procedures, including an online application and automatic permission after deadline.
of Polish justices by the end of 2017.71 Both domestic opponents and the EU strongly criticized these bills, accusing PiS of attempting to place courts firmly under its control.72

Therefore, the Polish national court may soon be unduly influenced by PiS, the same party who enacted the Act on Windfarms. This would arguably present a significant roadblock for any challenge to the Act on Windfarms and should be kept in mind as the context in which a case could be brought.

A. Potential Polish Penalties

When assessing any challenge to the Act on Windfarms, the Court would likely conduct two separate inquiries. First, can it be proven that the effect of the law would be to prevent the member state from achieving their binding renewable energy goal under Article 3 of the Renewable Energy Directive? And second, is the challenged law non-discriminatory and the least onerous method of achieving the legislature’s goals? The first inquiry would likely be given more weight by the Court given the discretion that member states are afforded by the nature of directives and by the Commission.

1. Analysis of the First Inquiry

As part of the first inquiry, Elecdey Carcelén provides useful factors and sources for the Court to consider when determining whether the effect of the law would prevent Poland from reaching its renewable energy goals under the Renewable Energy Directive.

The first factor is the size of the geographic area affected by the law.73 The larger the geographic area affected by the contested law, the more likely that the contested law will prevent the member state from meeting their renewable energy goals.74 Clearly, the Act on Windfarms has a much larger scope than the levy at issue in Elecdey Carcelén. The Act affects the entirety of Poland and any wind farms that exist or will be constructed in the country, rather than a mere region of a member state.75 Therefore, this factor points toward a finding that the law may prevent Poland from reaching its renewable energy goals.

71 Id.
72 Id.
73 See Elecdey Carcelén 2017 E.C.R. at ¶ 32 (“It is nevertheless doubtful whether it would actually be possible to prove that a certain levy introduced by a region prevents the Member State as whole achieving the [Directive’s] targets. . .”).
74 Id.
75 Id. See also Act on Windfarms, supra note 7.
The next step is to examine statistics and trends concerning Poland’s renewable energy usage. In addition, Poland’s National Action Plan will be examined to determine what extent Poland intends to rely on wind energy to meet its renewable energy goals. Though the court in Elecdey Carcelén did not use this source of information, it will be useful because statistics on renewable energy use after the implementation of the Act on Windfarms are not available yet.

In 2015, 11.8% of Poland’s energy consumption came from renewable energy sources. Eurostat projects that 12.3% of Poland’s energy consumption will come from renewable energy sources in 2017-2018. Indeed, recently released statistics show that only 10.9% of Poland’s energy came from renewable energy sources.

Because of the unavoidable flaws in the Eurostat statistics, resort must be made to Poland’s National Action Plan that details how it will comply with the Renewable Energy Directive. According to the Plan, 11.9% of Poland’s energy consumption in 2015 was to come from renewable energy sources. Based on the Eurostat figures, Poland is behind its own projections, albeit by 0.1%. However, Poland’s actual wind energy production surpassed its projected 2015 wind energy production in the Plan by over 3000 gigawatt-hours.

Therefore, this factor would likely undercut any challenge to the Act on Windfarms. Though the Act on Windfarms affects the entirety of Poland, the Polish wind industry’s production surpassed what the government deemed necessary for successful compliance with the Renewable Energy Directive.

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76 Elecdey Carcelén 2017 E.C.R. at ¶ 32.
78 Eurostat, SHARES 2015 Detailed Results, https://ec.europa.eu/eurostat/documents/38154/4956088/SUMMARY-RESULTSSHARES-2015.xlsx/9b58ce0-25b1- 4f09-8f4a-db9a06ce2a2d (open the Excel sheet that downloads in the bottom of the screen; click the “PL” tab in the Excel sheet; the relevant statistics are under “Electricty” column and the “Wind” row).
79 Eurostat, SHARES 2017 Detailed Results, https://ec.europa.eu/eurostat/web/energy/data/shares (last visited February 20, 2019) (Click the ZIP “SHARES 2017 detailed results” halfway down the webpage; open the ZIP folder that has downloaded and select “Poland” Excel file; at the bottom of the Excel spreadsheet click “Overall Summary”; the first tab gives the electricity statistics).
81 EUROSTAT NEWS RELEASE, supra note 77.
82 SHARES 2015 Detailed Results, supra note 78; EUR. COMM’N, supra note 80, at table 10b.
Though Poland has not surpassed its overall renewable energy usage goal as Spain has,\(^{83}\) Poland’s failure to do so cannot be attributed to the wind industry. Moreover, the Act on Windfarms will likely inhibit the growth of windfarms rather than put existing windfarms out of business. This means that the existing output capacity is likely enough for Poland to meet its binding target of 15% under the Renewable Energy Directive.\(^{84}\)

As a final matter, the Polish government could point to exceptions built into the Act on Windfarms that allow for the wind industry’s continued, if somewhat diminished, growth and prioritization of other energy sources. The primary way for the wind industry to adapt to the Act on Windfarms would be to use smaller turbines or “micro installations.”\(^{85}\) The Act on Windfarms explicitly exempts these micro installations,\(^{86}\) which are projected to play an “increasingly important role” due to the increasingly distributed nature of the energy sector.\(^{87}\) Poland has also indicated that it will prioritize different renewable energy sources, especially biofuels, which are considered a renewable energy source in the Renewable Energy Directive.\(^{88}\) Thus, the statistical analysis and built-in exemptions of the Act on Windfarms make it unlikely that a potential challenger could prove the Act on Windfarms would prevent Poland from meeting its binding renewable energy goals.

2. Analysis of the Second Inquiry

Next, the Court would determine whether the Act on Windfarms is the least onerous method of achieving the legitimate goals of the legislature.\(^{89}\) In conducting the analysis, the Court would likely consider the inherent discretion that member states possess for directives\(^{90}\) and the Commission’s

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\(^{86}\) Id.

\(^{87}\) Id. The Georgia coast is predicted to utilize these micro installations in the future. See Wind Generation, GA. POWER, https://www.georgiapower.com/about-energy/energy-sources/wind-energy.shtml (last visited Nov. 1, 2017).


\(^{89}\) See Azienda Agro-Zootecnica Franchini Sarl v. Regione Puglia, 2011 E.C.R. 1-06561, ¶ 73 (“[t]he principle of proportionality referred to in Article 13...requires that measures adopted by the Member States in this field do not exceed limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question...”).

\(^{90}\) TFEU, supra note 36, at art. 288.
interpretation of Article 13 as requiring a less discretionary, more objective administrative system.\textsuperscript{91}

First, it must be determined what legitimate goals the Polish legislature is pursuing via the Act on Windfarms. Since the Act on Windfarms prevents building new wind farms close to residential areas, the legislature’s goal is likely to prevent the noise and aesthetic pollution that wind farms sometimes cause.\textsuperscript{92} Similarly, the Act on Windfarms disallows building new wind farms within certain nature preserves, such as the Natura 2000.\textsuperscript{93} This means the legislature was also likely attempting to prevent potential damage to local wildlife that wind farms may cause.\textsuperscript{94} Therefore the legislature’s goals were likely preventing noise pollution and the loss of wildlife.

Next, it must be determined if these goals are accomplished utilizing the least onerous method. The legislature arguably chose the least onerous method of preventing noise and aesthetic pollution by requiring an offset distance of 10 times the height of the turbines. As mentioned, Denmark also requires an offset distance, albeit a much shorter one, so Poland can point to another EU member who uses a similar regulation criterion.\textsuperscript{95} Moreover, the Act on Windfarm’s effective distance of two kilometers would make the wind turbine indiscernible.\textsuperscript{96} Finally, the Act on Windfarms contains an explicit exception for “micro installations.” This exemption allows for smaller, less noisy installations avoiding the need for costly transmission lines that carry the electricity from remote areas to the electricity user.\textsuperscript{97}

While a challenger to the Act on Windfarms may counter, saying the effective two kilometer offset distance precludes over 99 percent of Poland from wind farm development,\textsuperscript{98} the fact remains that the Act on Windfarms offset distance ensures that no residential area would be able to hear the wind farm. In addition, the micro installation exception would make more land available for wind farm development, albeit on a smaller scale.

Moreover, the two-kilometer offset distance required by the Act on Windfarms almost indisputably prevents damage to bird populations and other local wildlife because of the stringent requirements that preclude wind farm development in much of the country. By encouraging micro installations,

\textsuperscript{91} Eriksen, supra note 40, at 288.


\textsuperscript{94} DEPT. OF ENERGY, supra note 92. The damage to wildlife would mostly arise from birds flying into spinning turbine blades.

\textsuperscript{95} DANISH ENERGY AGENCY, supra note 19, at 14.


\textsuperscript{97} DEPT. OF ENERGY, supra note 92.

\textsuperscript{98} Press Release, supra note 5.
which present a much smaller threat to wildlife, and disallowing development near natural habitat areas, the law doubly ensures that local wildlife populations will not be affected.

Thus, the Act on Windfarms, despite its broad bar on developing new, traditional wind farms, does accomplish the legislature’s goals in the least onerous way. Essential to this finding is the micro installation exception contained in the Act on Windfarms and the legislature’s wish to entirely eliminate the possibility of noise pollution and danger to wildlife. Basically, the Act on Windfarms only allows wind farms in areas where they would not be disruptive to human or animal populations.

VI. CONCLUSION

A potential challenge to the Act on Windfarms would likely fail. The challengers would not be able to show that Poland would fail to meet its 2020 renewable energy goal under the Renewable Energy Directive, even with the debilitating effects on the wind sector. Moreover, it remains unclear, statistically speaking, what effect the Act on Windfarms has had because new renewable energy statistics have not been released and because the Act on Windfarms allows for micro installations.

In addition, the overarching policy of both the Court and Commission is to give member states substantial deference in how they achieve their binding goals under the Renewable Energy Directive. Poland exercises this discretion by prioritizing micro installations of wind power and biofuels rather than traditional wind farms. Lastly, the Act on Windfarms comports with the Commission’s preference for objective criteria and less administrative discretion because it creates clear criteria that all applicants must consider.