

# **CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RENEWABLE ENERGY 2023**



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# TABLE OF CONTENTS

■ 4 Albania

■ 14 Bulgaria

■ 22 Czech Republic

■ 32 Hungary

■ 40 Moldova

■ 50 Poland

■ 64 Romania

■ 74 Serbia

## GUIDE CO-EDITORS



# CHAPTER CONTENTS

## 1. SUMMARY

## 2. OVERVIEW OF THE COUNTRY'S RENEWABLE ENERGY SECTOR

### 2.1. Legal Framework

### 2.1. Domestic Sales and Imports/Exports

### 2.2. Foreign Investment and Participation

### 2.3. Protection of Investment

## 3. DEVELOPMENT OF RENEWABLE ENERGY PROJECTS

### 3.1. Granting of Grid Connection Rights

### 3.2. Ownership by Foreign Companies

### 3.3. Stages of the Development Process

### 3.4. Obligatory State/Public Participation

### 3.5. Risks to be Considered

## 4. RENEWABLE ENERGY CONSTRUCTION AND PRODUCTION

### 4.1. RTB Status

### 4.2. Construction of Renewable Energy Projects

### 4.3. Granting of Renewable Energy Production Licenses

### 4.4. Renewable Energy Production by Foreign Investors

### 4.5. Operation and Maintenance of Renewable Energy Projects

### 4.6. Decommissioning Process

### 4.7. Risks to be Considered

## 5. BALANCING OF RENEWABLE ENERGY PROJECTS, STORAGE, SALES

### 5.1. Balancing of Renewable Energy Projects

### 5.2. Storage

### 5.3. Sales

## 6. ROOFTOP, OFFSHORE, FLOATING AND AGRICULTURAL RENEWABLE ENERGY PROJECTS

### 6.1. Offshore Wind and Floating Photovoltaic Projects

### 6.2. Rooftop Photovoltaic Projects

### 6.3. Agrivoltaic Projects

## 7. TRADING OF GREEN CERTIFICATES/CERTIFICATES OF ORIGIN

### 7.1. Certification

### 7.2. Trading



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# CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RENEWABLE ENERGY 2023 ALBANIA



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## 1. SUMMARY

## 2. OVERVIEW OF THE COUNTRY'S RENEWABLE ENERGY SECTOR

### 2.1. Legal Framework

The Albanian legal framework governing the energy sector, including the promotion and use of renewable energy sources (RES), has undergone significant developments in the last dec-ades. This is due to the commitments of the Republic of Albania in the context of the Europe-an Union (EU) integration process (this involves the process of approximation of the Albanian legislation with the EU *acquis*), as well as the *Energy Community Treaty* (EnC Treaty) to which Albania is a party. The result is an evolving legal framework where the respective laws and secondary legislation have been and still are subject to continuous amendments.

The power system in the Republic of Albania consists of electricity production, transmission, distribution, trading and supply to customers. These activities are exercised by entities li-censed pursuant to *Law no. 43/2015 "On the power sector"*, as amended (Power Sector Law). The regulatory authority is the Energy Regulatory Entity (ERE).

Until very recently, the key regulatory basis for the promotion of RES production in Albania was found in *Law no. 7/2017 "On promoting the use of energy from renewable sources"* (Old Renewable Energy Law). This Law approximated partially the *EU Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources* and amending and subsequently repealing *Directives 2001/77/EC and 2003/30/EC*. This Law was abrogated by *Law no. 24/2023 "On promoting the use of energy from renewable sources"* (New Re-newable Energy Law) which was published in the Official Gazette on 14 April 2023 and en-tered into force on 29 April 2023. The New Renewable Energy Law approximates partially the *EU Directive 2018/2001 of 11 December 2018 on the promotion of the use of energy from re-newable sources*.

Notably, the New Renewable Energy Law cannot be consid-ered fully applicable since its key provisions require further regulation by means of secondary legislation to be enacted by the Government of Albania, MIE, and ERE. For this transito-ry period, which is expected to last up to 12 months, the New Renewable Energy Law calls for the temporary application of the exist-ing secondary legislation that was issued based on the Old Renewable Energy Law. Against this background, the following is based on the currently applicable rules as per the secondary legislation still in force, whilst also referring to the new rules under the New Renewable Energy Law to the extent they are fully applicable as such or otherwise provide hints for the future regulation of the renewable energy sector

in Albania.

There are also rules in place regarding energy efficiency and energy performance of build-ings, which promote the use of renewable and energy-efficient technologies in heating and cooling in order to achieve energy performance targets.

The New Renewable Energy Law sets out the following key principles and objectives based on which the Government shall promote the RES production and sale in Albania: **a)** promote the increase of RES use to ensure sustainable development in Albania and to comply with its commitments under the EnC Treaty; **b)** reduce the import of fossil fuels, greenhouse gas emissions and protect the environment in compliance with the international commitments of Albania in line with the relevant international treaties or agreements; **c)** promote the develop-ment of the renewable electricity market and its regional integration; **d)** increase the diversifi-cation of the energy resources and the security of energy supply in Albania; and **e)** promote the development of rural and isolated areas by improving their supply with energy.

To that effect, the Law provides for the legislative framework for promoting the use of RES, the binding national objec-tives for the contribution of RES energy in gross final energy con-sumption by 54.4% in 2030, the rules for supporting RES-produced energy, accessing and operating grids by RES producers, issuing, transferring and canceling guarantees of origin for the renewable energy produced, etc.

As pointed out above, the legal framework is further detailed by means of several governmen-tal acts (Council of Minis-ters' decisions (CMDs)) and regulatory acts (ERE Board of Commis-sioners' decisions). The currently in force CMDs provide for two key categories of schemes under which RES projects may be developed in Albania: **(a)** the auctions or Government-supported schemes, whereby the Government offers certain incentives to the private devel-oper selected through a competitive process, and **(b)** the commercial off-take or merchant scheme, whereby the right to develop the RES project is not subjected to a competitive pro-cedure and no incentives are granted as in the first scheme (elaborated in Section 3.1.). Two PV projects have been already awarded under the auctions scheme: **(i)** Karavasta Solar PV power plant (140 megawatts), and **(ii)** Spitalla Solar PV power plant (100 megawatts). Mean-while, in 2021 Albania announced a 100 megawatts wind auction where bidders can compete with pro-jects between 10 megawatts and 75 megawatts and the winners will be awarded a 15-year power purchase agreement (PPA), which will be converted into a contract for difference (CfD). The second phase was concluded in September 2022 resulting in six qualified bidders. The ceiling price for the bids is set at EUR 75/megawatt hour and qualified bidders may sub-mit are expected to submit their bids on 31 May 2023.

Since 1 April 2021, the rules setting out the balancing responsibility for each and every market participant have become effective. Such responsibility can be exercised directly vis-à-vis the Transmission System Operator (TSO) or through a balancing group responsible party.

The Albanian power exchange (ALPEX SHA) was recently incorporated and started operations in early 2023, contributing further to market liberalization.

On a broader level, Albania ratified the *United Nations Paris Climate Agreement* in 2016 and has taken strategic and legal action to implement its terms.

According to the *Albanian National Energy Strategy 2018-2030* and the *National Plan for Energy and Climate 2021-2030*, Albania's energy policies pursue three objectives: **i)** support for the overall economic development, **ii)** increase the security of energy supply, **iii)** protection of the environment. Moreover, Albania's strategic targets include the following:

- Reduction of the final request for energy by 15,5% related to energy efficiency
- Reduction of greenhouse gases by 11,5%
- Reduction of energy intensity in the GDP by 18%
- Increase of natural gas penetration in the country through the Trans Adriatic Pipeline, for the supply of primary energies, from 0,36% in 2015 to 19.81% in 2030.

Two PV projects have been already awarded under the auctions scheme: **(i)** Karavasta Solar PV power plant (140 megawatts), and **(ii)** Spitala Solar PV power plant (100 megawatts). Meanwhile, in 2021 Albania announced a 100 megawatts wind auction where bidders can compete with projects between 10 megawatts and 75 megawatts and the winners will be awarded a 15-year power purchase agreement (PPA), which will be converted into a contract for difference (CfD). The second phase was concluded in September 2022 resulting in six qualified bidders. The ceiling price for the bids is set at EUR 75/megawatt hour and qualified bidders may submit are expected to submit their bids until May 2023.

Since 1 April 2021, the rules setting out the balancing responsibility for each and every market participant have become effective. Such responsibility can be exercised directly vis-à-vis the Transmission System Operator (TSO) or through a balancing group responsible party.

The Albanian power exchange (ALPEX SHA) was recently incorporated and started operations in early 2023, contributing further to market liberalization.

## 2.2. Domestic Sales and Imports/Exports

On average, Albania is a net-energy importer (ERE's annual report of 2021 shows that electricity imports in 2020 marked the value of 3,238 gigawatts hour and exports the value of 963 gigawatts hour).

Hydropower represents more than 90% of the country's installed power capacity, therefore, accounting for the largest share of its electricity generation. According to IRENA's 2021 Study on Albania's Renewables Readiness Assessment, renewable energy, especially other than hydro, is deemed to be a solution to decreasing Albania's dependence on energy imports. It will also mitigate the impact of climate change resulting in unreliable hydropower production.

Albania is aiming to reach its renewable energy targets by promoting renewable energy use from sources other than hydro both under the Government-supported and the merchant schemes. Other measures are also considered such as tax exemptions, net metering, etc.

TSO is responsible for setting the cross-border transmission capacity values and for reconciling them with the partner TSOs in compliance with criteria established by ENTSO-E. The Power Sector Law and other secondary legislation provide the procedures as well as the auction criteria for cross-border allocation capacity, in both directions, between the control zone of TSO and the partnering TSOs. They aim to establish a transparent process for the allocation of interconnection capacities which is monitored by ERE.

According to the EnC Secretariat's Annual Implementation Report of 2022, all cross-border capacities are allocated through SEE CAO, except split auctions on the interconnection with Serbia. The Albania – Kosovo control block cooperates on cross-border balancing. Market coupling between Albania and Kosovo is envisaged to take place in parallel with the launch of the day-ahead market in Kosovo.

Currently, Albania has interconnection lines with Greece (400 kilovolts and 150 kilovolts), Montenegro (400 kilovolts and 220 kilovolts), and Kosovo (400 kilovolts and 220 kilovolts). A 400-kilovolts overhead line with North Macedonia is under construction, to be completed by 2023.

Expansion and/or upgrade of the transmission and distribution grid can be made where it is deemed necessary by the relevant operator (TSO and Distribution System Operator (DSO)) and in line with the mid-term and long-term development and investment plans approved by ERE pursuant to financial and technical criteria specified under the *Transmission Grid Code* and *Distribution Grid Code* respectively.

### 2.3. Foreign Investment and Participation

Foreign and local companies are treated equally as regards acquisitions of interests in companies operating in the renewable energy sector.

### 2.4. Protection of Investment

With a view to the energy sector, Albania is a party to the Energy Charter Treaty (ECT) as well as to the EnC Treaty. The key objective of this latter treaty is to extend the EU internal energy market rules and principles to countries in South-East Europe, the Black Sea region, and beyond, pursuant to a legally binding framework. In view of that, Albania has undertaken specific commitments vis-à-vis its counterparties which it is reflecting in its strategic documents and domestic legislation.

More broadly, in its effort to attract and protect foreign investments, Albania has concluded numerous international investment agreements, applicable also to investors in the energy sector, including 45 bilateral investment treaties (BITs), 7 treaties with investment provisions (TIPs), and 21 investment-related instruments (IRIs). The majority of such agreements are already in force (39 BITs and 7 TIPs). Albania has also ratified the *International Convention for the Settlement of Investment Disputes* as well as the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*.

Such international instruments offer foreign investors substantive protections against discrimination, expropriation, unfair treatment, non-transfer of capital, etc. They also provide for the possibility of settling investment disputes through international arbitration and offer favorable rules on the enforcement of foreign arbitral awards.

## 3. DEVELOPMENT OF RENEWABLE ENERGY PROJECTS

### 3.1. Granting of Grid Connection Rights

Albanian legislation offers different schemes for investors to obtain the right to develop RES projects. These are elaborated below along with the authorities responsible for granting the related approvals.

#### a) Government-supported schemes

In order to ensure the national target on renewable energy, the Council of Ministers upon proposal by the Minister of Infrastructure and Energy (MIE/Minister) approves measures to promote and support the use of electricity from renewable sources. These measures are further detailed by the Minister through its instructions. A 'support scheme' is defined as the instrument or mechanism applied to promote the use of RES energy by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a

renewable energy obligation or otherwise, the volume of such energy purchased.

The following comprises a list of the schemes currently applicable (based on the secondary legislation currently in force which will apply until the new secondary legislation is approved pursuant to the New Renewable Energy Law):

- support under a PPA concluded for a maximum duration of 15 years with the public offtaker by existing priority producers (HPPs that have been awarded concessions in the past and started operations until December 2020) and small projects of up to 2 megawatts (solar) and 3 megawatts (wind) based on feed-in tariffs which are set by ERE on the basis of a prior methodology approved by the Albanian Government

- support under a PPA concluded for a maximum duration of 15 years with the public offtaker by private investors that have won an auction organized by the Albanian Government for higher capacities based on a fixed price resulting from the auction, often combined with the possibility to also sell in the free market certain part of the electricity generated (hybrid form). Such investors may be also granted the right to use state-owned land for free for a certain period of the project (recent deals were for 30 years)

- support under the CfD to be concluded between the auction winner and the soon-to-be incorporated Renewable Energy Operator (REO) for a maximum duration of 15 years and which takes the form of a variable premium calculated as the difference payment between the price with which the RES producer was declared successful in the competitive process for granting the support (the strike price) and the market price for electricity (the reference price). Once it is fully available (regulation is still incomplete and there may be issues with market functioning), the CfD is expected to substitute the existing PPAs under the previously mentioned support scheme.

The New Renewable Energy Law has introduced some amendments to the existing schemes for supported agreements (PPAs, CFDs, etc.) such as some flexibility for MIE to offer successful bidders agreements that are longer or shorter than 15 years. Moreover, it has introduced a new scheme, specifically the contract for premium whereby a fixed premium (negative or positive, depending on the bidding process) or a sliding premium (as a difference between the guaranteed price and the reference price) are paid above the market price by the REO to the priority producer. Overall, such amendments and the new scheme will only be fully regulated and applicable once the secondary legislation will be enacted and entered into force – expected to happen by April 2024).

#### b) Merchant scheme

A company may develop RES projects in Albania also out



of the Government-supported schemes by obtaining such development right from the Council of Ministers (for plants with an installed capacity over 2 megawatts) or the MIE (for RES plants with an installed capacity below 2 megawatts). The necessary documentation, criteria, and procedures to be met by companies for obtaining such a right are governed by *CMD no. 822, dated 7 October 2015 "On the approval of rules and procedures for the construction of new power generation capacities which are not subject to concessions"*, as amended.

Essentially the applicant should convince the Government about the feasibility of the proposed project, as well as its technical qualifications and financial capacities.

The right to develop RES projects (above 2 megawatts) is obtained by means of two consecutive approvals (a preliminary approval by MIE and a final approval by the Council of Ministers). Moreover, a project development agreement is concluded between the company/JV and MIE, whereby the company shall have to pay MIE a royalty fee of not less than 2% of the average annual electricity sales for a certain period (recent deals were for 49 years). In any case, the company may start construction and operation of the project, only if it has secured rights over the land and it obtains several other permits required by the domestic legislation.

All system customers and users are entitled to access the transmission grid and/or distribution grid respectively and TSO/DSO are obliged to ensure such access on a transparent, non-discriminatory basis and against tariffs approved and published by the ERE. RES projects enjoy priority grid access and dispatch.

The applicant applies with the TSO or DSO for a potential connection and the latter evaluates and replies with an offer in principle to connect to a certain point of the grid providing also a timeline within which the offer is valid. If the applicant accepts the offer within the indicated timeline (generally 18 months), the parties proceed with entering into a connection agreement.

The connection agreement is based on the template connection agreement approved by the ERE.

### 3.2. Ownership by Foreign Companies

See Section 3.1. No differentiation is made between foreign and private investors.

Generally, the project development agreements concluded between MIE and the winning bidder/developer provide that the transfer of such projects to a third party (domestic or foreign) can be made upon prior approval of MIE. Essentially MIE will review the capacities of the potential counterparty

to ensure the smooth continuation of the project. Often the winning bidder must commit in the PDA not to transfer its shares to a third party for a certain period of time (e.g., three years) after the commercial operation date.

### 3.3. Stages of the Development Process

The following key options are available to investors in securing land for developing RES projects in Albania:

- The investor obtains free real rights to use state-owned land for developing a RES project on the basis of the Government-support scheme after having been selected as the winning bidder of a public competitive process launched by MIE. The rights are granted through a project development agreement (an investor-state agreement) concluded between MIE and the winning bidder. They include the investor's right to construct the RES facility on the state-owned land, the free and quiet enjoyment of the site, the land usage rights, rights of way and easements, etc. These rights are granted for the duration of the project development agreement (e.g., 30 years), and upon its expiry, the facility and the land are handed over to MIE.
- The investor obtains real rights for free (against the symbolic price of 1 EUR) to use state-owned land for developing a RES project based on the merchant scheme, provided it is awarded the status of a strategic investor under Albanian law (see also Section 3.4.).
- The investor obtains ownership or real rights over state-owned or private land against reference prices or market prices respectively, for developing a RES project (Government-supported or not) pursuant to the broader Albanian legislation (not applicable to RES projects only).

The key permits required for the development of RES projects in Albania include the following:

- a) Development & construction phase
  - Preliminary opinion for the possibility to connect the potential project to the grid issued by TSO or DSO
  - Preliminary & final approval for the right to build a renewable energy power plant issued by MIE and the Council of Ministers (in the case of the merchant scheme)
  - Development permit, issued by the National Territory Council
  - Archeological and cultural heritage approval issued by the Albanian National Council of Material Cultural Heritage
  - Preliminary Environmental Impact Assessment approval or in-depth EIA report / Environmental declaration issued by



the National Environmental Agency, depending on the specifics of the project and its anticipated effect on the environment

- Fire protection report approval, issued by the Fire Protection and Rescue office at the relevant Municipality
  - Technical appraisal and confirmation of the project, issued by the Albanian Institute of Construction or the Tirana Polytechnic University
  - Connection to the grid approval issued by TSO or DSO and connection agreement concluded with the TSO or DSO
  - Project Development Agreement concluded with MIE
  - Building permit issued by the National Territory Council
- b) Operation phase**
- Fire safety certificate issued by the competent Fire Protection and Rescue Authority
  - Occupancy permit issued by the National Development Agency / relevant Municipality
  - Power generation license issued by ERE
  - Any other trading or supply license issued by ERE (if applicable in case of trading and/or supply activity).

### 3.4. Obligatory State/Public Participation

There are no legal requirements for private investors to accept the participation of the state or state-owned companies in their investment through shares or management rights.

Meanwhile, there is legal room for the state to develop joint projects in the case of so-called 'strategic' investments. The state may award to the private investor land use rights over state-owned property, or it may obtain shares in the joint venture with the private investor. This requires first and foremost that the private investor satisfies the requirements to obtain the strategic investment status (investment value of the project to exceed EUR 30 million or EUR 50 million, depending on the specific benefits granted by the Government).

### 3.5. Risks to be Considered

Key risks include potential legal issues regarding the proper acquisition of land rights as well as detrimental legal changes in response to market developments (global, regional, and domestic), particularly the energy crisis.

## 4. RENEWABLE ENERGY CONSTRUCTION AND PRODUCTION

### 4.1. RTB Status

See Section 3.3.

### 4.2. Construction of Renewable Energy Projects

N/A

### 4.3. Granting of Renewable Energy Production Licenses

A company may carry out the activity of electricity generation only upon obtainment of a generation license issued by ERE for a maximum term of 30 years, with the right of renewal. To obtain the license, the company should be registered in Albania and its object of activity should refer specifically to power generation. The application file should contain information on the legal, administrative, and ownership aspects of the company, the financial and fiscal status, as well as the technical and economic documentation.

The power generation license is obtained through a two-step procedure which is made public and in practice takes approximately 3-4 months. In the first step, the ERE Board of Commissioners formally opens the procedure for the evaluation of the application and in the second step, the Board either rejects or approves the application (conditionally or unconditionally).

The generation license follows a template approved by ERE's Board of Commissioners in 2016. Key terms and conditions of the license include the following:

- the obligation of the licensee to hold one generation license only
- the obligation of the licensee to obtain prior approval from ERE in cases of **(i)** transfer of the license to a third party, **(ii)** changes of ownership and control of the licensee as well as **(iii)** encumbrances over the shares and assets of the licensee (unless the value of the assets is below a designated threshold or their relevance for the licensed activity is minimal), etc.
- reporting and information disclosure obligations regarding the main aspects of the generation activity, including the anticipated decrease of installed capacity (except for cases of force majeure), etc.
- cases of license amendments undertaken by ERE, where **(i)** the installed capacity of the plant increases by more than 10% of the approved capacity, **(ii)** there are changes in the circumstances on the basis of which the license was issued (legal framework, conditions of the investor-state agreement, court decisions or other events that significantly affect the production, transmission, distribution, supply, trading of electricity), etc.
- cases of license revocations undertaken by ERE, where the licensee **(i)** fails to meet the essential conditions of the license, **(ii)** violates environmental protection legislation during the

performance of the activity, (iii) endangers the citizens' life, health, and property, (iv) fails to make the regulatory payments imposed by ERE, (v) becomes financially incapable or initiates a bankruptcy proceeding, etc.

#### 4.4. Renewable Energy Production by Foreign Investors

There are no specific limitations for transferring licenses to foreigners. Both foreign and domestic entities are treated equally in this respect.

As mentioned in Section 4.3., a valid transfer of a license to a third person may occur upon the prior approval of the ERE Board of Commissioners. The Board evaluates the legal, technical, and financial capacities of the potential transferee based on the same legal requirements for the issuance of a new license.

#### 4.5. Operation and Maintenance of Renewable Energy Projects

There are no specific regulations on the operation and maintenance of RES projects, apart from the technical requirements stipulated in the Albanian Transmission and Distribution Grid Codes as well as other relevant legislation regarding permitting and approvals (environmental protection, fire protection, health and safety, etc.).

#### 4.6. Decommissioning Process

There are no specific legal requirements in relation to the decommissioning of renewable energy projects. The general principles and rules under the environmental protection legislation apply in terms of the investor's obligations to rehabilitate the area when dismantling the facility and/or disposing of the equipment. The detailed technical requirements are found in the environmental and social impact assessment report prepared by the developer as well as in the corresponding environmental protection approval issued by the National Environmental Agency (EIA approval, environmental declaration, environmental permit, etc.).

#### 4.7. Risks to be Considered

We have not identified any specific risks in relation to such phases of RES projects in Albania.

### 5. BALANCING OF RENEWABLE ENERGY PROJECTS, STORAGE, SALES

#### 5.1. Balancing of Renewable Energy Projects

Under Albanian Power Sector Law, TSO is responsible for ensuring the system balances services from the balancing service providers in conformity with the balancing rules approved by

ERE. All market participants are obliged to balance generation, consumption, and electricity sale/purchase processes in accordance with the accepted schedule being financially responsible to TSO for the settlement of the imbalances system.

Electricity market participants may regulate the balancing responsibility by means of a contract with the TSO, thereby acquiring the status of the balancing responsible party, or by signing a contract for transferring the balancing responsibility to another balancing responsible party, thereby becoming a member of the balancing group, in conformity with the market rules.

Curtailed and outage situations are addressed in the respective distribution and transmission grid codes. There is no express regulation establishing an obligation to compensate producers for damages resulting from curtailment and outages. There is, however, a general principle laid down in the Power Sector Law under which the grid operator, when carrying out its key tasks of dispatching electricity and upholding system safety, must not affect contracts entered into by grid customers. Moreover, under the grid connection and operating agreement templates approved by ERE, the grid operator is obliged to carry out curtailment of generation in a reasonable and proportionate manner to minimize the effect on grid users. These qualifications set out a threshold for the power generator's rights to compensation from the grid operator where the latter fails to honor agreements by enforcing curtailment of electricity generation. On top of that, the general Albanian Civil Code rules regarding compensation for actual damages and loss of profit will apply.

#### 5.2. Storage

As opposed to the Former Renewable Energy Law, the New Renewable Energy Law provides certain regulations on electricity storage, which are expected to become fully applicable once the secondary legislation is in place.

The Albanian Government shall adopt measures to support a specific renewable energy storage technology to achieve the reduction of CO2 emissions, security of supply, or optimization of the use of renewable energy production. Support measures may take the form of grants, investment loans, premiums, or other operational support. Where they constitute state aid, such support measures shall be subject to prior approval by the state aid commission in accordance with the legislation on state aid. In any case, such support measures shall be awarded through a competitive process launched by MIE.

With a view to balancing responsibility, under the New Renewable Energy Law electricity produced by priority producers

(i.e., any RES producer that benefits from the supported measures), which is not delivered to the grid, but stored in their storage facilities, is considered delivered and benefits from the government-support at the time of scheduled injection into the network. Moreover, priority producers may use their facilities or other storage facilities covering all costs to mitigate the imbalance effect and, in case their support schemes allow, they may benefit from hourly differences through grid injection relocation.

### 5.3. Sales

Albanian power producers may sell electricity to other participants in the market through bilateral PPAs or the organized market (the recently incorporated power exchange ALPEX SHA started operations in early 2023).

For Government-supported capacities, certain statutory limitations are in place. Producers should follow the pre-agreed contractual scheme of selling their electricity at a fixed price to the public off-taker designated by the Government for a certain period (max 15 years). Note that under the New Renewable Energy Law, the max duration of 15 years is considered a general requirement. This means that the contracting authority (MIE) may even propose other, shorter, or longer, timelines in specific cases.

For the merchant capacities, power producers may enter into PPAs with traders, suppliers and end-consumers. Generally, parties are free to negotiate the terms and conditions within the limits of the Civil Code and the standards of the market rules in force. However, in the case of supply contracts with end-consumers the Power Sector Law requires that the PPA addresses fairly consumer protection issues such as quality of service, compensation in case of failure to meet the agreed quality of service, price, and method of information about changes of the price and other key conditions of electricity supply, dispute settlement mechanism, and process, customer's flexibility for switching the electricity supplier, etc.

## 6. ROOFTOP, OFFSHORE, FLOATING, AND AGRICULTURAL RENEWABLE ENERGY PROJECTS

### 6.1. Offshore Wind and Floating Photovoltaic Projects

Offshore wind or floating PV projects are not specifically regulated in Albania. Where possible, the general rules are deemed applicable. Exceptionally, given few developments in relation to floating PV projects (currently two floating PV projects have been approved in Albania), ERE has established specific rules for the designation of the selling price of electricity from small-scale floating PV projects (up to 2 megawatts).

### 6.2. Rooftop Photovoltaic Projects

In the context of promoting RES production, the Old Renewable Energy Law provided for a net metering scheme to be used by small and medium enterprises as well as household clients. These categories could install a PV plant with a 500 kilowatts total capacity to cover partially or completely their energy needs and inject the surplus energy into the distribution network. They should also bear the costs of installing the metering system.

The net balance was to be calculated on a monthly basis and excess electricity is deemed to be remunerated according to prices approved by ERE.

Since 2019 some secondary legislation was in place regarding the requirements to be followed by the applicant for obtaining authorization from DSO for developing such projects. These rules were simpler than those applicable to obtaining development rights for higher-capacity PV projects. However secondary legislation has been ever since incomplete on the more important aspect of the methodology of calculation and determination of electricity prices for the net-metering scheme.

The New Renewable Energy Law follows a similar path by promoting RES production by self-producers up to a capacity of 500 kilowatts. Self-producers are defined more broadly so as to comprise any final consumer that produces renewable electricity for its own consumption and that can store or sell self-produced renewable electrical energy, provided these activities do not constitute their main commercial or professional activity. Such self-producers are entitled to generate, consume, store, and sell excess production of renewable electricity, including bilateral supply and trading agreements according to the principles of equality and proportionality.

The New Renewable Energy Law has also introduced rules regarding self-producers of renewable energy located in the same building, including multi-apartment blocks. These may engage jointly as self-producers and share renewable energy produced in their building, by means of respecting grid charges and other relevant charges, taxes, and duties applicable to any self-producer of renewable energy.

Notably, such rules that were introduced by the New Renewable Energy Law are expected to apply as of January 1, 2024, whilst their full implementation will also require the adoption of secondary legislation regarding aspects such as the rights and responsibilities of such self-producers, the application procedures, the relevant methodology and scheme of compensation, rules of electricity sale, etc.

### 6.3. Agrivoltaic Projects

There are no specific rules in Albania on agrivoltaic projects. Where possible, the general rules are deemed applicable.

## 7. TRADING OF GREEN CERTIFICATES/CERTIFICATES OF ORIGIN

### 7.1. Certification

Production of renewable energy is certified through the so-called guarantees of origin (GOs). GOs have been already regulated by the previous legislation, and are now in more detail by the New Renewable Energy Law).

A GO is defined as an electronic document that has the sole function of proving to a final customer that a given share or quantity of energy was produced from renewable energy sources. GOs are issued by ERE upon the application made by a RES producer and once the plant has started operation. ERE should follow the principles of objectivity, transparency, and non-discrimination in relation to the issuance, transfer, use, and end of validity of GOs. ERE holds an electronic register of GOs and publishes the register data on its website.

One GO corresponds to one electricity unit (1 megawatt hour) generated by the power plant and injected into the grid. The GO is valid for one year starting from the last day of the production period for which it was issued. GOs that have not been canceled expire 18 months after the production of the power unit.

GOs are transferable. Electricity produced from renewable energy sources for which the producer has sold the corresponding GO separately from the electricity, cannot be traded or sold to the end buyer as electricity produced from renewable energy sources.

When a priority producer benefits from support measures under the New Renewable Energy Law, the market value of the GO for the same production must be returned to the REO. In case the producer benefits from a support measure for the purchase of energy, the GO is issued to the REO. The REO decides whether to sell the GO directly to suppliers or consumers or through a bidding process.

### 7.2. Trading

The concept of GOs is underdeveloped in Albania. To the best of our knowledge, no local market is functional yet. The possibility of trading GOs beyond the local market is also questionable as long as no international agreement with other states for the recognition of Albanian GOs is in place. Meanwhile, in principle, Albania acknowledges GOs issued in the Energy Community and may only refuse their recognition when there are reasonable doubts about their accuracy, reliability, or authenticity. ERE will take into account any opinion of the Energy Community Secretariat on the recognition of GOs and will provide written reasons for any deviation.



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# CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RENEWABLE ENERGY 2023 BULGARIA



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## 1. SUMMARY

The 2020s kicked off with a rather unique all-around interest in Bulgaria's market for projects in the Renewable Energy Sector. Some saw the opportunity to pull foreign investments, others – ways to incorporate better use for a property, but all agreed that this sector would be prominent in our future. Soon after, the Ukraine invasion brought perhaps the biggest shock in decades to Europe's energy security – on the one hand, a gas crisis, on the other, galloping electricity prices in its wake. The crisis, together with the ever-lower installation costs and the need to reduce its carbon footprint, created an opportunity for Bulgaria to expand renewable energies and invest in energy efficiency solutions.

At the start of 2023, Bulgaria is establishing itself as the Balkan country with the largest photovoltaic (PV) capacity (1,186 megawatts for 2021). According to a report by Solar Plaza, over the next three years, 61% of the total growth for the Balkans is expected in Bulgaria, with capacity in the country projected to reach 2784 megawatts in 2024.

Bulgaria is a regional net exporter of electricity. The main power plant (the nuclear plant in Kozloduy) is state-owned, and the profits from electricity exports are used to mitigate higher energy prices. The government is gradually decreasing its coal power capacity to replace it with renewable power capacity.

Furthermore, the legislator continues to create an increasingly favorable regime for developing Renewable Energy projects, especially for self-consumption. This tendency is also influenced by the main objective of the Low Carbon Economy component of the *Bulgarian National Recovery and Resilience Plan* (NRRP), namely reducing the carbon footprint and energy intensity of the economy and supporting the green transition. The exploration and construction of geothermal energy sources and storage facilities are also foreseen as a possible way to smooth the decarbonization of the Bulgarian energy sector by reducing emissions. At the same time, for smoother handling with the inconsistency in energy production by RES, flexible and secure operational management of the electric power system shall be ensured. The NRRP foresees several reforms and projects in this respect which are expected to be fulfilled in the coming years. The integration of the Bulgarian electricity market is also among the intended goals.

## 2. OVERVIEW OF THE COUNTRY'S RENEWABLE ENERGY SECTOR

### 2.1. Legal Framework

The *Bulgarian Energy Act* (EA) and the *Energy from Renewable Sources Act* (ERSA) are the primary legal acts that regulate the

development, operation, and financing of renewable energy sources (RES) and the sale of electricity as well as the issue of guarantees of origin (GOs). The construction and development of power plants are further regulated by the *Ownership Act*, the *Spatial Development Act*, and the *Environmental Protection Act*, among others. The operation, licensing, and commissioning or sale of electricity is further regulated by various ordinances and rules that cover the licensing of activities, access and connection to the grid, trading, participation in the Independent Bulgarian Energy Exchange (IBEX), etc.

Over the years, various legislative amendments have been introduced, as well as support schemes and facilitated mechanisms for RES projects. RES policies and incentives in Bulgaria are generally established at the national level under the ERSA and the Integrated energy and climate plan of the Republic of Bulgaria 2021-2030, drafted following the main strategic documents at the European and national levels. Further, the NRRP provides for the adoption of numerous amendments and supplements to the existing legislation to boost the share of RES. Those aim is to simplify the RES installation procedure for own consumption and the licensing and permitting procedures; avoiding unnecessary delays; reducing grid connection times, etc.

According to the applicable laws, the respective operator of the grid is obliged to connect each producer of electricity that has fulfilled the relevant requirements. The most common approach in securing the land for the project is either to acquire it or the right of construction (in rem rights) to be established in favor of the investor. Bulgarian regulations do not restrict foreign investors from investing in RES projects. On the contrary, foreign investments are strongly supported by the state. They will play a crucial role then fulfilling the target set in the NRRP to commission 3,500 megawatts of new renewable capacities.

In view of the energy crisis, the significant importance of having an accessible, reliable, and sustainable form of energy come out on top. The interest of the business in investments in the RES sector (mostly PV) for their own consumption is rising, especially for facilities with a total installed capacity of up to 30 kilowatts hour. This is related to the desire of the owners of the energy facilities to satisfy their own energy needs close to the place of production, which is inevitably related to the reduction of losses from the transformation and transmission of energy. It is expected that in the coming years, the interest in the construction of similar energy facilities will remain, with a tendency for their multiple to increase. A great amount of the financing under the NRRP is designated for RES projects. In this respect, there are procedures taking place encouraging the transition of the private sector to eco-friendly activities, such as a scheme to support the construction of a minimum of 1.4 gigawatts of RES and

batteries and providing grants to households for the construction of new PV systems up to 10 kilowatts hour for own consumption, as well as for solar water heaters.

*In line with the above, a bill for amendment of ERSA is recently submitted to the National Assembly for the purposes of fulfilling the objectives related to the transposition of the harmonization of Directive 2018/2001, the term for which expired in 2021. The draft proposals aim at regulating the energy communities, defining “producing end-consumer,” and providing incentives applicable to them. On a separate note, the amendments aim to create the conditions for implementing the reforms provided in the NRRP. A subsequent easing of the connection procedures for RES projects is also planned. The draft proposals shall be firstly discussed, as a result of which they may be amended. They can enter into force only after adoption by an active National Assembly.*

## 2.2. Domestic Sales and Imports/Exports

In compliance with the goals of the European Union (EU), Bulgaria will strive to achieve at least a 27.09% share of energy from RES in gross final energy consumption by 2030. This national target should be achieved by increasing the consumption of RES in all three sectors: electricity, heat, and energy for refrigeration and transportation. Bulgaria is a major producer and exporter of electricity in the region, which is expected to continue in the following years. A crucial role will play in the planned investments in the electricity transmission grid, which will increase energy efficiency, reduce technological costs and improve trading conditions. The increased grid transmission capacity will enable the connection of generating modules of systemic importance and installations for decentralized electricity generation. The NRRP also invests in the digital transformation and development of information systems and real-time systems of the Bulgarian Electricity System Operator EAD (ESO) in the conditions of the low-carbon energy sector.

Suppose the set goals need to be achieved after 2025. In that case, the Ministry of Energy (ME) plans the possibility of conducting auctions for additional capacity for energy from RES, taking into account market conditions. Conducting auctions for the provision of capacity for the production of electricity from RES and the provision of a premium to the market price for the electricity sold on the electricity market is regarded as an appropriate form of support to reach the binding target for 2030.

## 2.3. Foreign Investment and Participation

Bulgarian regulations do not prohibit or restrict foreign investors or companies with foreign ownership from investing in RES projects. Many investors still see Bulgaria as an attrac-

tive destination that provides government incentives for new investments. Due to its strategic location and low tax rates, Bulgaria is highly suitable for foreign investments in RES. In addition, Bulgaria offers some of the least expensive labor in the EU and low, flat corporate and income tax rates. There are no legal limits on foreign ownership or control of firms. Foreign entities are given the same treatment as national firms and their investments are not screened or restricted. As a practice, foreign investors incorporate a local entity to run the project.

## 2.4. Protection of Investment

The *Energy Charter Treaty* is the main international treaty in the energy sector that Bulgaria is a party to. It provides a multilateral framework for energy cooperation. In due course, Bulgaria also implements the relevant to the energy sector EU Directives.

## 3. DEVELOPMENT OF RENEWABLE ENERGY PROJECTS

### 3.1. Granting of Grid Connection Rights

Grid connection is regulated by the EA, ERSA, and Ordinance 6 on the connection of producers and customers of electricity to the transmission or distribution networks. The operator of the transmission grid (when the total installed generator capacity exceeds 5 megawatts), respectively the operator of the distribution grid (when the total installed generation capacity is less or equal to 5 megawatts) are obliged to connect each producer of electricity that:

- has signed a written agreement for a grid connection.
- has performed the obligations under the grid connection agreement and the legal requirements for connection to the grid.
- has constructed electricity installations that comply with the technical specifications and safety operation provisions and
- has signed a contract for access to the grid.

The operator of the respective grid determines the technically possible connection point upon observation of the safe electricity grid operation and the approved plans for developing the electricity grid. The legislation provides general and simplified grid connection procedures. The general grid connection procedure includes:

- written statement of the terms and conditions for grid connection performed by the transmission grid operator, i.e., ESO for power generators with a capacity exceeding 5 megawatts or by the respective regional grid distribution operator as per the location of the power generator when its capacity is less or

equal or 5 megawatts.

- preliminary contract for grid connection concluded between the transmission operator, or the respective distribution operator and the company-owner of the power generator, and
- contract (final) for grid connection concluded between the transmission operator, or the respective distribution operator and the company-owner of the power plant.

Facilitated procedures shall apply to small power generators as defined in art. 24 ERSA, power generators for which, when applying for grid connection, it is declared that the produced electricity shall not be purchased at a preferential price (art. 25 ERSA), and installation of PV panels with a capacity of up to 5 megawatts for own consumption (art. 25a ERSA).

#### Ownership by Foreign Companies

No specific regulation concerning the development rights granted/transferred to foreign investors exists. Bulgarian law does not prohibit or restrict foreign investors or companies with foreign ownership from investing in RES projects, including any development rights.

### 3.2. Stages of the Development Process

A RES project goes through various development stages and phases till starting real operation, mainly:

- Acquisition of legal titles to the lands where the project shall be located considering the main principle of the Bulgarian law that the construction, development, and operation of RES projects and connection facilities shall be carried out on land/s owned by the company-investor or on which the right of construction (in rem rights) has been established from their owner in favor to the company-investor.
- Environmental Assessment and Environmental Impact Assessment Decision. The main aim of the proceedings is to assess the environmental impact of the project and to conduct a compatibility assessment. The Environmental Assessment sets forth the expected changes that will occur in the environment due to the project, and Environmental Impact Assessment Decision specifies environmental conditions for implementing the project. The competent authority is the Ministry of Environment and Water or the Regional Inspection of Environment and Water. The proceedings could take approximately 3-4 months (excluding preparation of the Environmental Impact Assessment Report).
- Detailed Development Plan, including Detailed Development Plan – Parcel Plan for the elements of the technical infrastructure – traces of cable lines. Both procedures concern the zoning of the project and its approval for inclusion in the

zoning plans of the relevant territory. A Detailed Development Plan – Parcel Plan is required for the construction of elements of the technical infrastructure outside of urbanized zones. The process takes approximately three months.

- Grid connection (See Section 3.1.).
- Building design and Building Permit. Construction works concerning PV or onshore wind farms may commence only after a Building Permit has been obtained unless the exceptions are explicitly provided in the law. Eligible to apply for a Building permit is the owner of the land and person holding established in rem rights, including construction rights set under specific law. Competent to enact a Building permit is the Chief Architect of the respective Municipality as per the location of the installation or the Minister of Regional Development and Public Works in case of installation involving more than one district area. Before applying for a Building Permit, the investor is obliged to obtain all required opinions, permits, and arrangements from various authorities – fire safety and protection of the population authorities, the decision on exclusion from agricultural production, Biological Diversity, Cultural Heritage, and Water Permits, among others.
- Access and Transmission Agreement regulates the use of the grid network following the commissioning of the project and putting it in operational work in parallel with the grid, i.e., the relations between the company-investor and the respective grid operator regarding the use of the electricity grid. The scope of the grid access agreement is to regulate the rights and obligations of the parties in connection with the dispatching, including the conditions for the implementation of the prognosis schedules for the production quantities of electricity and the compensation payable by the operator in case of limitation in the production mode of the plant, etc. Appendixes to the grid access agreement could be annual and monthly production programs, evaluation of the potential of the resource used for the production of electricity, repair programs, technical and regime requirements for the work of the plant, telecommunication, and telemechanic means, dispatching conditions, etc.
- Use Permit. As soon as the RES project, including the grid connection facilities, is fully built, a special commission checks their compliance with the construction documentation and whether they are ready for putting into exploitation. Use Permit is the final act of the completion of the construction process. A special commission is appointed by the National Construction Control Department to check and test the suitability of use of the installation before enacting the Use Permit. Following the report of the commission, the National Construction Control Department to the Ministry of Regional Development and Public Works enacts the Use Permit. The process takes approx. a month.

■ Generation Licence (See Section 4.2.).

### 3.3. Obligatory State/Public Participation

Bulgaria's energy market is dominated by Bulgarian Energy Holding JSC (owned by the state through the ME). It manages the most important companies in the energy sector such as the Kozloduy Nuclear Power Plant, the National Electricity Company, the ESO, and most of the conventional hydro and pumped storage plants. In general, the state benefits from foreign participation in the renewable energy sector mostly through the initial and annual license fees and taxes which shall be paid by the energy participants. An example of a fee due by RES produces is the obligation to contribute 5% of their income to the Fund for Security of the Electricity System (FSES) (a release from this obligation is provided to new RES projects or green hydrogen entered into exploitation after January 1, 2021).

Currently, for companies, operating in the electricity sector measures are introduced to address the high energy prices under *Council Regulation (EU) 2022/1854* (Regulation). The electricity producers with facilities for the production of electricity with an installed capacity of more than 1 megawatt, whose market revenues are obtained from the sale of electricity produced from sources under Art. 7, par. 1 of the Regulation and for energy produced from coal and hydroelectric plants, make targeted contributions to the FSES, representing the positive difference between market revenues without value-added tax and the specified revenue cap, calculated by applying the values for the relevant type of producer, with a delivery period from December 1, 2022 to June 30, 2023, with the exception of transactions with balancing energy required for the balancing needs. The target contribution amount is calculated for each transaction. The values used to calculate the revenue cap for the relevant type of producer were determined by an act of the Council of Ministers.

### 3.4. Risks to be Considered

It is our understanding that the applicable legislation is in line with European tendencies and regulations to stimulate investors. Bulgarian legislation is compliant with EU legislation and the Bulgarian government is open to foreign investment and collaboration.

## 4. RENEWABLE ENERGY CONSTRUCTION AND PRODUCTION

### 4.1. RTB Status

Prior to the construction of a RES project, the investor must obtain certain government authorizations that include:

- approval of the change of the designation of the land to be used for the project construction or for electricity purposes.
- approval of detailed development plans for the project and for the grid connection equipment.
- establishment of easement rights for the laying of the technical infrastructure.
- carrying out an environmental impact assessment of the investment intention for the construction of power plants and an ecological assessment of the detailed development plans.
- approval of investment projects.
- obtaining confirmation from the grid operator on the terms and conditions of the project for grid connection, and
- acquisition of a construction permit.

The regulatory risk has been considered the main risk related to the construction of new renewable energy projects. Due to the gradual elimination of state aid for renewable projects, the risk is considered to be significantly reduced.

### 4.2. Granting of Renewable Energy Production Licenses

The main legislation regulating the production license is provided in the EA and the Ordinance on licensing activities in the energy sector. The Energy and Water Regulatory Commission (EWRC) being the only authority to monitor all activities in the energy sector is the competent body to issue licenses for the RES projects. According to amendments in the EA effective as of February 2023, producing electricity through a power generator of 20 megawatts or more megawatts requires a valid license granted by the EWRC (before the amendments, the capacity of the generator was 5 megawatts). Such a license may be applied for and obtained as early as before the commencement of the power generator's construction, but should, in any case, be available and effective before the actual electricity production starts. A license is not required if the produced electricity is only for own consumption. A license is granted to an entity registered in the Bulgarian Commercial Register or in a Register of a member state of the EU, that has **(i)** technical and financial capabilities, material and human resources, and organizational structure to fulfill the regulatory requirements for carrying out the electricity production activity, **(ii)** ownership or in rem rights over the land/s and the electricity objects through which the electricity production activity shall be carried out, and **(iii)** the electricity equipment meets the requirements for safe operation and environmental protection. A production license shall be issued for a term of validity from one year up to 35 years. It depends on the used resource and the financial capability. In the practice, usually,



the EWRC grants a production license valid for 20-25 years. The term of validity of a license may be extended for a new period not exceeding 35 years, provided that the licensee has met the conditions established by the law and has fulfilled all obligations and requirements under the previously issued license. Early termination of the license, before the expiration of its term, is applicable in the cases where the licensee is in breach of the legislation, the terms of the granted license, or acts of the EWRC.

### 4.3. Renewable Energy Production by Foreign Investors

Bulgarian law does not forbid or restrict foreign investors or companies with foreign ownership from investing in RES projects. For granting a production license it is required only an entity registered in the Bulgarian Commercial Register or in a Register of a member state of the EU. This means that foreign investors should have a Bulgarian or EU company established for special purposes of developing the RES project and obtaining of production license on the territory of Bulgaria. Entities with foreign ownership are given the same treatment as national firms and their investments are not screened or restricted. The granted production license is non-transferable, including the given rights and obligations under the license.

### 4.4. Operation and Maintenance of Renewable Energy Projects

There are no specific Bulgarian regulations on the operation and maintenance of renewable energy projects.

### 4.5. Decommissioning Process

A RES project – the holder of a production license can be decommissioned upon approval by the EWRC. The licensee shall notify the EWRC of the need to decommission at least one year before the license expires. In case the power plant must be decommissioned for technical reasons (after the expiration of the license), the EWRC must prolong the license term up to the term for final decommissioning. In all cases, the EWRC considers if the decommissioning might lead to a breach of security of supply or endanger national security and public order. Decommissioning might occur upon expiry of the technically determined term for safety exploitation, unused main equipment, loss of energy site, etc. The ESO should be informed of all decommissioning activities and all subsequent actions for suspension of the activity of producing electricity should be coordinated with the ESO. Decommissioning of RES projects that do not hold a production license should be completed in cooperation with the distribution grid operator and the ESO.

### 4.6. Risks to be Considered

We may not identify high risks related to the construction, production, operation, maintenance, and decommissioning of renewable energy projects in Bulgaria.

## 5. BALANCING OF RENEWABLE ENERGY PROJECTS, STORAGE, SALES

### 5.1. Balancing of Renewable Energy Projects

In Bulgaria, there is a balancing market operating to mitigate the imbalance costs of market participants that occurred from the deviation between the prognosis and reported electricity production and consumption. The main acts where the balancing market is regulated are the EA and the *Electricity Trading Rules* (ETR). The prices of the imbalance costs are determined by the ESO for each settlement. Participants in the balancing market are the coordinators of balancing groups (standard, special, and combined), and the producers and consumers of electricity. The coordinators are private companies licensed by the EWRC for performing activities as electricity traders with included rights and obligations of coordinators of balancing groups.

The possibility for the coordinators of standard and combined balancing groups to transfer their balancing responsibility to other balancing group coordinators were banned with amendments in the ETR. In this respect, the joint financial settlement of imbalances is not possible anymore. In addition, a 15-minute imbalance settlement period was introduced as required by *Regulation (EU) 2019/943 on the internal electricity market*. As a result of the introduction of the new rules on the balancing energy market, a fairer distribution of the costs of imbalances between commercial participants in the electricity market shall be achieved, which in turn will lead to energy supplies at minimum costs.

### 5.2. Storage

The existing legal gap regarding the regulation of energy storage has been filled by the adopted amendments in the EA effective as of February 2023. Energy storage is qualified among the other energy activities. The activity of energy storage will be carried out freely in the market, i.e., no license shall be required (with exception for the cases where the storage facility is a stand-alone facility and its operator concludes electricity transactions). The energy storage will be carried out by the operator of a storage facility which, on its end, can be built either at a new or existing site for the production or consumption of energy or as a standalone facility.

At present, pumped-storage hydropower plants are the most widespread method for storing renewable energy. Although

the losses from the pumping process generally turn the power plant into a net consumer of electricity, the system increases its revenue by selling more electricity during periods of peak consumption, when electricity prices are highest. In Bulgaria, there are currently three pumping and accumulating hydroelectric power plants with a total generating capacity of 1.4 gigawatts.

### 5.3. Sales

The Bulgarian energy market despite being under a liberalization process, still, includes a regulated market (where the prices are regulated by the EWRC), a free market organized by IBEX, and a balancing market (imbalance costs). The completion of the reform of the electricity market in the direction of full liberalization is set as an aim under the NRRP. IBEX is an electricity trading platform that enables participants to enter into transactions at market prices through a variety of products. IBEX offers exchange segments Intraday, Day-Ahead, and Centralized Market under bilateral agreements. As of February 2021, all RES producers with plants equal to or up to 500 kilowatts hour must trade their electricity on IBEX. This rule shall not apply to:

- transactions concluded by producers which supply electricity to their branches, enterprises, and works thereof located within the national territory through the grid or own direct electric power lines.
- transactions concluded by producers of electricity from RES projects commissioned after January 1, 2019, and
- transactions concluded by operators of a storage facility connected to the grid after February 1, 2023.

In the practice, usually, RES producers conclude a general agreement for purchase-sale and balancing of electricity with electricity traders under freely negotiated prices. The trader registers the RES producer in its balancing group and following the registration, the trader starts to sell the electricity of the RES producer on IBEX. Usually, the agreements are one-year.

## 6. ROOFTOP, OFFSHORE, FLOATING, AND AGRICULTURAL RENEWABLE ENERGY PROJECTS

### 6.1. Offshore Wind and Floating Photovoltaic Projects

There are no Offshore Wind and Floating PV Projects in operation in Bulgaria yet. Currently, discussions are taking place intending to adopt a special regulation on energy from RES in marine spaces (drafts have already been prepared), which would be a basis for attracting investors in offshore wind farms.

### 6.2. Rooftop Photovoltaic Projects

The legal acts regulating the development and operation of rooftop PV projects are the same as indicated in Section 2.1. There are a lot of regulation incentives related to the deployment of rooftop PV projects. A simplified procedure for grid connection is provided to power plants with a total installed capacity of up to and including 30 kilowatts hour, which are planned to be built on the roof and facade structures of buildings connected to the electricity distribution network and on real estate in urban areas. In addition, a notification regime (to the respective electricity network operator) is introduced in the cases where an end customer installs a power plant with a total installed capacity of 5 megawatts on a roof or facades of structures of buildings and real estate in urban areas, the energy from which will be used only for own consumption.

According to amendments in the SDA as of January 2023, approval of development-design projects shall not be required for the issuance of a building permit for RES installations on the roof and facade structures, the adjacent lots, etc. with a total installed capacity of up to 1 megawatt. No detailed plan shall be required in the cases where the RES installations are located outside the urbanized territories. In addition, no building permit shall be required for construction, major repair, and replacement of installations for the production of energy, thermal energy, and/or energy for cooling from RES to the existing single-family residential and villa buildings and in their adjacent land properties, the energy from which will be used only for own consumption, if their total installed power does not exceed 20 kilowatts hour. In those cases, a simplified notification procedure is prescribed by the law.

### 6.3. Agrivoltaic Projects

It was recently announced that the drafting of a legal regulation of the so-called agro photovoltaics is starting, with the aim of reconciling agricultural land and photovoltaics. Currently, there is no legislation in force in this regard.

## 7. TRADING OF GREEN CERTIFICATES/CERTIFICATES OF ORIGIN

### 7.1. Certification

The regulatory framework for the GOs is provided in the ERSA. Under the ERSA, a GO is an electronic document that serves as proof that a certain share or quantity of delivered energy is produced from RES. The conditions and procedure for the issue, transfer, and cancellation of GOs, as well as recognition of GOs, are further determined in *Ordinance No.RD-16-1117/14.10.2011* of the Minister of Economy, Energy, and Tourism. The Sustainable Energy Development Agency (SEDA) is the appointed competent body to issue,



transfer and cancel GOs. SEDA organizes a system for the issue, transfer, and cancellation of GOs. SEDA also recognizes GOs issued by the competent authorities of the other EU member states.

A GO is issued to the producer for the produced standard amount of 1 megawatt of electricity, valid for a period of 12 months. The GO is canceled once it has been used or upon its expiration date. The GO is used when electricity is transferred to an end customer or when it proves the share of RES in the total energy composition of the supplier. In practice, GOs are used as proof of eligibility for receiving a feed-in tariff or a premium-in tariff paid by the FSES.

## 7.2. Trading

No exchange market for GOs is available in Bulgaria. The amendments in the EA, effective as of February 2023, provide that the IBEX shall organize an exchange market of GOs. IBEX has already taken steps towards implementing an objective, transparent, and effective GOs trading platform in accordance with international standards. It is expected this new market segment of IBEX to be in operation very soon.



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# CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RENEWABLE ENERGY 2023 CZECH REPUBLIC



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## 1. SUMMARY

As the Czech Republic is a member of the European Union (EU), its legislation, including legislation relating to renewable energy sources, is to a significant extent based on EU law. The Czech Republic is continuously adapting its legislation to contribute to the EU's goals set out by the *Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources* (Directive 2018/2001) and *Regulation (EU) 2018/1999 on the Governance of Energy Union and Climate Action* (Regulation 2018/1999). The respective goal is to collectively ensure that the share of renewable energy in gross final consumption in the EU reaches 32%. European legislation is further advancing its targets on reducing greenhouse gas emissions under the *Green Deal* and *Fit for 55* policies with an ambitious goal to become a climate-neutral continent. It should be emphasized that the Czech Republic is taking a very responsible and consistent approach to meeting its renewable energy targets. Proof of this is the fact that the Czech Republic has reached the binding renewable energy target set for 2020, where the Czech Republic reached this target seven years earlier than required by European legislation.

The specifics of the Czech Republic are related to its geographical and climatic conditions and economic possibilities. Currently, the proportion of renewables in the Czech Republic's energy mix is relatively small, with fossil fuels dominating. However, this situation is set to change with the above-mentioned EU and Czech objectives. Renewable energy is set to play a key role in the energy transformation that the Czech Republic is facing in the coming years. Therefore, the untapped potential of renewable energy sources in the Czech Republic is huge. Instead of coal, the state plans to make greater use of wind, hydro, biogas, and solar energy. It is clear that the Czech Republic is trying to run renewable energy projects more and more. This is done by financial support for the construction of such projects, by speeding up the process of obtaining all the permits for the construction of the projects, or by ensuring that the electricity generated by these projects is collected. For this reason, investment in this area appears to be very prospective.

Of particular note, to support the construction of renewable energy plants, there is also a so-called Modernization Fund, from which funds can be drawn for, among other things, the production and use of electricity from renewable sources. One of the programs financed by the Modernization Fund in the Czech Republic is the program to support new non-fuel renewable energy sources (*Nové obnovitelné zdroje v energetice; RES+*). Beneficiaries of support under this program can be owners of power plants, existing or future holders of a license to operate in the energy sector, and the so-called Renewable Energy Community under Article 22 of the Directive

2018/2001.

## 2. OVERVIEW OF THE COUNTRY'S RENEWABLE ENERGY SECTOR

### 2.1. Legal Framework

#### a) Support schemes in the Czech Republic

In the Czech Republic, there is support in the form of feed-in tariffs and green bonuses, and auction bonus support. The return on investment in relation to the construction of new renewable energy projects is made easier by various subsidy programs that contribute to the implementation of climate protection policy and energy targets in the Czech Republic.

#### b) Capacity allocation and grid access in the Czech Republic

The electricity producer has the right to connect to the grid if it meets the conditions set out in the relevant legislation, in particular *Decree No. 16/2016 Coll., on the conditions of connection to the electricity grid, of the Energy Regulatory Office (Energetický regulační úřad)* (ERO). The electricity producer has the right to transport the produced electricity and sell it to other entities. In addition to the sale of electricity to traders, the producer can provide so-called support services to the transmission system operator (the state-owned company CEPS, a. s.) which consist of an increase or decrease in the supply of energy on the instruction of the dispatching center, which regulates the balance in the system by these interventions.

According to Section § 25 *Act. no. 458/2000 Sb., Energy Act* (EAct), distribution system operators are obliged to publish annually the expected development of the distribution grid for at least five years. They are also obliged to publish on an on-going basis information on distribution possibilities, including data on available distribution capacity at different times of the year, or for different types of days on 110-kilovolt lines and 110-kilovolt high voltage transformers. This is because the possibilities of electricity distribution are not constant over time. They can be variable with respect to a large number of different influences (condition of equipment, construction activity, repairs, upgrades, natural conditions, etc.).

#### c) Environmental impact assessment in the Czech Republic

The environmental impact assessment in the Czech Republic is governed by *Act No. 100/2001 Sb., on Environmental Impact Assessment*, according to which the renewable energy project could be assessed in terms of their environmental and public health impact assessment (EIA Act). In some cases of construction of production plants, for example, hydropower projects with a total capacity of more than 10 megawatts or wind power plants with a mast height of more than 50 meters, the assessment under this act is a mandatory part of the construction procedure.

**d)** Interconnectivity and power purchase agreements in the Czech Republic

The sale of electricity produced by renewable energy projects on the basis of bilateral and corporate power purchase agreements (PPA) is allowed and possible in the Czech Republic. For the record, this type of contract has even recently started to be widely used in the Czech Republic. As the PPAs are most often concluded for a period of 10 to 30 years, there is a considerable advantage for the producers of the long-term security of supply at a pre-agreed price, thanks to which the producer has a secure income and return on the investment. Another major advantage is that it is easier for an investor to obtain financing for their project if they have a pre-agreed PPA with a guaranteed power purchase. As for the conditions of such contracts, the only mandatory obligation is for the electricity supply contract to include an imbalance responsibility clause.

**e)** Operation and maintenance of renewable energy projects in the Czech Republic

Renewable energy projects have to comply with the regulations that apply to their operation and maintenance and meet all the specific requirements set out for them. These requirements and conditions are set out, especially in *Act No. 165/2012 Coll., Supported Energy Sources Act (SESAct)*, *EA, Decree No. 79/2022 Coll. on technical-economic parameters*, *Decree No. 166/2022 Coll. on reporting energy from supported sources*, and a number of others. If they fail to do so, they risk fines, revocation of the necessary license for their business, or withdrawal of the relevant state support.

**f)** Distribution/transmission tariffs and additional overheads in the Czech Republic

In general, the distribution and transmission tariffs are a regulated component of the prices of electricity. These prices are set annually by a price decision of the ERO and consist of a number of items. First, there is the price of providing electricity distribution to individual customers, i.e., charges for the use of the distribution network, which is multi-component and consists of the price for power input and the price for the quantity of electricity distributed. Second, there is a price for system services (Czech korunas/megawatt hour) which covers the costs of the transmission system operator for the purchase of so-called support services from electricity producers providing these services. Third, there is a price for the activities of the OTE (i.e., the Market Operator – the state-owned company that is the operator of the electricity/gas market in the Czech Republic) that covers the costs of the activities of the OTE and the ERO, which is multi-component and consists of price for activities related to the clearing of imbalances, price for activities related to the payment and administration of support from supported energy sources and fee for the activi-

ties of the ERO. Lastly, there is a component of the price for support for electricity from supported energy sources.

Prices for producers of electricity, in general, are regulated by *Decree No. 16/2016 Coll., on the conditions of connection to the electricity grid*, the ERO. These are the costs associated with the connection and the provision of the required input or output. They include the categories which consist of necessary legitimate costs incurred in connection with the acquisition, construction, or modification of the transmission or distribution system, which is caused by the applicant's request in relation to the location and method of connection of its equipment, the cost of project documentation, surveying and other directly related investment costs, including costs directly related to the acquisition of the easement and payment of the cost of construction, modification or acquisition of the transmission system or distribution system.

The electricity producer is usually also obliged to pay the so-called electricity tax according to *Act No. 261/2007 Coll. on the stabilization of public budgets* and value-added tax according to *Act No. 235/2004 Coll. on value-added tax*.

**g)** Electricity storage options and requirements in the Czech Republic

As far as electricity storage options are concerned, the only way to store more electricity in the Czech Republic is currently pumped storage plants. There are three of them that have been operating in the Czech Republic for some time – Dlouhé Strane, Dalesice and

Stechovice. In addition, large-capacity battery systems for storing electricity are being developed in the Czech Republic. One of them is the installation of a 4-megawatt battery located on the premises of the Tusimice power plant. However, in general, the Czech Republic has a lot of opportunities and potential for development in the field of electricity storage.

As regards the requirements of electricity storage for the electricity providers, they are not specifically regulated by law in the Czech Republic. However, this does not apply to the obligations relating to electricity storage facilities concerning the construction procedure and also the obligations concerning the disposal of batteries or accumulators at the end of their useful life, which are regulated, as specifically described below.

**h)** Most common approaches in securing land for projects in the Czech Republic

The most common approaches in securing land for the renewable energy project in the Czech Republic would be the acquisition of lands or the acquisition of building rights.

**i)** A brief highlight of the most recent trends in the market in the Czech Republic

As set out above, the Czech Republic has committed itself within the EU to participate in binding national targets for the overall share of renewable energy in gross final energy consumption and for the share of renewable energy in transport.

As for Directive 2018/2001 and Regulation 2018/1999, are included in the package of energy legislation presented by the European Commission called *Clean Energy for All Europeans*. Directive 2018/2001 introduces new measures for various sectors of the economy, particularly on heating and cooling and transport, where progress has been slower (for example, an increased 14% target for the share of renewable fuels in transport by 2030). It also includes new provisions to enable citizens to play an active role in the development of renewables by enabling renewable energy communities and the self-consumption of renewable energy. It also establishes strengthened criteria to ensure bioenergy sustainability.

In July 2021, the EU Commission proposed a revision of the directive (COM/2021/557 final) with an increased 40% target as part of the package to deliver on the *European Green Deal*. In May 2022, the Commission proposed in its Communication on the REPowerEU plan (COM/2022/230 final) to further increase this target to 45% by 2030.

As regards the specific laws in the Czech Republic in which the European legislative acts are implemented, these are mainly the following acts:

- SESAct, which, in relation to renewable sources, regulates their support, rules for development and regulation, and financing of support for electricity, heat, and biomethane from renewable sources;
- EAct, which regulates the conditions of doing business and the exercise of state administration in the energy sectors, including renewable energy;
- EIA Act, the implementing regulations to this Act, and price decisions of the ERO.

As regards other current trends in the Czech Republic, *Government Decree No. 298/2022 Sb. on the determination of electricity and gas prices in an exceptional market situation* is currently in force until the end of 2023. This regulation sets the maximum prices for electricity and gas supply. If the determined price does not cover the justified costs of ensuring the supply of electricity or gas, the electricity or gas market participant supplying the electricity or gas is entitled to reimbursement of the proven loss incurred due to the supply of electricity or gas at the determined price and a reasonable profit.

Currently, due to the prevailing energy crisis in 2023, there is an obligation under the EAct to pay a levy on the excess rev-

enues of electricity producers. The subject of this levy is the so-called excess income, which means the positive difference between the market income and the established cap on market income from electricity sales for the levy period of 2023.

According to a recent amendment to the EAct, the threshold, where a license for electricity production is required for a power generation plant, has been increased from 10 kilowatts hour to 50 kilowatts hour (at the same time, the construction procedure for such plants has been simplified). This matter is described in detail below.

In addition, another amendment to EAct is to be adopted, which will allow community electricity sharing. This could result in increased local production and consumption of renewable electricity, increasing energy security and self-sufficiency for communities, businesses, and households.

## 2.2. Domestic Sales and Imports/Exports

According to the SES Act, a new system of support settings for renewable energies for the period 2021 to 2030 is designed. The supports apply to both the renewable energy plants that shall be newly put into operation and renewable energy plants that are already in operation.

No specific plan regarding import/export has been determined in the Czech Republic at this time. However, in general, the Czech Republic has so far been an energy-exporting country. At the moment, fossil fuels represent the largest percentage of energy sources mix in the Czech Republic, followed by nuclear sources. Renewable energy accounts for a relatively small percentage of the Czech energy mix. However, this is expected change, and the increase in renewable energy is expected in light of the current EU and related Czech legislation. The official plan for future development in the Czech Republic should be determined by the so-called State Energy Concept (*Statní energetická koncepce*). However, the current concept from 2015 is now outdated. The new State Energy Concept should be adopted by the end of 2023.

In regards to the need for investment into grid capacities, there is a significant challenge in the Czech Republic as well as in the EU. Currently, investments are mainly in renewable energy sources themselves, and therefore in the coming years, investments will also be needed in the capacity of the grid, whose current capacity might be sufficient in the future.

## 2.3. Foreign Investment and Participation

There are no special limitations or requirements on acquisitions of interests in the respective renewable energy sector by foreign companies in the Czech energy legislation. In general, the EAct requires that entities may only operate in the energy



sector in the Czech Republic on the basis of a license granted by the ERO. In order to hold a license in the case of a legal entity with its registered office outside the Czech Republic, it is necessary for that entity to have an organizational unit established in the Czech Republic.

Also, generally, i.e., not exclusively in relation to the renewable energy sector, the Czech Republic has a relatively new law that deals with the requirements and restrictions for the acquisition of shares by foreign companies. It is *Act No. 34/2021 Coll., on the screening of foreign investments and on amendments to related acts* (the Foreign Investment Screening Act). According to this act, if a foreign company were to express an intention to invest in the Czech Republic in the renewable energy sector in such a manner and to such an extent that the particular investment could disrupt the Czech Republic's critical infrastructure which would have a significant economic impact for the Czech Republic, then such an investment could only take place if it is granted a special permit by the Ministry of Industry and Trade of the Czech Republic.

#### 2.4. Protection of Investment

As mentioned above, Czech energy legislation is strongly influenced by EU legislation. There are also many international treaties concerning nuclear safety, for example, the *Nuclear Safety Convention* or *Vienna Convention on Civil Liability for Nuclear Damage* or bilateral agreements between the Czech Republic and its surrounding states, e.g., the treaty between the Czech Republic and Slovakia about cooperation in the field of state supervision of nuclear safety of nuclear installations and state supervision of nuclear materials. As regards other international energy treaties with non-EU countries, there are only a few treaties regulating the use of nuclear energy but none of those are strictly related to renewable energy.

### 3. DEVELOPMENT OF RENEWABLE ENERGY PROJECTS

#### 3.1. Granting of Grid Connection Rights

The main legal and organizational framework for the development of renewable energy projects is outlined in *Act No. 183/2006 Sb., Building Act* (Building act), which is going to be replaced, step by step, by the *New Building Code No. 283/2021 Coll.* State authorities responsible for regulating the development of renewable energy sources include both authorities under the Construction Act and authorities under other legislation, in particular the ERO, whose competence is enshrined in the EAct.

As for the current major initiatives or policies of the Czech government in relation to renewable energy production, there is the *National Energy Plan of the Czech Republic and Climate Plan*

(*Vnitrostátní plán České republiky v oblasti energetiky a klimatu*). This plan has been prepared on the basis of the requirement of Regulation 2018/1999 of the European Parliament and of the Council on the governance of the Energy Union and climate action. A key part of this plan is the setting of the Czech Republic's contribution to the EU's so-called energy and climate targets in the area of reducing emissions, increasing the share of renewable energy sources, and increasing energy efficiency.

At the end of 2022, the EU Council adopted *Regulation 2022/2577*, which sets out a temporary framework for accelerating the permitting and deployment of renewable energy projects. The regulation introduces urgent and targeted measures to focus on specific technologies and project types with the greatest potential for rapid deployment and the least environmental impact. According to the new regulation, the planning, construction, and operation of power plants and renewable energy installations are presumed to be in the overriding public interest. For example, for solar energy installations, the length of the permitting procedure should not exceed three months. The expiry date of this regulation is June 30, 2024, but it is possible that it will be extended. This regulation is expected to speed up the permitting process. In addition, the Czech Republic approved an amendment to the EAct, which accelerated the construction of renewable sources of electricity up to 50 kilowatts hour, as these constructions will no longer require a building permit or notification under the Building Act. Also, these constructions do not need a license from the ERO under the EAct anymore.

#### 3.2. Ownership by Foreign Companies

As mentioned above, it is only possible to operate in the energy sector in the Czech Republic on the basis of a license granted by the ERO in the case of an activity that falls within the scope of activities covered by the obligation to have a license under the EAct (which includes also electricity generation). In the case of a legal entity with its registered office outside the Czech Republic, it is necessary for that entity to have an organizational unit established in the Czech Republic in order to hold a license.

There are no specific restrictions to the transfer or disposal of renewable energy development rights or interests. However, the transfer of a license is generally not possible. In the case of a change of operator of an energy plant (including a renewable energy plant), the current operator must apply for cancellation of its license and the new operator must apply for a new license. This can be avoided, for example, by the way of transferring a share in the company that operates the energy plant. A special (much more advantageous) system applies in the case of mergers/divisions of energy companies, etc.



### 3.3. Stages of the Development Process

The conditions for the construction of renewable energy production, i.e., renewable energy plants and related need of different authorizations depend on many factors. In particular, the type and scale of the renewable energy plant is determinant. In general, every construction in the Czech Republic must meet the requirements of the legislation and go through a complex permitting process.

To be more particular, for example, if the electricity generation plant exceeds an electrical capacity of 1 megawatt, an authorization under the EAct containing consent for the construction of the electricity generation plant must be retrieved. The developer has to submit an application for authorization before the commencement of the procedure according to the Building Act.

The other example of the procedure is that in some cases when the renewable energy plant is considered a project within the meaning of the EIA Act, the application for zoning decision must be accompanied by the documents that include the outcome of the environmental impact assessment process. After the opinion of the concerned state administration bodies, a zoning decision is issued, and subsequently a building permit (*stavební povolení*). In more complex projects, the issuance of the approval of the building permit is conditional on a successful test run, during which the functionality and characteristics of the completed building are verified. When the approval of the building permit is granted, it is necessary to apply for a license under the EAct. Subsequently, a contract is concluded for the connection of the applicant's facility for the generation, distribution, or offtake of electricity to the transmission system and the contract for the connection of the applicant's facility for the generation of electricity to the distribution system. The permitting process is concluded by the approval of the building permit (*kolaudační souhlas*), which finally allows the project to be put into operation.

However, renewable energy plants are nowadays seeing a substantial simplification and facilitation of the conditions for construction. For example, according to the latest amendments to the Building Act and EAct (referred to as the *Lex OZE 1*). Thanks to these amendments renewable energy plants over 1 megawatt established and operated in the public interest were classified as public technical infrastructure that can be placed in undeveloped areas and therefore it is not necessary to amend the zoning plan (*uzemní plan*). Moreover, for the construction of small renewable energy plants up to an installed capacity of 50 kilowatts hour a building permit is no longer required under certain conditions. This amendment is based on *Regulation 2022/2577* which is introducing a new temporary emergency regulation to accelerate the deployment

of renewable energy sources with a particular focus on small-scale projects with an installed capacity of 50 kilowatts hour in order to secure energy supply, reducing volatility in the market and lowering energy prices.

As regards the length of the procedure, according to the above-mentioned EU Council *Regulation 2022/2577*, the time limits for issuing permits for the construction and operation of renewable energy plants are now significantly reduced, regardless of the planned installed capacity. The same applies to grid connection and, as far as the technical parameters of the connection allow, there should be no delay on the part of the distributor. The respective time limits also cover the environmental impact assessment process, if required.

For example, in the case of solar power plants located on buildings, the time limit may not exceed three months. It is also worth noting that the process of installing solar power plants will also be exempted from the previous requirement for an environmental impact assessment. As regards the above-mentioned buildings up to 50 kilowatts hour, the deadline is one month. If the authorities fail to take a decision on the permit within the deadline, it will be deemed to have been granted.

### 3.4. Obligatory State/Public Participation

In the Czech Republic, the state participates in the development of renewable energy projects mainly in the form of various subsidy programs that contribute to the implementation of climate protection policy and energy targets in the Czech Republic. Generally speaking, support for financing renewable energy in the Czech Republic is broad. The main sources of funding are national programs, programs financed from the proceeds of the sale of emission allowances, EU operational programs, and other support programs.

Of particular note, there is the so-called Modernization Fund, from which funds can be drawn for, among other things, the production and use of electricity from renewable sources. One of the programs, financed by the Modernization Fund in the Czech Republic, is the program to support new non-fuel renewable energy sources (*Nové obnovitelné zdroje v energetice, RES+*). Beneficiaries of support under this program can be owners of power plants, existing or future holders of a license to operate in the energy sector, and the so-called Renewable Energy Community under Article 22 of the *Directive of the European Parliament and Council (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources*.

There are no specific benefits from the state in case of foreign participation in the renewable energy sector in the Czech Republic. However, the general rule of conducting business as a foreign entity in the Czech Republic applies, especially in relation to taxes. Also, the general rules for license fees, access to

the grid fees, caps on offtake prices, etc. apply. Likewise, as a general rule, the provision of some form of state subsidy does not confer a right on the state to data produced as part of the development process. In specific cases, the conditions of the form of subsidy in question will depend on specific terms of the subsidy.

### 3.5. Risks to be Considered

The main risks related to the development of renewable energy projects in the Czech Republic include in particular far too long return periods of investment, the administrative complexity, and risks associated with the processing of the application for subsidies, the level of competitiveness of individual technologies, the conservative attitude of part of the population to new technologies related to renewable energy and in general uncertainty about the future development of the energy sector (especially in terms of the future price of power electricity).

## 4. RENEWABLE ENERGY CONSTRUCTION AND PRODUCTION

### 4.1. RTB Status

As stated above, it is generally necessary to obtain a number of construction law and environmental law permits (e.g., zoning permits, building permits, and binding opinions on landscape intervention). Some of the renewable energy projects may also require an EIA (Environmental Impact Assessment) binding opinion as well. The number of obligatory permits can vary with the particular project. Also, in general, an entity can start a business in any energy sector regulated by the EAct only with an energy license issued by the Energy Regulatory Authority.

### 4.2. Construction of Renewable Energy Projects

The main risks related to the construction of renewable energy plants in the Czech Republic include in particular the administrative complexity with the processing of obtaining required construction law and environmental permits. In general, the duration of this processing usually takes a long amount of time in the Czech Republic. However, thanks to the above-mentioned *Regulation of EU Council 2022/2577*, this situation might be improved, because of the obligatory time limits of the approval process that are designated to be around 3-6 months long.

### 4.3. Granting of Renewable Energy Production Licenses

The main legal and organizational framework for granting renewable energy production is outlined by the EAct. The government authority responsible for the regulation of renewable energy production and granting of renewable energy production licenses is the ERO. Its superior authority of it is the

Ministry of Industry and Trade (*Ministerstvo průmyslu a obchodu*).

There are no special conditions for renewable energy production licenses. The standard license conditions for renewable energy production for the applicant as a natural person include being 18 years of age, having legal capacity, integrity, and professional competence. If the applicant is a legal person, the conditions for natural persons must be met by the members of the statutory body. In addition, the appointment of a responsible representative is another condition for granting a license to a legal person. A responsible representative also has to meet the conditions set out for a natural person but must not be a member of the supervisory board or other controlling body of the legal person. The responsible representative of the licensee shall be approved by the ERO

In addition to the above conditions, the applicant must demonstrate that they have the financial and technical capacity to carry out the licensed activity. Furthermore, the ownership or use of the right to the energy equipment to be used for the licensed activity must be provided, or the owner of the energy equipment must agree to its use for the following purposes.

The license can be granted if the respective conditions are met and if the relevant documents, such as the ownership of the energy equipment, are provided. The license for the production of electricity, gas, and thermal energy is granted for a maximum period of 25 years. The license for the distribution of electricity and gas is granted for an indefinite period of time, while the license for the trade with electricity and gas is granted for a period of five years with the possibility of extension.

The main grounds for early termination are that the license holder no longer meets the conditions for its granting, or in case the holder has breached the obligations laid down in the EAct, or in case the holder in the performance of a licensed activity endangers life, health, or property, seriously violates legal regulations related to that activity.

### 4.4. Renewable Energy Production by Foreign Investors

In order to be granted a license, the foreign investor as a legal entity with its registered office outside the Czech Republic needs to have an organizational unit established in the Czech Republic. The transfer of a license is generally not possible according to Czech legislation. Therefore, for example in the case of a change of operator of an energy plant, the new operator must apply for a new license. However, as stated above, this can be avoided, for example, by the way of transferring a share in the company that is the operator of the energy plant.

#### 4.5. Operation and Maintenance of Renewable Energy Projects

In addition to the general obligations that all energy production plants must comply with, there are some specific things that are set for renewable energy projects. These specificities concern, in particular, the parameters they must comply with in order to receive support. They are laid down, for example, in *Decree No. 166/2022 Coll. On the reporting of energy from supported sources*; *Decree No. 110/2022 Coll. On the determination of types and parameters of supported renewable sources and criteria for sustainability and greenhouse gas savings for biofuels and biomass fuels*.

#### 4.6. Decommissioning Process

There may be particular requirements for the removal of the construction and restoration of the field in question to its original state specified in the building permit that is issued for the relevant construction.

In the case of photovoltaic panels in the Czech Republic, their take-back and recycling can be secured by the manufacturer or importer. There is no further charge for this handover and recycling as this recycling fee is already paid in advance. In the Czech Republic, producers of electrical and electronic equipment associate themselves with so-called collective (EPR) systems that provide take-back, recycling, and disposal for their members.

These collective systems are regulated by *Act No 542/2020 Coll., on end-of-life products, the aim of which is to ensure high environmental protection against the negative effects of waste from selected products*, in accordance with European Union regulations. Selected products include, for example, electrical and electronic equipment, batteries, or accumulators.

#### 4.7. Risks to be Considered

The main risks related to the construction, production, operation and maintenance, and decommissioning of renewable energy projects in the Czech Republic include the administrative complexity and risks associated with the processing the permitting process of the plant construction, increasing requirements for maintenance of the plant in order to maintain the possibility of its operation or to maintain the possible existing subsidy provided by the state, risk related to the capping of prices for energy sales, the need to spend large amounts of funds for the disposal of the plants.

### 5. BALANCING OF RENEWABLE ENERGY PROJECTS, STORAGE, SALES

#### 5.1. Balancing of Renewable Energy Projects

In the Czech Republic, there is no legislation that would aim to limit or balance the production or offtake from renewable energy projects in particular. Nor are there for renewable energy projects. Quite the contrary, the construction of renewable energy projects is strongly supported in the Czech Republic. However, there is a general regulation applicable to all electricity generating plants (i.e., including renewable energy projects) with a total installed electrical capacity of 1 megawatt or more according to which these projects are only possible to build on the basis of state authorization for the construction of a power generation plant. The authorization shall not be granted by the Ministry if the envisaged electricity generation plant does not comply with it. Additionally, each entity trading in electricity must be held responsible for the deviation it causes in the grid so that it can subsequently pay for the regulatory energy that had to be used for the sake of balance because of its deviation.

#### 5.2. Storage

In the Czech Republic, there are no specific legislative requirements in relation to electricity storage that would relate to obligations to store the electricity during its production. Therefore, there are not any obligatory electricity storage requirements to be followed for the design and operation of renewable energy projects in particular. The storage solution for the operation of renewable energy plants is the choice and options of the operator.

However, there are some laws in the Czech Republic that may affect electricity storage de-vices or facilities in relation to their permitting process and construction procedure according to the Building Act and also their recycling or disposal. These include *Act No. 541/2020 Sb., on Waste* and *Act No. 542/2020 Sb., on End-of-Life Products*. The latter regulates the handling of end-of-life electrical equipment, batteries and accumulators, and also the solar panels.

#### 5.3. Sales

The sale of electricity produced by renewable energy projects on the basis of bilateral and corporate power purchase agreements (PPA) is allowed and possible in the Czech Republic. For the record, this type of contract has even recently started to be widely used in the Czech Republic. As the PPAs are most often concluded for a period of 10 to 30 years there is a considerable advantage for the producers of the long-term security of supply at a pre-agreed price, thanks to which the producer has a secure income and return of the investment.

Another major advantage is that it is easier for an investor to obtain financing for their project if they have a pre-agreed PPA with a guaranteed power purchase. As for the conditions of such contracts, the only mandatory obligation is to include a deviation liability clause. Otherwise, the contracting parties have wide contractual freedom in negotiating the content of the PPA and therefore they can set the terms of the contract according to their needs.

## 6. ROOFTOP, OFFSHORE, FLOATING, AND AGRICULTURAL RENEWABLE ENERGY PROJECTS

### 6.1. Offshore Wind and Floating Photovoltaic Projects

Offshore wind farms are out of the question due to the absence of a sea, therefore, only “floating” photovoltaic power plants can be considered. Their implementation in the Czech Republic is at an early stage, as only in recent years has the very first model of this kind began to be tested.

The Czech legislation does not provide specific regulations for the permitting procedures connected to offshore wind and floating photovoltaic projects. Consequently, the general permitting process described above shall apply.

The floating photovoltaic technology is being debated in relation to the flooding of disused brown coal mines. As the newly created water surfaces provide ideal technical conditions for the construction and operation of floating photovoltaic power plants, we could see a rise in the technology in the near future in the Czech Republic.

### 6.2. Rooftop Photovoltaic Projects

The Building Act is relevant for photovoltaic power plants in terms of legal regulation. This act views a rooftop photovoltaic power plant as either a new independent building or a building modification. The fundamental difference between the above lies mainly in the requirement to obtain a building permit.

In the first case, where the rooftop PV plant is a stand-alone building, the building on which it is located is considered to be only a supporting structure and is thus a case of building on a building. In such a case, the photovoltaic plant typically performs the role of an energy production plant that is fed into a distribution system and therefore must meet all the conditions for the issuance of a building permit (it must be allowed by the zoning plan, be in line with other interests protected by the Building Act, etc.). At the same time, the owner of such photovoltaics may be a person different from the owner of the building.

In the second case, if the rooftop photovoltaic power plant is only a structural modification, it is considered a building

installation that ensures the use of the building for the purpose for which it was established. Such a photovoltaic plant therefore mainly serves the building on which it is located. If the installation of such a plant complies with the conditions of the Building Act, the permitting process is much more straightforward and efficient.

Legislation changes effective as of January 2023 also significantly reduced the obstacles for the operation construction and operation of rooftop photovoltaic powerplants which are to be located on buildings owned by multiple entities (typically residential buildings). The updated Electricity Market Rules finally enable residents to effectively share the electricity produced by such power plants as well as the profit for the surplus of the electricity distributed to the distribution system. Henceforth, a significant increase in the construction of new rooftop photovoltaic powerplants can be expected.

### 6.3. Agrivoltaic Projects

The current situation is only in the state of intensive preparation of the amendment to the *Act on the Protection of the Agricultural Soil Fund (No. 334/1992 Sb.)*, which is in charge of the Ministry of the Environment. The purpose of the forthcoming amendment is primarily to create easier access to agrivoltaic support for growers of selected crops. The amendment will also need to ensure that the construction of the agrivoltaic power plant can take place without agricultural land having to be removed from the land fund, which is currently an obstacle to the development of such projects.

## 7. TRADING OF GREEN CERTIFICATES/CERTIFICATES OF ORIGIN

### 7.1. Certification

In the Czech Republic, there is general support in the form of feed-in tariffs and green bonus-es and auction bonus support.

In the case of feed-in tariffs, the obligatory purchaser is obliged to buy from the renewable energy producer all the electricity measured at the transmission point of the electricity production plant and the distribution or transmission system and delivered to the electricity system at the price set by the current price decision. The 15-year simple payback guarantee applies only to the support in the form of the purchase price, provided that the technical and economic parameters set by the Decree on technical and economic parameters are met. This price is maintained as a minimum price for the lifetime of the production, with a regular 2% indexation, except for plants using biomass, biogas, or bioliquids.

The green bonus for electricity produced from renewable energy sources is paid by OTE for all electricity produced and



measured by a specified meter, with the exception of technological self-consumption of electricity. In the case of support in the form of green bonuses, the producer must find its own electricity customer and negotiate a price with them. It is also possible to use part of the electricity produced for self-consumption and to negotiate a contract with the trader only for the supply of the unconsumed surplus. The green bonus is generally associated with a higher yield corresponding to the increased risk of selling the electricity produced compared to the purchase price.

The support in the form of auction bonuses aims to minimize the costs of supporting renewable energy production. The act lays down the procedure and conditions concerning the announcement of the auction, the financial security, the evaluation of bids, the decision to grant or not to grant the right to auction support, the use of the financial security, and the withdrawal of the right to auction support.

Also, there is the system of so-called guarantees of origin

(*Zaručky původu*) which can be issued to certify the “green” origin of power (generated in green power plants). The rules for issuing/trading with Origin Certificates are mainly governed by the SESAct.

## 7.2. Trading

As far as guarantees of origin are concerned, their issuance in the Czech Republic has been handled by OTE, a state-owned company, since 2009. All the activities related to the issuance were mainly paper-based, but in 2013, following the *Directive 2009/28 EC* of the European Parliament and of the Council, the Guarantees of Origin Register (*Evidence zaruček původu*, EZP) was created and launched, which was integrated into the price-trade information system of OTE (CS OTE). The EZP draws mainly on metered data from distribution system operators and on data filled in by electricity producers according to the relevant legislation. All activities such as issuing, transfer, use, or cancellation are therefore carried out electronically.



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# CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RENEWABLE ENERGY 2023 HUNGARY



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## 1. SUMMARY

The Hungarian renewable energy sector has developed recently, mainly focusing on photovoltaic power plants. According to the data publication of the Hungarian transmission systems operator, the installed capacity of the Hungarian solar power plants has exceeded 4,000 megawatts in 2022. There are future projects which have already received access to the transmission grid in an amount of approximately 5,000 megawatts. Therefore, the installed photovoltaic capacity might double within a few years, and the Hungarian target of 6,000 megawatts of total installed solar capacity by 2030 could be reached much earlier.

The Hungarian capacity of wind farms is around 330 megawatts. All of the wind power plants were authorized and constructed before 2016, since then, no new wind power plant has been established in Hungary due to the very restrictive legislation, which makes the construction of wind farms practically impossible.

Due to the rapid growth of the Hungarian renewable energy sector, the electricity system currently faces a capacity deficiency. A national transmission system upgrade is necessary to enable the integration of the electric capacity generated and requested by weather-dependent energy sources.

## 2. OVERVIEW OF THE COUNTRY'S RENEWABLE ENERGY SECTOR

### 2.1. Legal Framework

The legal framework of the renewable energy sector is determined by *Act LXXXVI of 2007 on the electric energy* (Electricity Act), government decrees, decrees, and resolutions issued by the Hungarian Energy and Public Utility Regulatory Authority (HEA) and various regulations (e.g., *Commercial Code*) of the Hungarian transmission system operator (TSO), MAVIR Zrt.

In Hungary, electricity from renewable energy sources was supported by the mandatory offtake (KAT) support scheme until 31 December 2016. The principle of the KAT support scheme is that the power plants may sell the produced energy in the mandatory offtake based on an annual fixed amount. The fixed tariff is 40,34 HUF/kilowatt hour in 2023. The amount of electricity and the period of the mandatory offtake are determined for each eligible electricity producer. The provisions of participating in the KAT scheme have changed several times in recent years. Currently, the producers in the mandatory offtake system are not allowed to leave the support scheme and sell the produced electricity in the free market.

A new renewable energy support scheme (METAR) was introduced in January 2017. The introduction of the METAR

scheme does not interfere with the previously obtained KAT entitlements. The METAR scheme comprises three sub-systems determined by the power plant's capacity: a feed-in tariff (for plants below 0.5 megawatts), a green premium without tendering (for plants below 1 megawatt) and a green premium granted through tendering procedures for all kinds of renewable power plants.

The principle for the feed-in tariff support system is the same as for the KAT support scheme. In the METAR green premium (without tendering) support system, the producers may sell the electricity generated from renewable sources on the free market at market price, and the producers receive administrative premium support above the market reference price as a surcharge claim (the so-called market premium). The budgets of the feed-in and the green premium (without tendering) systems determined for 2020-2026 were exhausted in 2019; therefore, new entitlements cannot be requested.

However, the METAR green premium tendering procedure is still available for new renewable energy projects. The tenders are technology neutral, with one bidding round and a price-based evaluation. The winners will be granted green premium support at the initial supported price in the winning bid for the period determined in the tender call, but for 20 years at most. The HEA organizes the tenders, and the last tender took place in March 2022. 435 gigawatts hour/year support was requested in the tender.

The regulatory body of the energy sector is HEA, an independent regulatory authority whose responsibility covers licensing, supervision, price regulation, and tariff-and-fee preparatory tasks in the fields of electricity.

The HEA licenses are necessary to establish and operate power plants generating electricity, to operate electricity storage facilities, and to trade electricity.

Different rules and licensing procedures apply to power plants based on their nominal capacity, and a license is not required for power plants with less than 0.5 megawatts capacity. Small power plants with a capacity between 0.5 megawatts and 50 megawatts are subject to a simplified licensing procedure; The HEA issues a combined micro power plant license for constructing the power plant and the electricity generation in a single procedure. Power plants with a capacity of 50 megawatts or more shall obtain a separate license for the establishment of the power plant and a separate license for the operation of the power plant.

The main rules of the grid connection and the capacity allocation are determined in the Electricity Act, and within this framework, the TSO determines the detailed rules. Theoretically, grid connection capacity can be obtained through

competitive allocation tender or in an individual procedure, but currently, there is no capacity to apply for. For the details, see Section 3.1.

The environmental impact assessment of a renewable project is required if the project exceeds certain thresholds in terms of the size of the land or the installed capacity and pursuant to a preliminary assessment, the project has a significant impact on the environment. If a project is subject to environmental impact assessment, the activity may only begin after the issuance of the environmental protection permit.

The distribution and transmission tariffs (such as electricity system usage fees, connection fees, and special fees) are subject to regulation and determined for price regulation cycles. The current price regulation cycle started on April 1, 2022, and the framework rules are described in *HEA Decree No. 12/2020. (XII. 14.)*. The fees are calculated and determined by the HEA taking into account the principle of the least cost and the justified costs of the network licensees. When determining the fees, large changes from one year to the next shall be avoided as far as possible.

As renewable energy projects have only started to become widespread in recent years, there are several areas where special legislation has yet to be adopted, including renewable power purchase agreements, electricity storage requirements, and the operation and maintenance of renewable energy projects.

## 2.2. Domestic Sales and Imports/Exports

In 2021, the share of electricity from renewable energy sources in the gross final electricity consumption was 14.3%, with a 56.5% increase in electricity generated by solar power. The goal is to increase the share of renewable energy sources to at least 21% by 2030.

In recent years, the most dynamic growth appeared in using solar power, renewable district heating and heat pump systems, and biofuels with mandatory blending rates. The expansion of small-scale hydropower capacity is also planned, in addition to maintaining existing hydropower plants.

In the heating and cooling sector, there is great potential for the efficient use of biomass and ambient heat through heat pumps. Only 10-15% of Hungary's geothermal potential is currently exploited, although geothermal energy can be a competitive alternative to other energy sources. Given the geological conditions of Hungary, the aim is to exploit the geothermal thermal energy potential. In addition, the possibility of the biodegradable fraction of municipal waste for useful heat production should be exploited.

Hungary's import energy dependence is high. The import

dependence rate for all energy sources was 54.3% in 2021. However, Hungary is devoted to eliminating its reliance on imported energy sources and boosting electricity production relying on nuclear and solar energy. The goal is to stabilize the share of energy imports below 20% by 2040.

## 2.3. Foreign Investment and Participation

Hungary currently has a two-folded FDI regime:

The *Act LVII of 2018 on controlling foreign investments violating Hungary's security interests* regulates a national security-type screening in the "classic" strategic sectors, including certain services under the Electricity Act. According to this regime, a ministerial acknowledgment is required if a foreign investor intends to acquire – directly or indirectly – at least 25% of the ownership of a company (or 10% of a public company), falling under the scope of applicability of the relevant regulation.

In May 2020, due to the pandemic, a new regime was introduced: ministerial acknowledgment is required for certain transactions if a foreign (including EU/EEA/Swiss) investor intends to acquire a strategic company (e.g., any Hungarian-based company with an activity in the energy sector). The stake which triggers the notification obligation depends on the investor: in case of non-EU/EEA/Swiss investors the acquisition of 5% (or 3% of a public company) is the threshold, while in case of EU/EEA/Swiss investor, only the acquisition of majority influence falls under the regime. In some instances, an additional condition is that the investment value reaches HUF 350 million (approximately EUR 875,000). This new regime was initially introduced as a temporary one, but it is still in force, currently with reference to the Ukrainian situation.

## 2.4. Protection of Investment

Hungary is one of the 53 signatories and contracting parties to the *Energy Charter Treaty*, which provides a multilateral framework for long-term cooperation in the energy sector, including energy trade, transit, and investment. The treaty protects foreign investors in energy, promotes the progressive liberalization of international energy trade, and aims to transfer its provisions to the WTO, thereby giving them global reach.

Hungary is also a party to the *Paris Agreement* on climate change. Its goal is limiting global warming to well below 2, preferably to 1.5 degrees Celsius. Hungary, among other signatory governments, contributed, before and during the Paris Conference, with a comprehensive national climate action plan to reduce their emissions, additionally committed to publishing action plans every five years, with increasingly ambitious targets in each plan.

The EU also set a target in the *Renewable Energy Directive*

(2018/2001/EU) to cover 32% of the EU's energy consumption with renewable energy sources by 2030 and to decrease carbon dioxide emissions by 40 % compared to 1990 levels. In compliance with the directive, the Hungarian Parliament adopted the Electricity Act.

In addition, the European Green Deal, signed by all 27 EU Member States, including Hungary, aims to reduce net greenhouse gas emissions (GHG) by at least 55% by 2030, compared to 1990 levels, and turn the EU into the first climate-neutral continent by 2050. Each country was required to draw up its own energy strategy, which Hungary has done.

Additionally, in the framework of its regulatory role, the Parliament passed a new law on climate protection (*Act XLIV of 2020*) containing the above EU climate objectives along with setting a target for Hungary to achieve a 40% reduction in greenhouse gas emissions compared to 1990 and a share of renewable energy sources in gross final energy consumption at least 21% by 2030.

### 3. DEVELOPMENT OF RENEWABLE ENERGY PROJECTS

#### 3.1. Granting of Grid Connection Rights

The transmission and distribution networks are available in exchange for the network access fee. In April 2021, a new system for connection to the transmission grid was introduced, whereby producers may connect to the transmission or distribution grid by either participating in a competitive allocation tender or in an individual procedure.

According to this new system, the Hungarian TSO, MAVIR Zrt. regularly determines the free capacity of the transmission grid, and the developers can apply for these free capacities. The first publication was released at the beginning of May 2022, and according to that, there was zero capacity in the system. Therefore, developers can only obtain grid connection through an individual procedure, where the developer has to establish its grid connection. All costs of such developments will be borne by the developer, including the costs of the necessary public network development.

#### 3.2. Ownership by Foreign Companies

According to the Electricity Act and its implementing decree, small power plant licenses may only be granted to companies with a registered seat in Hungary, while licenses for the establishment and operation of power plants with a nominal capacity of 50 megawatts or more may only be granted to limited liability company (*korlátolt felelősségű társaság*) or joint-stock companies (*reszvénytársaság*) with a registered seat in Hungary.

Thus, power plants may not be owned directly by foreign com-

panies. However, indirect foreign ownership is generally not restricted. Typically, the power plants are owned and operated by Hungarian project companies, and licenses and authorizations are granted to these project companies. Therefore, foreign investors typically establish project companies or acquire shares in the project companies already holding the necessary authorizations.

HEA's prior consent is necessary before acquiring, directly or indirectly, shares or voting rights, which represent at least 5% or more of the votes in any license-holder company, except for combined micro power plant license holders (PV plants with a nominal capacity between 0.5 megawatts and 50 megawatts), where the HEA has to be notified only after the acquisition.

#### 3.3. Stages of the Development Process

Before the actual construction of the power plant, the developer has to secure the land on which the power plant will be built and apply for capacity to access the transmission grid.

The power plant can be established on one's own property or property owned by a third party; however, in the latter case, the owner's consent is required for the construction.

There are special requirements and preconditions regarding projects which will occupy more than 2 hectares, or the nominal generation capacity of the plant's unit will reach or exceed 500 megawatts. In these cases, the assessment of the planned project's environmental effect and preliminary authorization by the HEA is necessary. The preliminary authorization is granted for three years and might be extended for additional three years. In the preliminary authorization, HEA defines the technical requirements for the power plant to ensure the functionality of the electricity system without interruptions and the security of operation and electricity supply.

For power plants with a nominal capacity below 500 megawatts but above 0.5 megawatts, a combined micropower license or a license for establishing the power plant is necessary. The HEA issues these licenses for an administrative service fee, the amount of which depends on the nominal capacity of the power plant (approximately between EUR 1,250 and EUR 5,000). Both licenses are granted for a definite period with a possibility of extension. Based on a combined micro power plant license, the developer is authorized to establish and operate the power plant and also to sell the self-produced electricity. In the case of a power plant above 50 megawatts nominal capacity, the license for the establishment authorizes the developer only for the construction of the plant, and a separate license is required for permanent electricity generation.

To secure the power plant's access to the transmission grid, the developer has to apply for capacity with the TSO through

the competitive allocation tender (if there will be any capacity to allocate) or in an individual procedure. In both cases, the developer must provide financial security in the amount of 900,000 HUF/megavolt amperes (approximately 2,250 EUR/megavolt amperes). Once the grid capacity is secured, the developer enters into a grid connection agreement with the local DSO. The agreement might contain provisions for the public network intervention to connect the power plant to the grid. The agreement is typically concluded for an indefinite period.

If these licenses/authorizations are in place, the developer may apply for the building permits, separately for the power plant and the cable connection required to connect the power plant to the respective substation. These permits are typically valid for two years and might be extended for an additional two-year period. The permits authorize the developer to establish the power plant and the production cable on the given property in line with the submitted technical documentation. The building authority issues these permits after consultation with expert authorities such as environmental or disaster management authorities. The building authority and the expert authorities may determine special conditions which must be met during the construction work.

### 3.4. Obligatory State/Public Participation

In Hungary, there is no mandatory participation for the state or any other public bodies in renewable energy projects or their development. Nevertheless, through MVM Group (the state-owned group of electricity companies), the Hungarian state indirectly participates in renewable energy projects: MVM has a solar power capacity of approximately 200 megawatts, and they are continuously expanding their capacity from year to year. MVM also owns five hydroelectric power plants, including the two largest Hungarian ones located at Tiszalok and Kisköre, with a nominal capacity of 41 megawatts.

There are two main taxes that specifically burden the electricity producers in Hungary: the income tax of energy suppliers (Robin Hood tax) and the extra-profit tax.

The Robin Hood tax is an income tax payable by energy suppliers and public utility suppliers, including electricity generation license holders and electricity trading license holders (but excluding, e.g., renewable energy producers who participate in the KAT or METAR support schemes). The tax base is the pre-tax profit modified with certain increasing and decreasing items. The tax rate is 31%.

In June 2022, another special, so-called “extra profit tax” was introduced, payable by renewable energy producers who are entitled to participate in the KAT or METAR support schemes but leave or fail to enter the respective support scheme in 2022 or 2023. The tax base is the difference between the hypotheti-

cal revenue that the producer would have generated by selling the electricity under the KAT or METAR support scheme and the revenue generated on the market. The specific tax rate is 65%.

### 3.5. Risks to be Considered

Currently, the most significant risk related to developing renewable energy projects is the lack of grid capacity. See Section 3.1.

In addition, securing the land required for the project may also be problematic in the case of lands classified as agricultural land. According to the applicable legislation, agricultural lands cannot be acquired or used by companies in Hungary, which means that the ownership of the land can only be secured following the construction of the power plant and the reclassification of the land. As a result of this situation, in these cases, the close cooperation of the developer and the private individual owners is required throughout the development phase, which has its own pitfalls.

## 4. RENEWABLE ENERGY CONSTRUCTION AND PRODUCTION

### 4.1. RTB Status

Generally, a Hungarian renewable energy project can be considered “Ready-to-built” if it has the following authorizations: **(i)** ownership or other right securing the use of the land; **(ii)** combined micro power license for power plants with a nominal capacity between 0.5 megawatts and 50 megawatts or a license for the establishment of the power plant above 50 megawatts nominal capacity; **(iii)** building permit for the power plant; **(iv)** separate building permit for the production cables, including transformer station and switching station; **(v)** grid connection agreement.

### 4.2. Construction of Renewable Energy Projects

The power plant project has to be constructed in line with the provisions of the building permits and the HEA licenses. Both authorizations contain a timeframe for constructing the power plant, which the developer has to meet. If the developer fails to complete the plant in the given timeframe, the building permits will expire, and the HEA will revoke the HEA license. Constructions are typically carried out within the framework of turnkey EPC agreements.

After the construction of the power plant, a commissioning procedure is conducted, and a so-called occupancy permit has to be acquired for the permanent commercial operation of the plant. The building authority grants the occupancy permit if the construction work was carried out in accordance with the building permit and the related documentation, the plant is



in a condition suitable for its safe use, and the consent of the relevant operators of public utilities is given.

If the plant is not established in accordance with the specifics determined in the building permits, instead of an occupancy permit, a continuation permit must be requested from the building authority. In this case, even if the building authority grants the continuation permit, a fine will be imposed simultaneously.

The project owner also has a notification obligation toward the HEA and the TSO regarding the proposed date for the commencement of commercial operations, the completion of commissioning, and the actual commencement of commercial operations.

### 4.3. Granting of Renewable Energy Production Licenses

Please see Section 2.1. for the main legislation for obtaining renewable energy production licenses.

An operating license is required for the operation and electricity generation of power plants with a nominal capacity above 50 megawatts. The HEA issues the license for a definite period with the possibility of an extension. In the case of power plants with a nominal capacity between 0.5 megawatts and 50 megawatts, the combined micro power plant license obtained before the construction of the plant also covers electricity generation. These licenses authorize the producers to sell self-produced electricity.

The terms and conditions of the operation are determined in the operating license. In the event of a breach of any of these terms, the HEA may issue a written notice to comply with the obligations and/or impose fines. If the license holder fails to remedy the infringement, the HEA may amend or revoke the license. The revocation of the license is obligatory in some cases, e.g., if the electrical installation is operated in a manner that seriously endangers the electricity supply, human life, health, operation, property safety, or the environment.

### 4.4. Renewable Energy Production by Foreign Investors

See Section 3.2.

### 4.5. Operation and Maintenance of Renewable Energy Projects

There are no specific regulations on the operation and maintenance of renewable energy projects. However, the expert authorities might determine special conditions in the occupancy permit for the operation of the power plant with regards to environment, nature or soil protection rules or disaster management requirements, etc.

In most cases, the operation and maintenance are performed by third-party contractors in accordance with the terms of the parties' agreement.

### 4.6. Decommissioning Process

There is no specific regime in Hungary in relation to the decommissioning of renewable energy projects, disposal of equipment, or recovery of fields. The reason for the lack of legislation might be that the Hungarian renewable energy market has just started growing, so probably no real need has arisen so far concerning the decommissioning of these renewable energy projects.

Nevertheless, the provisions of the WEE Directive (2012/19 Directive of the European Parliament and the Council on waste electrical and electronic equipment) have already been implemented, mainly by Government Decree No. 197/2014. On waste management activities related to electrical and electronic equipment. This government decree does not explicitly regulate the decommissioning process of renewable energy projects, but with certain limitations, it can be applied to decommissioning power plants.

### 4.7. Risks to be Considered

The most significant factor holding back developers of renewable electricity projects might be the rapid and often unpredictable changes in the regulatory environment. In the past years, significant changes were introduced concerning the grid connection procedure, resulting in zero grid connection capacity. New taxes have been levied on the energy generator, and the rules of the support schemes and the balancing system are also changing continuously, which might require the investors to reconsider their business operations from time to time.

## 5. BALANCING OF RENEWABLE ENERGY PROJECTS, STORAGE, SALES

### 5.1. Balancing of Renewable Energy Projects

The Hungarian regulatory framework for balancing renewable energy projects is in line with the 2017/2195 EU Commission Regulation on establishing a guideline on electricity balancing. The framework rules for balancing are determined in the Electricity Act and in its Implementing Decree, while the detailed rules are specified in the Business Rules (*Kereskedelmi Szabályzat*) of the Hungarian TSO.

The Hungarian TSO's responsibilities include ensuring that the electricity system functions smoothly and without interruptions, as well as balancing the electricity system, and also the operation, maintenance, and improvement of the transmission network. To fulfill these obligations, the Hungarian TSO operates the networked meter-balancing system (balancing circles) and makes arrangements for settlement with the balancing



circle accounts.

Each electricity producer has to join a balancing circle. In every balancing circle, there is one member, the balancing circle manager, responsible for providing the required schedules and ensuring that the quarter-hourly balance of their producers and consumers is zero.

The goal of this system is to ensure that the amount of electricity fed into the balancing circle and fed out of the balancing circle is the same in every settlement time unit. In case there is a deviance from the schedule (either positive or negative), the TSO charges the cost of the balancing energy supply to the balancing circle manager.

### 5.2. Storage

There is no specific electricity storage regulatory regime in Hungary, however, the concept was introduced in the Electricity Act in 2016: electricity storage activity is subject to a licensing procedure in accordance with the provisions applicable to power plants.

As the weather-dependent renewable energy projects prove to be a challenge for the TSO in terms of maintaining the balance, the TSO (in line with the authorization of the Electricity Act) amended its *Operational Code* in 2022 and implemented a requirement for weather-dependent power plants to have a storage unit with at least a capacity of 30% of the nominal capacity of the power plant. This requirement has been suspended due to the Ukrainian situation.

### 5.3. Sales

Renewable energy producers are entitled to sell the self-produced electricity in possession of their combined micro power plant license and operating license issued by HEA. Other market players have to apply for an electricity trade license at HEA.

The license holders are obliged to offer their available generation capacity to ensure the system-level services and the distribution flexibility services required by the electricity supply regulations.

The electricity producers participating in one of the subsidy schemes (either KAT or METAR) are only entitled to sell the produced electricity in accordance with the provisions of the subsidy scheme. Producers who do not participate in the subsidy schemes may sell their generated electricity on the free electricity market. The sale of the generated electricity may be carried out either directly on the Hungarian Power Exchange (HUPX), which is the organized Hungarian power market or through market-based sales contracts or power purchase agreements.

PPAs are subject to the general legislation of the energy sector and the applicable industrial codes of the TSO, but there are no specific legal restrictions on the conclusion of power purchase agreements between renewable energy producers and electricity traders as off-takers, so the terms and conditions of such agreements can be freely determined by the parties. With respect to corporate power purchase agreements, there are some regulatory provisions to comply with, but the terms and conditions are mainly also subject to the agreement of the parties.

## 6. ROOFTOP, OFFSHORE, FLOATING, AND AGRICULTURAL RENEWABLE ENERGY PROJECTS

### 6.1. Offshore Wind and Floating Photovoltaic Projects

N/A

### 6.2. Rooftop Photovoltaic Projects

In Hungary, rooftop photovoltaic projects are mainly widespread among households and companies to cover their own electrical needs.

These projects are so-called household power plants, which are basically micro power plants connected to the low-voltage system with an interconnection capacity of less than 50 kilovolt amps at a connection point. The general rule regarding this kind of power plant is that the produced electricity shall be accepted and bought by the electricity trader or universal service provider upon the producer's request. However, due to network capacity issues, *Government Decree No. 413/2022 (XI.26.)* temporarily suspended the possibility of feeding the electricity generated by household power plants into the public network and only those household power plants may be installed which produce electricity solely for their own electricity consumption. This restriction does not concern those household power plants which were implemented based on connection requests submitted before October 31, 2022. According to the latest news, the review of this temporary suspension is in progress, but the development of the necessary network capacities takes time.

### 6.3. Agrivoltaic Projects

No information is publicly available in Hungary on implemented agrivoltaic projects. However, an amendment of *Act CXXIX of 2007 on the protection of agricultural land* foresees future agrivoltaic projects as it enables the establishment and operation of a power plant that produces electricity using solar energy in accordance with the agrivoltaic system on agricultural land if it does not prevent the utilization of the area below the plant as agricultural land. The act also stipulates that the detailed rules will be determined in a government decree, but

this legislation is yet to be issued.

## 7. TRADING OF GREEN CERTIFICATES/CERTIFICATES OF ORIGIN

### 7.1. Certification

The Hungarian guarantees of origin (GO) system has been operated by the HEA since January 1, 2014. GOs are tradeable electronic certificates that prove to the final customer that a certain share of the electricity was produced from renewable energy sources.

GOs are issued in an electronic registry by the HEA upon application submitted by either the electricity producer or the account holder authorized by the electricity producer. To register into this electronic registry and open an account, the electricity producer has to enter into an agreement with HEA.

GOs are registered after production, so the trading is disconnected from the physical electricity products; it is performed retrospectively.

On February 1, 2022, the HEA joined the European Energy Certificate System (EECS), which means that Hungarian GOs may now enter the international market and foreign GOs received within the EECS are recognized in Hungary.

### 7.2. Trading

The Hungarian GO market was launched in July 2022. It is an organized, auction-based market operated by HUPX Zrt. HUPX maintains a registry of tradable products that are listed either in the Associations of Issuing Bodies or the HUPX register and offers financial clearing and settlement services to ensure reliable trading processes.

The HUPX GO market started with the single-seller model (MAVIR, the Hungarian TSO), and the multiple-seller model was only launched later in September 2022. According to HEA publications, a total of nearly 1,073 gigawatts hour of domestic and 10 gigawatts hour of foreign GOs were sold for around EUR 3.53 million at the September 2022 auction of HUPX.



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# CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RENEWABLE ENERGY 2023 MOLDOVA



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## 1. SUMMARY

Given the present geopolitical and economic circumstances, attaining energy security is a big challenge. The Republic of Moldova has faced an unprecedented energy crisis, due to a high level of dependency on fossil fuel and electricity imports. Moldova has made considerable efforts to diversify supply sources during the previous year. Moldova has assumed commitments arising from its European integration aspirations which are fully conducive to its development.

Due to the emergency synchronization with ENTSO-E in 2022, Moldova has been pushed closer to electricity trade with European Union. This was a significant and worthwhile step towards supplier diversity, which should be followed by the development of competitive markets, ensuring the sustainability of the energy sector and its security.

The Energy Strategy 2030 of the Republic of Moldova has set the main objectives in the energy field for the medium and long term, which objectives consider the integration of Moldova's energy market with that of the European Union by pursuing commitments assumed within the Energy Community.

Currently, Moldova imports approximately 80% of its electricity consumption from Transnistria. The remaining 20% of electricity primarily comes from the Moldovan Combined Heat and Power Plants (CHPs) and a small portion (approximately 3%) from renewables.

Moldova exceeded its overall 2020 target of 17% renewable energy production from the total electricity consumption by reaching 25.06% of renewable energy in 2020. However, contributions of renewable energy to electricity and transport are still very low.

As regards 2030, the Moldovan Energy Strategy (which is currently under revision) indicates the following national targets for 2030:

- 30% renewable energy in the overall consumption;
- improved energy efficiency by 30%;
- reduction of CO<sub>2</sub> emissions by 35%.

The 2016 Renewables Law sets the legal basis for renewable energy support schemes, consisting of (i) administratively set feed-in tariffs for small producers (less than 4 megawatts for wind and 1 megawatt for all other renewables technologies) that have been declared eligible as per the law and (ii) administratively set fixed prices for the producers declared eligible further to the auctions organized by the Government. So far, two decisions were approved by the Government, in 2018 and

2021 (amended in 2022), allocating a cumulative capacity of 165 megawatts for auctions and 356 megawatts for feed-in tariffs.

To help investors in renewable energy to get acquainted with the complex provisions of national legislation and planned procedures, the Energy Efficiency Agency, which acts under the Ministry of Infrastructure and Regional Development, was assigned the role of an informal one-stop shop. Moldova joined the energy community initiative to establish a regional system for guarantees of origin. The national electronic registry for guarantees of origin in Moldova was created and can be utilized as soon as EnergoCom, as the designated issuing body, signs a direct agreement with the service provider.

Finally, on February 16, 2023, a new Government was sworn in and the newly created Ministry of Energy took over the responsibility to achieve the new energy target of Moldova.

## 2. OVERVIEW OF THE COUNTRY'S RENEWABLE ENERGY SECTOR

### 2.1. Legal Framework

Principles of renewable energy legislation

1. The legislation of the Republic of Moldova on renewable energy is founded on the following principles:

- a) adjustment of the national legislative framework to the norms and standards of the European Union;
- b) promotion of renewable energy by applying support schemes;
- c) carrying out state administration of renewable energy;
- d) ensuring transparency in carrying out activities in renewable energy;
- e) ensuring non-discriminatory access to networks;
- f) ensuring access of individuals and legal persons to information on the production and use of energy from renewable sources;
- g) ensuring information and education to the public on the production and use of energy from renewable sources;
- h) supervising the cultivation and use of genetically modified plant varieties for the production of solid biofuel and biofuels in a closed technological cycle.

As regards the Renewables Sector, such is mainly regulated by *Law no. 10 of 26 February 2016 on Promoting Energy from Renewable Sources* (Renewables Law).

The Renewables Law sets forth the following support schemes for producers of electricity:

- Fixed electricity prices for producers declared eligible further

to the auctions organized by the Moldavian Government for large-capacity units (power plants with an installed capacity exceeding 4 megawatts in case of wind power plants, or 1 megawatt in case of other technologies);

Fixed feed-in tariff scheme for power plants with capacity below the above threshold. The above-mentioned support schemes are not applicable to producers that benefited from prior aid.

For the purpose of implementing the above-mentioned support schemes, the government approves and updates the capacity limits of the state aid. As per the *Government Decision no. 401 of 08 December 2021 on the Approval of Capacity Limits, Maximum Quotas, and Capacity Categories in the field of Electricity from Renewable Sources* valid until December 31, 2025.

## 2. Recent trends in the Moldavian market

The emergency synchronization and the energy crisis shifted the Government's focus to interconnectivity and diversification of supply. Measures to speed up electricity market reform and the country's integration with Ukraine and Romania took center stage. At Moldova's request, the Secretariat prepared an electricity market reform action plan, which was endorsed by the Moldovan Government at the second EU-Moldova High-Level Energy Dialogue on June 30, 2022. The plan outlines key activities that should be undertaken by relevant stakeholders: the transmission system operator's certification, implementation of joint capacity allocation on the interconnections with Ukraine and Romania, and REMIT implementation. The adoption of the new Electricity Law, which is currently being drafted, is being prioritized.

Renewables have great potential in the Republic of Moldova. Wind energy has the greatest technical potential at approximately 77.3%, followed by solar potential equal to approximately 9.3%; biomass constitutes about 8.3%, out of which, solid biomass constitutes 7% and biogas potential is estimated at 1.2%, and hydro potential is about 5.2%. The technical potential of RES for power generation in the Republic of Moldova is estimated to be 65,029 gigawatts hour.

## 2.2. Domestic Sales and Imports/Exports

Electricity generated from renewable power plants by the producers that obtained the status of eligible producers and, hence, the benefit of support schemes, is purchased by Central Electricity Supplier (Energo.com). Hence, electricity supported by the support schemes approved by the Renewables Law cannot be freely traded on the Moldavian electricity market.

Moreover, currently, there is a state of alert on the electricity market in Moldova, and according to National Agency for Energy Regulation (ANRE) *Decision no. 790* of October 13,

2022, the export of electricity is prohibited during the state of alert.

Moldova imports approximately 80% of its electricity consumption from Transnistria.

## 2.3. Foreign Investment and Participation

Foreign investors in the Republic of Moldova shall benefit from the same rights as local investors. The procedure for registering and operating a foreign-investment company is similar to the procedure for registering, operating, and dissolving a local investment company. Foreign investors may acquire, in accordance with the legislation of the Republic of Moldova, the right of ownership of immovable property on the territory of the Republic of Moldova, except for agricultural and forestry land, in order to carry out an entrepreneurial activity.

*Law no. 174/2021* (National Security Investment Law) entered into force on November 19, 2021, which regulates the conditions for investment activities in areas of importance for state security. However, a functional mechanism related to this procedure has not yet been regulated (the secondary regulatory framework is scheduled to be approved soon).

Under the provisions of the National Security Investment Law, the operation of energy infrastructure is an area of importance for state security. Unfortunately, since the National Security Investment Law has quite recently been approved (in November 2021), there's no existing practice of Moldovan authorities and no relevant precedent on how such authorities might interpret this specific situation.

Under the provisions of the National Security Investment Law, any potential investor, prior to carrying out investment activities in areas of importance for State security, is obliged to obtain prior approval from the Council for the promotion of investment projects of national importance (Council). Omission of FDI filing may lead to consequences such as suspension of the exercise of voting rights, rights to convene and hold the general meeting of shareholders/associates, to receive dividends, etc. The investors are obliged to request prior approval within 30 days of the notification received from the Council or to sell the acquired shares within 60 days of the date of the notification received from the Council.

The list of legal consequences/risks is not exhaustive, as such will depend on the type of transaction, but the current legislation does not provide any penalties.

## 2.4. Protection of Investment

*The Paris Agreement* is a legally binding international treaty on climate change, adopted by 196 countries at the 21st Conference of Parties of the United Nations Framework Convention



on Climate Change (UNFCCC) in December 2015. It entered into force on November 4, 2016. The goal of the *Paris Agreement* is to limit global warming to well below 2 degrees Celsius when compared with pre-industrial levels.

Moldova is a signatory to the *Paris Agreement* and in March 2020 presented its second Nationally Determined Contribution (NDC2), to the UNFCCC Secretariat. The NDC2 includes:

- A new economy-wide unconditional target to reduce greenhouse gas emissions by 70% below 1990 levels by 2030. According to the *National Inventory Report 10 of Moldova* to the UNFCCC, in 2019 Greenhouse Gas (GHG) emissions were 69.5% less than in 1990.

- A new economy-wide conditional target, under which emissions could be reduced by up to 88% below 1990 levels.

EU-Moldova relations and the Association Agreement. On June 23, 2022, Moldova was granted the formal status of candidate for accession to the European Union. In due course, this will lead to an upgrading of Moldova's relationship with the EU, including the opening of accession negotiations.

The *Association Agreement* (AA) between the Republic of Moldova and the European Union, including a Deep and Comprehensive Free Trade Area (DCFTA) entered into provisional application in 2014 and into full force on July 1, 2016. An important pillar of the AA/DCFTA is aligning Moldovan laws to selected EU legislative acts, thereby supporting improvements in governance, strengthening the rule of law, and providing more economic opportunities by opening further Moldovan access to the EU market for goods and services.

Along the lines, in accordance with the decision of the Ministerial Council of the Energy Community *No 2021/14/MC-EnC*, the Republic of Moldova is to transpose into national legislation the *Regulation (EU) 2018/1999 on the governance of the energy union and climate action* (part of the Clean Energy Package), one of the requirements of which is the development and approval of integrated national energy and climate plans.

The key priorities for cooperation between the EU and Moldova are identified as increased energy security and a better-functioning energy market. The EU provides funding towards strengthening the capacity for energy sector reform and increased energy efficiency.

EU support for the alignment of Moldovan legislation to EU regulations in the energy sector is carried out under the framework of the Energy Community; alignment should, in due course, contribute to the extension of the EU internal energy market to Moldova.

In addition, Moldova is one of the focus countries of the *EU4Energy Program* implemented by the International Energy Agency, the Energy Community Secretariat, and the Energy Charter Secretariat.

The Energy Community. Moldova became a contracting party of the Energy Community Treaty in 2010 and has commitments to transpose EU energy legislation, develop competitive and open electricity and gas markets and integrate its national energy markets into the EU internal energy market.

As a Party to the Energy Community Treaty, in order to comply with the requirements of international commitments, the Republic of Moldova is to develop a new public policy document defining the actions and measures envisaged for the energy sector for the time horizon after 2030. Currently, the *Energy Strategy of the Republic of Moldova until 2050* (SEM 2050) is being developed.

### 3. DEVELOPMENT OF RENEWABLE ENERGY PROJECTS

#### 3.1. Granting of Grid Connection Rights

The main pieces of legislation that regulate the connection to the grid of renewable energy capacities are the *Renewables Law, Law no 107 of 27 May 2016 on Electricity, Law on Energy Efficiency no. 139/2018, Government Decision no. 401 of 08 December 2021 on the Approval of Capacity Limits, Maximum Quotas and Capacity Categories in the field of Electricity from Renewable Sources* valid until December 31, 2025, the *ANRE decision no. 169/2019 on the connection to the electricity networks and for providing electricity distribution and transmission services*.

As per the said legislation, connection rights are granted by the grid operator through the grid connection permit which is issued based on the *first come, first served* principle.

The grid operator is entitled to refuse access to the electricity network on the grounds of lack of capacity – the refusal regarding access to the network must be formulated in writing by the system operator and should include the presentation of reasons justified from a technical and economic point of view and the presentation of relevant information about the measures necessary to remove the reasons for refusal, including the measures necessary for the development of electrical networks of transport and distribution and about the specific deadlines for their development. The producer facing a refusal has the right to reduce the capacity requested in the request for the issuance of the connection notice in order to observe the limits of the available grid capacity or to ask to be included in the waiting list for the issuance of grid connection permits held by the relevant grid operator. Such a waiting list includes the rejected requests for issuing the grid connection permits

ordered chronologically, in the order of receipt of requests for inclusion in the waiting list, by applying the *first come, first served principle*. The remaining available capacity due to the expiration of validity, the cancellation of connection permits, or following the reduction of capacity is made available to applicants on the waiting list.

The grid connection permits are issued free of charge and will contain the technical and economic conditions for the connection to the grid.

The grid connection permit will list the interconnection tariff which is formed out of the costs for the design and construction of the connection installation. If for the connection to the grid of the renewable energy capacity, the development of the electricity grid is necessary, the related costs will be incurred as follows:

- If the investment is included in the operator development plan, by the grid operator at the terms provided in the plan;
- By the producer, if the development of the respective grid is not a priority for the grid operator on the grounds that such investment is carried out for the exclusive benefit of the respective producer and is not necessary for other system users. In this case, the operator of the transport system, and the operator of the distribution system are obliged to present to the respective producer an evaluation that proves the fact that the development of the electricity network is for its exclusive benefit and to notify ANRE. In this case, the grid operator becomes the owner of the respective portion of the grid financed by the producer.

The grid connection permit issued for generation capacities is valid for a period of 24 months as of the date of issuance. At the applicant's request, the validity period of the connection permit is extended once by the system operator with an additional 24 months period, if the applicant presents a valid building permit for the construction of the generation capacity for which the connection notice was issued.

However, if the developer contracts directly a contractor for the design of the connection installation (instead of appointing the grid operator based on the grid connection contract), the grid connection permit will be terminated if the subcontractor does not provide the design documentation for the connection installation within 12 months as of the issuance date.

### 3.2. Ownership by Foreign Companies

The projects related to renewable electricity production can be developed by foreign companies, provided they comply with the licensing requirements that apply irrespective of the type

of investor (foreign or domestic).

The status of an eligible electricity producer, depending on the installed capacity, is obtained either through a tender organized by the Government or through the confirmation of this status by ANRE.

The solution for an investor interested in the license of an existing company or in the status of the eligible producer is to become a shareholder of that company or to incorporate his company and to apply for the license and for the eligible producer status.

### 3.3. Stages of the Development Process

The following permits/authorizations are required:

- Environmental permit – the administrative act issued by the competent authority for environmental protection, which confirms the environmental impact assessment and sets out the conditions and environmental protection measures to be observed in the case of implementation of the project. The permit is valid for four years and cannot be prolonged.
- The urban planning certificate for designing the facility construction – a regulatory act that provides the applicant (beneficiary) prescriptions and elements that characterize the legal, economic, technical, and architectural-urban regime of a construction/land, established by the urban planning and spatial planning documentation and allows the elaboration of the project documentation. The maximum validity term of the urban planning certificate is 24 months.
- Grid connection permit – a written position issued by the grid operator indicating the technical-economic conditions for connecting the power plant to the electricity network, as well as the conditions of using the electrical network after commissioning.
- the status of eligible supplier – producer of electricity from renewable energy sources who got the right that the entire quantity of electricity delivered by him to the electricity grids to be purchased at the set prices/prices by the 2018 Renewables Law. Has the obligation to build and start operating the power plant producing electricity from renewable energy sources no later than 24 months after confirmation of eligible supplier status.
- Building permit – which authorizes the execution of construction works for the general capacity on the basis of and in compliance with the urban planning certificate and the project documentation prepared, verified, and approved. The validity period of the building permit depends on the duration of construction works but the investor has the obligation to start the construction works within 6 months of the issuance date

thereof. Failure to initiate the construction works within the time limit set by the building permit will result in the building permit becoming invalid.

- The government decision in case of power plants having an installed capacity exceeding 20 megawatts.

- License – a document or certificate by which the issuing authority certifies the fulfillment of the conditions established by law, attesting the applicant’s rights and obligations for starting, carrying out, and/or terminating the entrepreneurial activity in the renewable electricity generation field of energy from renewable sources. The license is issued for a period of 25 years.

### 3.4. Obligatory State/Public Participation

State’s participation:

To date, investments in the energy sector have been largely funded by the Central Government or through state-owned enterprises. Some current projects are being financed by international financial institutions lending largely to the public sector. Going forward, public investment requirements in the energy sector will need to be integrated into an improved public investment management process. Much greater focus must also be placed on how to attract private investment into the sector, given the high investment needs and the poor efficiency of the existing state-run production facilities.

With respect to private investment, Moldovan State also directly participates in the direct investment approval, as it organizes the auctions for the award of eligible producer status and it issues the authorizations for the installment of a generation facility having an installed capacity exceeding 20 megawatts.

The state can benefit from foreign participation in the renewable energy sector of the jurisdiction in the following ways:

- Diversification of energy sources: By encouraging foreign investment in the renewable energy sector, the state can diversify its energy sources and reduce its reliance on traditional sources of energy, such as oil and gas, and the dependency on Transnistria. This can improve energy security, reduce the impact of volatile energy prices, and help to mitigate the risks of climate change.

- Collection of taxes (income, VAT).

- Adjacent investment: foreign investments will create jobs, boost economic growth, and help to achieve the state’s renewable energy goals.

- Access to technology and expertise: Foreign companies often bring with them advanced technology and expertise in the renewable energy sector, which can help to improve the

efficiency and effectiveness of renewable energy projects in the jurisdiction. This can help the state to develop a more robust renewable energy industry and reduce its dependence on fossil fuels

### 3.5. Risks to be Considered

See Section 4.7.

## 4. RENEWABLE ENERGY CONSTRUCTION AND PRODUCTION

### 4.1. RTB Status

The following permits are required in order to consider a renewable energy project as “Ready-to-build”: Environmental permit; The urban planning certificate for the generation capacity; Grid connection permit; obtaining the status of the eligible supplier; a Building permit, Government decision in case of power plants having an installed capacity exceeding 20 megawatts.

### 4.2. Construction of Renewable Energy Projects

Main specifics:

1. Permitting and regulatory requirements: Renewable energy projects require permits and regulatory approvals at the local, state/provincial, and federal levels which have been listed above.
2. Site selection and land acquisition: Identifying suitable sites with access to renewable resources such as wind, solar, hydro, and geothermal is crucial to the success of the project and the prohibition for foreign entities/citizens to purchase agricultural land. Land acquisition can be a complex process that requires negotiation with landowners and obtaining legal rights to use the land.
3. Technology selection: The selection of technology is important for the success of renewable energy projects. The choice of technology depends on the availability of renewable resources and the project’s scale and requirements.
4. Engineering and design: Proper engineering and design are necessary for the construction and operation of renewable energy projects. This includes site preparation, infrastructure development, and system interconnection.

Main risks: See Section 4.7.

### 4.3. Granting of Renewable Energy Production Licenses

The legal framework which regulates the licensing of renewable energy production:

- Renewables Law;

- *Law no 107 of 27 May 2016 on Electricity;*
- *Law no 92 of 29 May 2014 on Heat Energy and Promotion of Cogeneration;*
- *Law no 108 of 27 May 2016 on Natural Gas;*
- *Law no 160 of 22 July 2011 on Regulation by Authorization of Entrepreneurial Activity.*

The main authority responsible for the issuance of the generation license from renewable energy sources, as well as the issuance of the secondary legislation, is ANRE.

The license is issued for a period of 25 years, but if within four years of obtaining the license, the developer has not completed the construction of the generation capacity, the license shall be withdrawn by ANRE.

Necessary documents for obtaining the license in the renewable energy field:

- The application (declaration) which will contain information about the type of activity;
- The applicant's declaration on own responsibility regarding the assumption of compliance with the licensing conditions when carrying out the type of activity for which the license is requested and regarding the authenticity of the documents presented;
- Applicant's/company's excerpt from the state registry in the Republic of Moldova;
- the financial situation for the previous year, in the case of the active legal entity, or extract from the bank account, in the case of starting the business;
- to have qualified personnel, necessary for the activity for which he is applying for a license, and to present confirmatory documents in this regard

The license fee is MDL 3,250 (approximately EUR 160).

The license contains:

- (a) the name of the licensing authority;
- (b) the series, number, and date of issue/extension of the license;
- (c) the name, legal form of organization, legal address of the license holder or, in the case of a natural person holding a license, the surname, forename, and address;
- (d) date of adoption of the decision to register the undertaking or organization, IDNO of the undertaking or organization or series and number of the identity card, IDNP of the natural person;

- (e) the type of activity, in whole or in part, for which the license is issued;
- (f) the validity period of the license;
- (g) the signature of the head of the licensing authority or his deputy, authenticated by the application of the stamp of that authority;
- (h) the automatic document identifier generated by the GEAP AIS.

Other grounds for license withdrawal:

- a) non-authentic data detected in the documents submitted to the Agency with respect to the issuance, extension, or re-issuance of the license;
- b) ascertainment that the licensee does not meet the conditions established for the issuance and extension of the license;
- c) ascertainment that the license or a copy thereof has been transferred to another person for the purpose of carrying out the type of activity indicated in the license;
- d) failure to remedy within the prescribed period the circumstances which led to the suspension of the license;
- e) repeated failure to comply with the requirements issued by the Agency concerning the elimination of infringements of the conditions for the termination of the licensed activity;
- f) incapacity of the licensee to carry out the activity for which the license was issued.

#### 4.4. Renewable Energy Production by Foreign Investors

Please see Section 2.2. regarding the investments carried out by foreign investors in Moldova.

However, the electricity generation license or the status of the eligible producer is not transferable/assignable.

#### 4.5. Operation and Maintenance of Renewable Energy Projects

The operation and maintenance of renewable energy projects are carried out in accordance with the normative-technical documents approved by the Government and ANRE. Additionally, there are National standards approved by the National Standardization Institute.

#### 4.6. Decommissioning Process

At the moment, the legislation doesn't regulate the process of decommissioning renewable energy projects.

The potential investors should know that the environmental impact assessment requires that environmental cleanliness conditions are met, and at the end of the operating period, the renewable project installations are to be exported to the supplier or other companies for processing/decommissioning.



#### 4.7. Risks to be Considered

The main risk that should be taken into account is the geopolitical context and the war currently going on in Ukraine, as well as its effects on the Republic of Moldova.

Other risks to be taken into account:

- Financial-banking risk: credits in the Republic of Moldova are more expensive than those in the European banking market. Exact calculations should be made on the size of the investment, its value, and the return on investment (including the duration for re-turning the investment).
- Regulatory risks: Changes in the legal and regulatory framework, such as modifications to feed-in tariffs or net metering policies, can impact the profitability and viability of renewable energy projects.
- Environmental risk: the development of renewable energy projects can have environmental impacts, such as land use changes or impacts on wildlife, which can be subject to regulatory or public scrutiny. Climate-related factors are also considered, such as hailstorms that may occur during the summer, so appropriate measures to secure the solar panels should be considered.

### 5. BALANCING OF RENEWABLE ENERGY PROJECTS, STORAGE, SALES

#### 5.1. Balancing of Renewable Energy Projects

The regulatory framework for balancing the renewable energy generation position consists of *ANRE's Decision No. 283/2020 of 07.08.2020 on the approval of the Electricity Market Rules*, IS Moldelectrica, as the transmission system operator, has developed and approved a set of procedures and framework contracts related to the electricity balancing market

According to the above-mentioned legislative acts, each and every participant in the electricity market (hence, including the producers) have the obligation to undertake financial responsibility for the imbalances they generate in the electricity networks. All participants in the electricity market are obliged to plan their production and acquisition, including the declared import of electricity, for each dispatch interval of each delivery day, in such a way as to correspond to the consumptions and sales forecast, including the declared exports.

All participants in the electricity market are obliged to be registered with the OST as a balancing responsible party (PRE) and to send physical notifications. By way of exemption, the participants to the balancing market may set up balancing groups and delegate the balancing responsibility to a sole entity that will undertake liability for the entire group. Such

balancing groups.

Imbalances are calculated at the aggregate level for the production, consumption, and physical exchanges of each PRE or balancing group.

#### 5.2. Storage

No legislation adopted yet.

#### 5.3. Sales

The sale of electricity generated by the capacities that benefit from the support schemes detailed above cannot be freely traded in Moldova. Please see Section 2.1. for more details.

### 6. ROOFTOP, OFFSHORE, FLOATING, AND AGRICULTURAL RENEWABLE ENERGY PROJECTS

#### 6.1. Offshore Wind and Floating Photovoltaic Projects

No specific legislation regarding offshore wind and floating photovoltaic projects have been adopted.

#### 6.2. Rooftop Photovoltaic Projects

See Section 2.1.

#### 6.3. Agrivoltaic Projects

As regards agrivoltaic projects, the *Moldovan Land Code* allows for the installation of photovoltaic panels on agricultural land without changing its destination, provided such lands are grassed or used for agricultural activities.

### 7. TRADING OF GREEN CERTIFICATES/CERTIFICATES OF ORIGIN

#### 7.1. Certification

Guarantees of origin of electricity from renewable sources are issued by the transportation or distribution operators upon the request from the producer submitted according to *ANRE Decision no. 376/2017 of 28.09.2017 on the approval of the Regulation on guarantees of origin for electricity produced from renewable energy sources*. The producers benefiting from the support scheme are obliged to request the issuance of the guarantees of origin.

The guarantees of origin are issued in electronic format for each megawatt of renewable energy delivered in the transmission/distribution network.

The guarantees of origin are used by the electricity supplier to demonstrate the contribution of renewable energy sources in the total structure of electricity sources used by the supplier in the previous year.



## 7.2. Trading

The guarantees of origin can be transferred by the renewable energy producer to another producer or to an electricity supplier (including Energoecom) or by an electricity supplier to another supplier.

The transfer of the certificates of origin to Energoecom is mandatory in case of producers that benefit from the support schemes, while Energoecom further transfers such certificates

to the account of the suppliers that purchased electricity from renewable energy sources.

The guarantees of origin can be also transferred to participants in the electricity market from other states which are members of the European Union and/or from the countries part of the Energy Community.



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# CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RENEWABLE ENERGY 2023 POLAND



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## 1. SUMMARY

## 2. OVERVIEW OF THE COUNTRY'S RENEWABLE ENERGY SECTOR

### 2.1. Legal Framework

#### Main legislation

In Poland, the most important Acts in the area of renewable energy legislation (related, among others, to the development process, operation of renewable energy source (RES) projects, support schemes, connecting to the grid, power purchase agreements and/or regulatory constraints pertaining to electricity generation) are the *Act on Renewable Energy Sources* (RES Act), the *Energy Law*, *Construction Law* or the *Administrative Procedure Code*, as well as secondary legislation to these acts. The main general principles resulting from them are discussed below.

#### Permitting process, environmental impact assessment

Formal milestones of investing in RES projects result from the necessity to obtain the relevant permits. Such a process includes the following major stages: environmental permitting, planning (zoning) arrangements, ancillary permits, construction permit(s), and permit(s) for use.

One of the critical stages in the permitting procedure is obtaining a decision on environmental conditions (ED). Majority of the renewable energy projects require it. It is necessary for any investment that may affect the environment (either always or potentially). The obligation of obtaining ED covers all wind farms. However, regarding photovoltaics, the obligation applies to farms with an area of more than 0.5 hectares in protected areas and more than 1 hectare in other areas. The ED is issued mostly by the mayor of a municipality (Polish: *prezydent, burmistrz, wójt*) or the Regional Director of Environmental Protection. The administrative body issues the decision based on an analysis of the environmental impact of the installation. The ED may be used for six years, with the possibility of extension to 10 years. Within this period, the investor shall apply for an investment decision (building permit).

#### Securing legal title to the land

In order to construct and then operate a renewable energy project, the investor shall secure legal title to the land necessary for the development and operation of the relevant project. The most common agreement that is chosen on the market to secure the legal title for the purposes of the construction and operation of solar panels or wind turbine generators is the lease agreement (*umowa dzierżawy*). Under the lease agreement, the lessee may derive benefits from the leased object, and for that, the lessee is obliged to pay the rent to the lessor. The rent

is monthly or annual and usually is established as a fixed price, although sometimes the parties decide to base it on the specific formula referring to the amount of electricity generated or to the area of the occupied property. A lease agreement concluded for a definite period of time may be terminated only on the basis of the contractual provisions, meaning on the grounds stipulated in this agreement. A lease relationship concluded for a definite period longer than 30 years after the lapse of such a 30-year term is considered as concluded for an indefinite period. Consequently, after the lapse of this period, such a lease agreement can be terminated using a statutory notice (or contractual if stipulated in the agreement).

There are also some other possible ways to secure the legal title for the purposes of the PV plant / onshore wind farm. Quite often the parties conclude a usufruct agreement (*umowa ustanawiająca prawo użytkowania*) or a tenancy agreement (*umowa najmu*).

#### Support schemes

The RES Act introduces several subsidy schemes. One of them is the support system based on auctions. The auction scheme replaced the previous system of support in the form of green certificates (See Section 7.).

The auction scheme applies to RES installations that started generating electricity on or after July 1, 2016. Auctions for renewable energy are carried out separately within five technology baskets. Solar energy installations are in the same technology basket as onshore wind installations. Auctions are carried out separately for installations with an installed capacity of up to 1 megawatts (small installations) and above 1 megawatts, and separately for electricity generated in (i) RES installations commissioned before 1 July 2016, (ii) modernized RES installations; and (iii) new RES installations, i.e., planned RES installations, which will generate electricity for the first time after the closing of the auction session.

The auction is won by the participants who offered the lowest price for the sale of energy and whose bids together did not exceed 100 % of the value or quantity of energy specified in the auction announcement and 80 % of the quantity of electricity covered by all submitted bids. The winner of an auction is free to sell electricity on the market but has the right to settle the negative balance resulting from the difference between the adjusted bid price and the average market price. The negative/positive balance is settled on a monthly basis upon an application submitted by a RES producer to the Settlement Operator (*Zarządca Rozliczeń S.A.*).

#### Grid access

To be able to connect to the power grid, the investor shall apply to the relevant DSO or TSO for the grid connection

conditions, which are to be followed by the grid connection agreement. In general, the Energy Law introduces a rule of priority of renewable energy installations. However, this rule does not apply to a situation in which the grid connection agreement has been already concluded by an investor developing a non-renewable energy installation. The grid connection conditions are valid for 2 years from the date of delivery to the applicant. The grid connection agreement between the energy company and the system operator shall be concluded within this deadline. The grid connection agreement for a renewable energy source installation, in addition to the general prerequisites, should also contain provisions specifying the deadline for the first delivery of electricity generated in the installation to the grid (that shall not be longer than 48 months from the date of the conclusion of the agreement) and that a failure to deliver electricity generated in this installation for the first time within the specified period constitutes the basis for termination of the grid connection agreement.

### Distribution services agreement and power purchase agreement

Once the RES installation is connected to the grid and the license to generate electricity has been obtained (please refer to point 4.3 below), it is necessary to conclude an electricity distribution services agreement with the respective distribution system operator (also the DSO). The subject of the agreement is the provision of distribution services by the DSO to the RES installation, i.e., in particular the supply of the electricity from the DSO network to the RES installation, the receipt by the DSO of the electricity produced by the RES installation, as well as maintaining the continuity and reliability of the electricity supply and receipt.

Irrespective of whether the RES installation is participating in the auction scheme, it will be necessary to conclude a power purchase agreement (also as the PPA) with a selected buyer to secure the income from the generated electricity. The PPA provides a route to market for the electricity generated by the RES installation. In Poland, the PPA is a contract pursuant to which a large proportion (if not all) of a RES installation's revenues are earned, and consequently, the PPA underpins the economics of most power generation projects.

### Energy storage

Under current Polish law, the storing of electricity requires a license if the total installed capacity of the electricity storage facility exceeds 10 megawatts. The storage of electricity in storage facilities with a lower installed capacity does not require a license. The license is issued by the President of the Energy Regulatory Authority (ERA) at the investor's request and it is granted for a fixed period of time.

### Most recent trends on the market in Poland

The interest in and the number of concluded corporate PPAs (especially virtual PPAs) has been increasing in Poland recently, as these contracts allow to limit the costs of electricity and in addition enable achieving goals related to the consumption of "green" energy which is particularly important for larger customers.

Also, growing interest in onsite generation with the use of RES projects is currently observed in Poland. Due to regulatory constraints, the development of such projects has been hampered. Please See Section 4.7. for details.

Market participants have closely observed recent legislative work related to amending the 10 H rule (this is also discussed in Sections 3.1. and 3.5.) which had a significant negative impact on the possibilities to develop wind farm projects in Poland. According to it, wind farms had to comply with requirements concerning the minimum distance from residential buildings and nature protection areas. The minimum distance equaled 10 times the height of the wind turbine with rotor blades (approximately 1,500 meters). This rule has just been amended and the minimum distance changed to 700 meters which should allow, to a certain extent, the development of new onshore wind farm projects.

### 2.2. Domestic Sales and Imports/Exports

In February 2021, the Polish Council of Ministers adopted the *Polish Energy Policy 2040* (PEP2040). It is a strategic document, which defines the directions in which the energy sector in Poland should develop. According to PEP2040, more than half of the installed capacity will be zero-emission sources by 2040. A special role is to be played in this process by the implementation of offshore wind energy into the Polish electricity system and the launch of a nuclear power plant. These will be two strategic new areas and industries to be built in Poland, representing an opportunity for the development of the domestic industry.

As indicated in the PEP2040, the transformation also requires increasing the use of RES technologies in heat generation and increasing the use of alternative fuels in transport, including through the development of electromobility and hydrogen mobility. The planned investments and innovations in the energy sector are to include: new energy storage technologies, smart measurement and energy management systems, electromobility, alternative fuels, and hydrogen technologies.

PEP2040 assumes, *inter alia*, a reduction in the overall share of coal in the energy mix to a maximum of 56% in 2030 and 28% in 2040. The document also envisages that the share of RES in gross final energy consumption will increase to a minimum



of 23% in 2030. The total capacity of photovoltaic sources used is expected to increase to about 5-7 gigawatts in 2030 and about 10-16 gigawatts in 2040. For onshore wind power, this will be about 8-10 gigawatts, and offshore wind about 6 gigawatts in 2030. By 2033, the first Polish nuclear power plant unit of 1-1.6 gigawatts will be operational. The construction of five more is envisaged by 2043.

In view of PEP2040, Polish resources potential makes it possible to independently meet the demand for coal and biomass, but most of the demand for natural gas or crude oil must be covered by imports. The demand for hard coal will be covered by own resources, and the import-export ratio will be complementary. The demand for lignite will be covered by domestic resources, a short distance from the place of use. The demand for natural gas and crude oil will be mainly met by imported raw materials. Activities aimed at diversifying the directions and sources of supplies will be implemented. At the same time, domestic deposits (including un-conventional ones) will still be sought to replace the supply from depleted deposits. The demand for renewable raw materials (biomass) will be covered in the shortest possible distance from production.

Due to an insufficiently developed grid (as compared to the growing number of RES projects applying for the grid connection), substantial investment into local and international grid capacities will be necessary.

### 2.3. Foreign Investment and Participation

In principle, no significant specific limitations for investing in RES projects by foreign companies exist in Poland.

If the applicant has a registered office or a place of residence in the territory of a member state of the European Union, the Swiss Confederation, a member state of the *European Free Trade Agreement* (EFTA) – a party to the agreement on the European Economic Area, or Turkey, the licensed activity in respect of electricity generation in RES installation can be carried out directly, i.e., without the need to establish a local presence. In such a situation, the license may be granted to the particular foreign entity directly, in other cases local presence (in particular a Polish SPV or a branch office) has to be established. However, in practice in relation to electricity generation (including in RES), the licenses are typically issued to companies incorporated under Polish law and operating particular electricity generation installations.

Although typically the purchase of plots for the purposes of implementing RES projects is not performed, for the purposes of a broader picture please note that under Polish law, a foreigner (i.e. a natural person without Polish citizenship, a legal person with its seat abroad or a legal person having its seat in Poland, controlled directly or indirectly by those mentioned

above) from outside the European Economic Area (this area consists of the countries of the European Union, Iceland, Liechtenstein, and Norway) or Switzerland who intends to purchase real estate in Poland should obtain a prior permit from the Minister of Internal Affairs and Administration. The conclusion of a lease agreement by a foreigner, though, does not require a prior permit.

Additionally, the acquisition or takeover by a foreigner of shares in a company registered in Poland, which is the owner or perpetual user of real estate located in Poland, requires a permit issued by the minister in charge of internal affairs if as a result of such transaction, a company becomes a controlled company. A controlled company is a company in which a foreigner or foreigners directly or indirectly hold more than 50% of the votes at the shareholders' meeting or the general meeting, or have a dominant position.

### 2.4. Protection of Investment

The main international treaties that Poland is a party to are the *Treaty on the European Union* and the *Treaty on the Functioning of the European Union*. Poland, as a member of the EU, implements its policies and regulation concerning the renewables sector. Among others, Poland follows the *REPowerEU Plan* presented in 2022 that aims to transform Europe's energy system, in order to end the EU's dependence on Russian fossil fuels and to tackle the climate crisis. The plan provides for significant scaling-up and speeding-up of renewable energy in power generation, industry, buildings, and transport, which surely will accelerate the investments in RES also in Poland.

Another program that provides certainty for long-term investment in RES in Poland is a package of legislative proposals *Fit for 55* as part of the *European Green Deal*, which aims to strengthen the EU's position as a global climate leader. The package aims to introduce new policy measures to help bring about the transformative changes needed in the economy, society, and industry to achieve climate neutrality by 2050 and to support it, reduce net emissions by at least 55% (compared to 1990) by 2030.

## 3. DEVELOPMENT OF RENEWABLE ENERGY PROJECTS

### 3.1. Granting of Grid Connection Rights

(1) The fundamental legal act related to the issue of connecting to the grid is the act of April 10, 1997 – Energy Law (*Journal of Laws 2022.1385*, as amended) (Energy Law). Article 7 is one of the key provisions in terms of providing system users with access to fuel and energy markets.

(2) The Energy Law introduces the so-called public-law obligation to conclude a grid connection agreement (it is

preceded by obtaining the grid connection conditions which include more technical details) and it is imposed on the designated energy companies (Distribution System Operators and the Transmission System Operator), thereby guaranteeing the right of entities applying for grid connection to obtain such a connection (provided that statutory conditions are met) and, consequently, the possibility of concluding a contract based on which fuel or energy will be supplied or received.

(3) In Poland, there are Distribution System Operators and the Transmission System who decide about connection to the grid which they operate Operator (although connecting directly to the transmission system happens rarely). Potential refusal of connection to the grid may be subject to appeal to the President of the Energy Regulatory Authority (*Prezes Urzędu Regulacji Energetyki*) who is responsible for regulating the development of renewable energy sources and granting the relevant decisions.

(4) Given the above, in principle, it is mandatory to conclude a grid connection agreement, and renewable projects themselves have priority. However, these projects still encounter many barriers to development.

(5) The biggest barrier to the rapid development of RES in Poland is the numerous refusals to issue conditions for the grid connection of new capacities. The reason for these problems is essentially the lack of technical or economic connection conditions, which is the result of an insufficiently developed grid. As for the northern part of Poland, this also results from the fact that a certain grid capacity has been reserved by the TSO for the purposes of future transportation of the electricity generated in the offshore wind farm projects.

(6) According to data provided by the Ministry of Environment, in 2017/2018 there were 260 refusals, in 2019/20 it was 1200 refusals and in 2021/2022 the number of refusals reached nearly 3,500 (of which 3,415 concerned PV plants). Data from the second half of 2022 indicated that the number of refusals was around 60-80% of all applications submitted.

(7) In addition, the introduction in 2016 of the *10 H rule* (this is also discussed in Section 3.5.) had a significant negative impact on the possibility to develop wind farm projects in Poland. According to it, wind farms had to comply with requirements concerning the minimum distance from residential buildings and nature protection areas. The minimum distance equaled 10 times the height of the wind turbine with rotor blades (approximately 1,500 meters). This rule has just been amended and the minimum distance changed to 700 meters which should allow, to a certain extent, the development of new onshore wind farm projects.

### 3.2. Ownership by Foreign Companies

(1) The Energy Law provides the President of the ERA with the authority to grant licenses.

(2) To be granted a license, a necessary condition to be fulfilled is that the particular entity is established or is a resident on the territory of a Member State of the European Union, the Swiss Confederation, a Member State of the European Free Trade Agreement (EFTA) – a party to the *Agreement on the European Economic Area or Turkey*. Such foreign entities may undertake the licensed business activity directly without the need to establish a local presence (although for entities engaged in electricity generation usually local presence in the form of a company under Polish law is established; it is a standard practice that foreign companies operate in the area of electricity generation through Polish entities).

(3) Any business activity concerning the production of energy in renewable energy source plants is subject to licensing, with the exception of micro or small plants and plants producing electricity exclusively from agricultural biogas, including cogeneration, and exclusively from bioliquids.

(4) The question of the permissibility of the transfer of a license is contentious and there remains a dispute in the Polish doctrine. In principle, a license is an individual right and it is not possible to transfer or dispose of it. There is a different view according to which the transfer is possible in case of transfer of the enterprise to another company. This is, however, the minority view. In the light of Polish jurisdiction, the transfer or disposal of a license is impossible.

(5) With regard to the issue of transferring the building permit, the zoning decision, conditions for grid connection, and the environmental decision, it is possible.

### 3.3. Stages of the Development Process

(1) The beginning of RES investment from the permitting view is based on the designation of an appropriate location. In accordance with the applicable regulations, the legal act regulating the land use and the location of the investment is the local spatial development plan (LSDP). The investment intention needs to be in line with it.

(2) In the case of a lack of LSDP, an alternative for the investor is an application to the municipality for a decision on development conditions (DDC) (*decyzja o warunkach zabudowy*).

(3) Photovoltaics are erected based on both LSDP and DDC. Until 2016, it was possible to build wind farms on the basis of both DDC and LSDP. Currently, wind farms are allowed to be built only based on LSDP. The biggest barrier to the development of wind farms was the *10 H Rule* described in Sections 3.1. (7) and 3.5.

(4) The majority of renewable energy projects require an environmental decision (ED). It is required for any investment that may affect the environment (either always or potentially). The obligation of obtaining ED covers all wind farms. However, regarding photovoltaics, the obligation applies to farms with

an area of more than 0.5 hectares in protected areas and more than 1 hectare in other areas.

(5) The ED is issued mostly by the mayor of a municipality (*prezydent, burmistrz, wójt*) or the Regional Director of Environmental Protection. The administrative body issues the decision based on an analysis of the environmental impact of the installation.

(6) The ED may be used for six years, with the possibility of extension to 10 years. Within this period, the investor shall apply for an investment decision (building permit).

(7) The start of the construction process of an investment depends on obtaining a building permit (BP), which is necessary for any RES installation above 50 kilowatts hour. The BP is obtained after obtaining a DDC if the investment is not covered by the LSDP and the ED. BP is issued by the district governor and expires after 3 years from when the decision became final or when construction has been interrupted for more than 3 years.

(8) Prior to the commencement of use, a final permit for use should be obtained (or notification on completion of construction made). Permit for use is issued by the relevant construction supervision authority (i.e., District Inspector of Building Control).

(9) Moreover, to connect to the electricity grid, RES installation must meet the requirements of the grid connection agreement and conditions. Please refer to Section 3.1. for more information.

### 3.4. Obligatory State/Public Participation

(1) Apart from issues concerning all investments, as a rule, and subject to the following remarks, the Polish legal order does not provide for public participation in RES benefits. The public burden associated with the electricity sold primarily involves the obligation of obtaining and/or settling various certificates of origin and paying various fees such as an interim fee, cogeneration fee, RES fee, and capacity fee. The producer is also responsible for payment of the license fees and distribution (and/or transmission) costs related to the electricity it generates.

(2) In accordance with the latest legislative changes, however, some wind farms will become an exception and an example of public participation in benefits from renewable energy sources.

(3) The amended regulations on the construction of wind power plants stipulate that the investor carrying out the investment will allocate at least 10% of the installed capacity of the wind power plant to the residents of the community where the plant is being built.

(4) The resident of the community will be able to enter into an agreement with the investor, based on which such a resident

will become a virtual prosumer. The cost of taking up a share of the wind power plant's installed capacity will be the product of this share, expressed in kW, and the cost of building the wind power plant. After 15 years, the in-investor's obligation to allocate 10% of the installed capacity of the wind turbine to the residents of the community will cease.

(5) Attention should be paid to the *Act of 27 October 2022 on Emergency Measures to Limit Electricity Prices and Support Certain Consumers in 2023*, which requires electricity producers to pay the windfall tax. Their profit above a certain threshold is to be allocated to a special fund. However, this obligation is exceptional and is intended to last until the end of 2023, as it is related to the extraordinary situation due to the energy crisis.

### 3.5. Risks to be Considered

(1) There are two main risks that should be mentioned regarding the development of RES investments. First of them is related to the problem with connecting to the grid. This issue has been described in Section 3.1. A refusal to connect to the grid typically equals the impossibility of the project implementation.

(2) The second risk is related to spatial development. Since amendments regarding land wind farms in 2016 and the introduction of the *10 H Rule*, the development of new projects had become nearly impossible. This rule has just been amended and the minimum distance changed to 700 meters which should allow, to a certain extent, the development of new onshore wind farm projects. Initially, the proposed changes pertained to the minimum distance of 500 meters which would allow the development of a greater number of projects. In addition, many LSDPs which were adopted recently have been already aligned to an anticipated minimum distance of 500 meters. Since eventually 700 meters threshold has been adopted in the legislation, all such LSDP will have to be adopted again and/or changed, which typically is a time-consuming process.

(3) In addition, the following risks have to be considered:

a. the possibility of an appeal against the relevant administrative decisions (in particular the ED) by the entitled entities (i.e., a party whose legal interest or obligation is related to administrative proceedings or who requests the actions of an authority due to their legal interest or obligation) – most often by the environmental organizations and parties with a legal title to real estate located in the area affected by the project which can suspend the enforceability of the decisions and hamper the development of the project;

b. a time-consuming and complicated procedure of obtaining all necessary permits (as a statutory requirement, in Poland as a general rule a decision should be issued within 1-2 months, however when the environmental impact assessment is carried out a term for issuing the ED, it can extend even to 18

months);

c. the discrepancy of relevant decisions with each other and errors contained in them (e.g., in terms of specification of plots, the installed electrical capacity, etc.).

## 4. RENEWABLE ENERGY CONSTRUCTION AND PRODUCTION

### 4.1. RTB Status

(1) ED. The obligation of obtaining ED covers all wind farms. However, regarding photo-voltaic projects, the obligation applies to farms with an area of more than 0.5 hectares in protected areas and more than 1 hectare in other areas.

(2) The legal act regulating the land use and the location of the investment is the LSDP. The investment intention needs to be in line with it. In the case of a lack of LSDP, an alternative for the investor is an application to the mayor of the municipality for DDC (*decyzja o warunkach zabudowy*) or the decision on the location of a public purpose investment (*decyzja o lokalizacji inwestycji celu publicznego*) (as for the renewable energy projects the latter is practically limited to cable lines and transformer stations).

Additionally, there are plans to amend the *Act of 27 March 2003 on Spatial Planning and Development* in terms of the location of a PV plant with an installed electrical capacity of more than 1 megawatts, i.e., in view of the potential legislative changes it may be only based on the LSDP. Under the already binding regulation, the location of wind power plants is possible only on the basis of the LSDP.

(3) If the RES project is planned on a location, which is classified as agricultural or forest land in the local land register, prior to applying for a building permit the investor will need to exclude such land from agricultural or forest production, as applicable.

(4) A permit to locate cable under the public road permits to build connections with public roads, and a water permit (if needed).

(5) BP – building permit.

### 4.2. Construction of Renewable Energy Projects

Please refer to Section 3.13.5.

### 4.3. Granting of Renewable Energy Production Licenses

According to the provisions of the Energy Law conducting business activity in respect of generating electricity requires obtaining the relevant license to generate electricity (including in a renewable energy source). The license is issued by the President of the ERA.

Proceedings aimed at obtaining the license involve presenting numerous documents and information. These can be divided into three main categories:

a) Documents/information confirming that the applicant fulfills the formal and organizational requirements (this includes the relevant clean criminal record certificates, excerpts from the commercial register(s), a certificate confirming the tax identification number, etc.);

b) Documents/information confirming that the applicant fulfills the given technical requirements;

c) Documents/information confirming that the applicant is in possession of financial resources adequate to properly perform the licensed activity (this includes financial statements for the last three years, certificates issued by the tax authority and social security authority, an opinion issued by the bank where the principal account of the applicant is maintained, etc.).

If the President of the ERA finds the documents and information provided by the investor insufficient, the investor will be summoned to supplement the application for the license. This will result in the extension of the proceedings. Provided that the application is well prepared and all required documents and information are provided to the President of the ERA together with the application (and not supplemented at a later stage) and/or the investor replies to any summons issued by the President of the ERA swiftly, the proceedings should be completed and the license issued within three to five months.

The Energy Law provides also for several negative circumstances preventing granting of the license, such as bankruptcy or liquidation proceedings conducted against the applicant or conviction by a final court judgment for a crime or for a tax offense related to the business activity conducted. A clean criminal record has to be evidenced in relation to the entity requesting the license, individuals entitled to represent the company, and the supervisory board members, as well as entities that hold control over the company. Arranging all required clean criminal record certificates (as these might be necessary under various jurisdictions) usually constitutes one of the most cumbersome aspects of applying for the license.

In accordance with the relevant regulation, the license is issued for a definite period of time - from 10 to a maximum of 50 years, unless the applicant requests the license for a period shorter than 10 years. In practice, the President of ERA did not issue licenses for a period extending beyond the timeframe of the binding *Polish Energy Policy* (currently 2040).

The company which obtained the license is obligated to pay annually the license fee. This fee, paid in the amount ranging from PLN 1,000 to PLN 2.5 million, is calculated as a product of the revenue generated from the licensed activity, achieved in the particular year and the appropriate coefficient, as specified



in a regulation of the Council of Ministers.

The President of the ERA revokes the license in the following cases:

- 1) when a final court decision prohibiting the performance of licensed business activity has been issued or when the energy company has not commenced the licensed activity within the set time limit despite the President of ERA's request or has permanently ceased the performance of this activity,
- 2) non-fulfillment of any of the conditions required for granting the license.

The President of ERO shall revoke a license or amend its scope in case an energy company:

- 1) grossly violates the conditions specified in the license or other conditions of performing the licensed business activity specified by law;
- 2) has not, within the prescribed time limit, remedied the factual or legal situation which is inconsistent with the conditions specified in the license or with the provisions regulating the licensed economic activity.

One of the latest and significant initiatives aimed at facilitating easy commencement of electricity generation was the exclusion of electricity generation in small installations (installed capacity of more than 50 kilowatts hour and no more than 1 megawatts) from the obligation to obtain a license.

Also, an important aspect to consider is the update of the government document “*Energy Policy of Poland until 2040*” in terms of RES, e.g., an increase of the share of RES in total electricity generation by up to 50%.

#### 4.4. Renewable Energy Production by Foreign Investors

If the applicant has a registered office or a place of residence in the territory of a member state of the European Union, the Swiss Confederation, a member state of the *European Free Trade Agreement* (EFTA) – a party to the *agreement on the European Economic Area*, or *Turkey*, the licensed activity can be carried out directly, i.e., without the need to establish a local presence. In such a situation, the license may be granted to the particular foreign entity directly, in other cases local presence (in particular a Polish SPV or a branch office) has to be established. However, in practice in relation to electricity generation (including in RES), the licenses are typically issued to companies incorporated under Polish law and operating particular electricity generation installations.

The provisions of Energy Law do not provide for the possibility of transfer of the license. Although some authors in the legal literature state that it is potentially possible based on other legal provisions, in practice transfer of the licenses between

different entities does not occur.

The issue of “takeover” of the license in case of the merger, division, and transformation of companies is regulated by the *Polish Commercial Companies Code*. According to the provisions of this Act, the license is transferred to the legal successor by virtue of law, unless the law or the decision on granting the license provides otherwise. However, the President of ERA has the right to change the scope of the license or to withdraw it if, as a result of the above processes, the entity that obtained the license does not observe the conditions necessary to obtain the license.

Typically, the transfer of rights to a generation facility for which the license has already been obtained is implemented by the acquisition of a company holding the particular license.

#### 4.5. Operation and Maintenance of Renewable Energy Projects

Specific regulations on the operation and maintenance of renewable energy projects include in particular:

- 1) technical and operational requirements for devices, installations, and networks of entities applying for connection to the grid specified in the Energy Law, ensuring the particular safe operation of the electricity system against damage caused by improper operation of connected devices, installations, and networks or securing the connected devices, installations, and networks against damage in the event of a failure or introduction of restrictions in the consumption or supply of energy;
- 2) requirements resulting from the recent amendment to the *Act on Investments in Wind Farms*. The amendment sets forth rules for the safe operation of technical components of a wind power plant. The provisions of the amendment provide for, among others, the registration of business entities performing activities and service inspections of technical elements of a wind power plant and certification of these business entities.

#### 4.6. Decommissioning Process

Generally, the legislation does not regulate the decommissioning requirements for renewable energy projects. According to the *Construction Law*, a demolition permit decision is required for buildings and structures above eight meters. However, for the demolition of buildings and structures below eight meters, as well as buildings and building equipment for the construction of which a construction permit is not required, and for buildings and structures located in closed areas established by a decision of the Minister of Defense, a notification is required.

Only the way of disposing of PV panels is regulated. The European Union (EU) provides a legal framework for extended producer responsibility for photovoltaic modules on a



European scale through *Directive 2012/19/EU on waste electrical and electronic equipment* (WEEE). The WEEE Directive refers to the method of disposing of PV panels, which are classified as electronic devices. This directive introduced a requirement of 85% efficiency in the recovery of recyclable materials.

From a legal perspective, in Poland, waste from photovoltaic panels is treated like electro-waste. According to the provisions of the *Law on Waste Electrical and Electronic Equipment*, all equipment operation of which depends “on the supply of electric current or on the presence of electromagnetic fields, and equipment that can be used to generate, transmit or measure electric current or electromagnetic fields, which is designed for use at an electric voltage not exceeding 1,000 volts for alternating current and 1,500 volts for direct current,” should be returned to designated electric waste collection centers at the end of its useful life.

#### 4.7. Risks to be Considered

##### Reclassification risk

There is a risk that in the case of a dispute between the lessee and the landlord, the lease agreements may be classified as tenancy agreements instead of leases due to the lack of any benefits (natural or civil) derived from the leased object by the lessee, where such benefits constitute essential terms of a lease (contrary to tenancy, where the tenant just uses the rented object). Although there are some Polish court judgments confirming that in similar cases a lease agreement would not be automatically reclassified into a tenancy agreement, full mitigation of the reclassification risk is not possible under current legislation.

Article 661 of the *Civil Code* states that a lease relationship concluded for a definite period longer than 10 years after the lapse of 10 years – instead of the 30-year term applicable to tenancy – is considered to have been concluded for an indefinite period. Consequently, after the lapse of the 10-year period, such an agreement can be terminated using a statutory or contractual (if stipulated in the agreement) notice (please note that if a lease agreement is executed between business entities on both sides, the above period is different and is extended to 30 years).

However, this is a common problem in Poland, and we do not consider it to be a material risk.

##### Assignment of rights and obligations

Under the lease agreements that we have reviewed during multiple due diligence processes, the lessee is entitled to transfer his rights and obligations arising from such agreements to third parties. However, this right is based on a general consent

to the assignment (since the lease agreements do not specify to whom exactly the rights and obligations will be transferred) and such general provision could potentially be invalidated. Under the *Polish Civil Code*, the party, which is willing to transfer its obligations, shall obtain consent from the other party to be able to transfer its obligations to a specific third party (such requirement can be determined contractually by the parties also in relation to rights of the particular party). The risk of the invalidity of such consent could be mitigated by obtaining the landlord’s express consent to such an assignment made to a specific assignee. This is a common situation in Poland. However, our practice shows that this issue usually does not constitute a material risk.

##### Rent under the lease agreements

There are cases when under the lease agreements the lessee is not obliged to pay any rent to the landlord until commencement of the construction of the wind farm or PV plant. Please note that it may constitute grounds for invalidity of such agreements, as the rent is an essential component of the lease agreement and should be determined therein. Consequently, lack of title to the land resulting from the above could lead to the invalidity of the construction permit.

##### Mortgages on plots where the project is located

In recent years we identified many times that the land and mortgage registers (LMRs) (held for the land properties, which constitute the subject of the lease agreements) list mortgages registered for the benefit of different entities (third parties) listed in the LMRs. If the related receivables are overdue and the creditors enforce payment, it may lead to court enforcement proceedings and then to the sale of the plots in the form of an auction/tender. If as a result of such proceedings the real property is sold in a tender by the bailiff, then the lease agreements (whose term is longer than two years) concluded for such real property are terminable by the buyer. This risk cannot be fully mitigated and is a common risk for wind farms/PV projects in Poland. It cannot be eliminated by making an entry in the LMRs. The entry of these rights only gives a lessee the possibility to be a party to the enforcement proceedings. Although there is currently no way to fully mitigate this risk, usually this issue does not have a material impact on wind farm/PV projects in Poland.

The plots used for the RES projects are usually additionally encumbered with other rights established for the benefit of third parties (such as transmission easements, personal rights, and usufruct rights). Such rights should rather not interfere with the rights established for the benefit of the investor. However, this issue should be verified on a case-by-case basis and analyzed by the technical advisor who may wish to review these encumbrances (from the technical point of view) to con-

firm that they do not have any impact on the project.

### The possibility of challenging permits

The major problem in the investment process is related to the possibility of challenging the ED and other investment decisions by neighbors living in the vicinity of the project, who may appeal and suspend the enforceability of the decisions. Moreover, currently, NGOs have the possibility to appeal not only against ED but also against subsequent investment permits, such as, for example, construction permits. Such actions may stop the project and thus delay the entire planned project for a long-time causing inconvenience. It is very important to conduct the whole investment process correctly in order to avoid such situations.

### Incompatibility between permits

The most common risk in the investment process regarding solar power plants and wind power plants is the discrepancy of relevant decisions with each other and the errors contained in them. Obtaining all permits is a time-consuming and complicated procedure. It is extremely important to verify each stage of the investment process in order to avoid possible irregularities and the possibility of questioning the decision, which can result in a high risk to the entire investment.

### The 10 H Rule

In addition, the introduction in 2016 of the *10 H Rule* (also discussed in Sections 3.1(7) and 3.5.) had a significant negative impact on the possibility to develop wind farm projects in Poland. According to it, wind farms had to comply with requirements concerning the minimum distance from residential buildings and nature protection areas. The minimum distance equaled 10 times the height of the wind turbine with rotor blades (approximately 1,500 meters). This rule has just been amended and the minimum distance changed to 700 meters which should allow, to a certain extent, the development of new onshore wind farm projects.

### Available capacity and potential grid enhancement

One of the barriers to the development of RES installations in Poland is also the inefficiency of the transmission and distribution network and its inability to absorb large quantities of energy, which is resulting in increasing refusals to issue grid connection conditions, as compared to previous years.

### Onsite or near-site direct line PPA

To date, the model of onsite or near-site direct line PPA, i.e., a situation where the RES installation is located nearby the off-taker facility and there is a dedicated direct line transmitting power (the direct line is connected directly to the consumer's

internal grid, thus, in this model the “public” transmission/distribution grid is not used which allows avoiding grid costs and charges) due to regulatory constraints has not been used in Poland, which has also to some extent hampered the development of RES installations.

The Polish law theoretically allows the construction of a direct line between the electricity producer and the corporate buyer (onsite or near-site direct line) which means transporting electricity without using the public transmission/distribution grid. However, the construction of a direct line has to be approved by the President of the ERA, and in practice such approval may only be granted where there is no possibility for the customer to be connected to the transmission or distribution grid. In practice, the President of the ERA does not grant such approvals.

Nevertheless, some potential solutions for the implementation of direct delivery of electricity to consumers may be considered, these however have to be assessed with caution in relation to particular sites to minimize the regulatory risks.

Also, on 16 May 2023 the Polish government submitted to the parliament the draft act amending the Energy Law, which includes changes to the regulation on electricity direct lines. The draft has come in the wake of market criticism that current regulations amount to regulatory barriers for the development of on-site electricity generation in Poland.

The draft amendment, among others, includes the following changes to direct line regulations:

- the definition of the direct line has been aligned with the Electricity Market Directive (EU Directive 2019/944), which means that the electricity line between the power producer and its own facilities will no longer be considered a direct line;
- the construction and operation of the direct line will require an entry to the direct line register, instead of a decision by the President of ERA. The customer's lack of access to the public grid will no longer be a pre-condition for obtaining regulatory approval for the direct line;
- there will be a simplified procedure for the entry to the direct line register in the case of customers not connected to public grid or for generating units of aggregate capacity not exceeding 2 MW;

If adopted, the proposed legislation is likely to enable certain on-site generation models. The actual feasibility of these models, however, will largely depend on the level of additional charges payable to the public grid operators. The charges will be determined in the grid operators' tariffs in line with the principles set out in the tariff regulation.

The draft act still needs to be adopted by the parliament and then signed by the president.

## 5. BALANCING OF RENEWABLE ENERGY PROJECTS, STORAGE, SALES

### 5.1. Balancing of Renewable Energy Projects

A power producer may on its own be the entity responsible for commercial balancing, or it may contractually delegate this responsibility to external balancing entities of its choice. Thereby, it is possible to change the balance responsible party by selecting another entity and concluding an agreement with it requiring the new entity to be responsible for commercial balancing. It should also be recognized that the producer's securing of a balance responsible party or fulfilling this role on its own is essential for the performance of sales contracts concluded, including sales contracts pertaining to electricity generated in RES. This is because only a balancing market participant that acts as a balance-responsible party or has such a third-party balance-responsible entity is authorized to report the sale of electricity under PPA contracts via the central commercial balancing mechanism. At the same time, the contract for the provision of commercial balancing services itself should be considered a service separate from the sale of electricity.

In the event of low demand for power and electricity or other emergency situations in the electric grid, the electricity transmission system operator and/or the distribution system operator may order the reduction of generation in order to balance the system and ensure its safe operation. The RES producer is obliged to comply with the grid operator's orders to reduce power generation.

In the event of non-compliance with the order, the President of ERA has the authority to impose penalties on entities that fail to comply with restrictions on energy supply and consumption; fail to comply with the rules and obligations on the security of operation of the power grid, the plans and procedures used in a situation of threat to the security of electricity supply, the grid code of the relevant system operator, as well as the instructions of the relevant operator. The amount of the penalty may not exceed 15% of the fined entrepreneur's revenue earned in the previous fiscal year. In addition, the President of ERA may impose a penalty on the head of the energy company, in an amount not exceeding 300% of their monthly salary.

### 5.2. Storage

Energy Law defines "electricity storage" as the conversion of electricity drawn from the power grid or generated by a generating unit connected to the power grid and cooperating with

the grid into another form of energy, the storage of this energy, and its subsequent conversion back into electricity. Storage facilities with an installed capacity of more than 50 kilowatts hour, are subject to registration in a register maintained by the transmission system operator or distribution system operator competent for the area.

With the amendment of the Energy Law in 2021, electricity storage became a separate subject of licensed business activity. An energy company that has been granted a license pays an annual fee to the state budget, charged to the costs of its operations, with the application of similar rules as described in the preceding parts of this guide.

According to the new wording of the Energy Law, for the connection of an energy storage facility, the grid connection fee is determined on the basis of half of the actual expenditure incurred for the implementation of the connection.

The amendment to the Energy Law also introduced the obligation to include information on the planned investments in the energy storage facilities in the development plans for the grid prepared by the transmission system operator and the distribution system operators.

The investment process (concerning energy storage facilities) in Poland comprises the following major stages:

- (a) securing the legal title to the land for the planned investment,
- (b) environmental permitting,
- (c) planning (zoning) arrangements,
- (d) ancillary permits (if necessary),
- (e) obtaining construction permit(s),
- (f) obtaining permit(s) for use,
- (g) obtaining grid connection conditions and concluding the grid connection agreement,
- (h) obtaining the license/making an entry in the register of the energy storage facilities.

### 5.3. Sales

As a rule, there are no restrictions concerning the sale of electricity generated by RES installations. Limitations may be related to the grid to which the installation has to be connected. Whether a given generating unit will be connected to the grid depends on the technical capabilities (capacity) of the latter. However, as determined by the provisions of the Energy Law, renewable energy installations have priority in connecting to the grid.

Also, sometimes grid connection agreements (and subsequently distribution services agreements) determine the possibility

of the grid operator to implement limitations in electricity generation and as a result sale of electricity, which go beyond the typical provisions related to safe grid operation and are mainly the result of insufficient capacity available in the local electricity network.

The recently amended regulations on the construction of wind power plants stipulate that the investor carrying out the investment will allocate at least 10% of the installed capacity of the wind power plant to the residents of the community where the plant is built.

The resident of the community will be able to enter into an agreement with the investor, based on which such a resident will become a virtual prosumer. The cost of taking up a share of the wind power plant's installed capacity will be the product of this share, expressed in kilowatts hour, and the cost of building the wind power plant. After 15 years, the investor's obligation to allocate 10% of the installed capacity of the wind turbine to the residents of the community will cease.

Attention should be paid to the *Act of 27 October 2022 on Emergency Measures to Limit Electricity Prices and Support Certain Consumers in 2023*, which requires electricity producers to pay the windfall tax. Their profit above a certain threshold is to be allocated to a special fund. However, this obligation is exceptional and is intended to last until the end of 2023, as it is related to the extraordinary situation related to the energy crisis, mainly resulting from the aggression of Russia on Ukraine.

Both bilateral and corporate power purchase agreements (physical and virtual) are allowed in Poland and both are used by market participants in Poland. The interest in and a number of concluded corporate PPAs (especially virtual PPAs) has been increasing in Poland recently, as these contracts allow to limit the costs of electricity and in addition enable achieving goals related to the consumption of "green" energy which is particularly important for larger consumers.

As discussed in Section 4.7., certain regulatory limitations exist in relation to onsite or near-site direct line PPAs.

## 6. ROOFTOP, OFFSHORE, FLOATING, AND AGRICULTURAL RENEWABLE ENERGY PROJECTS

### 6.1. Offshore Wind and Floating Photovoltaic Projects

(1) No offshore wind project is yet operational in Poland. However, there are already farms in the development process. The *Act of 17 December 2020 on the promotion of electricity production in offshore wind farms* is the act dedicated to offshore wind. Among other things, it sets out an auction-based support system. Electricity generators in offshore wind farms that are admitted to the support scheme will be entitled to cover the

negative balance. In practice, this means covering the difference between the market price of energy and the price that allows generators to cover the costs of generating electricity at sea.

(2) Currently, the *Act of 21 March 1991 on maritime areas of the Republic of Poland and maritime administration* has the greatest meaning for offshore wind in Poland. This law sets forth rules for the determination of who will have the right to invest in a particular maritime area, mainly it specifies a competitive procedure (deciding procedure) for granting of permit that enables the location of an offshore wind farm in a particular area. As a rule, the deciding procedures are initiated between applicants. Investors are awarded points in accordance with the *Regulation of 27 November 2021 on the assessment of applications in the deciding procedure*. The winner is entitled to develop an offshore wind farm in a particular marine area.

(3) Floating photovoltaic is only just developing in Poland and has no dedicated legislation. The main difference with onshore PV is that the developer may have to obtain a water permit. It should be taken into account that the water permit is issued for a maximum of 30 years.

### 6.2. Rooftop Photovoltaic Projects

(1) Rooftop photovoltaics has no dedicated legislation. It is a very common solution for the prosumers. In the case of large-scale projects, the permitting procedure is generally standard as it was described in Section 3.

(2) The obligation of obtaining the decision on development conditions (DDC) is a matter of discussion. No decisions on development conditions would be necessary if there is no change of land purpose. However, there are voices that large-scale rooftop photovoltaic changes the purpose of the building and thus (as the building constitutes part of the land) results in the obligation to obtain the DDC.

### 6.3. Agrivoltaic Projects

(1) The development of renewable energy sources such as wind and photovoltaic farms mainly takes place on agricultural land. The general information contained in the preceding parts of this guide concerning this aspect is therefore applicable in this case.

(2) Significant restrictions on the areas in which development can take place arise from the *Act of 11 April 2003 on the formation of the agricultural system*. The purpose of this law is to reduce the use of agricultural land for other purposes and to reduce access to land by non-farmers. In certain cases, transfer of the legal title either by transfer of ownership or even by land lease is forbidden.

(3) The *Law of 3 February 1995 on the Protection of Agricultural and Forestry Land* introduces the protection of agricultural land of the best quality. In order to construct a RES installation



on agricultural land, it is necessary to exclude the land from agricultural production.

(4) If the photovoltaic project is planned on a location, which is classified as agricultural or forest land in the local land register, prior to applying for a building permit the investor will need to exclude such land from agricultural or forest production, as applicable. Exclusion from agricultural or forest production occurs by way of an administrative decision. The person who obtains the above-mentioned decision is obliged to pay a single fee, as well as annual fees for the permanent exclusion of the land from agricultural production. The value of the single payment is specified in the mentioned *Act on the Protection of Agricultural and Forestry Land* and depends on the quality grades of the soil.

## 7. TRADING OF GREEN CERTIFICATES/CERTIFICATES OF ORIGIN

### 7.1. Certification

Electricity from RES is certified with a certificate of the energy origin (the so-called “green certificate”), issued at the request of the generator. The certificate of the energy origin constitutes a document confirming that the electricity was generated from sources using the following energy sources in the energy conversion process: wind energy, geothermal energy, solar radiation, waves, sea currents, and tidal energy, the energy obtained from the fall of rivers and energy obtained from biomass.

A certificate of the energy origin is granted only for electricity generated in a given RES installation for the first time before July 1, 2016, i.e., before the amendment to the RES Act and the introduction of the auction scheme came into force (please refer to Section 2.1.). Consequently, newly built RES installations will not be able to become beneficiaries of this system.

The green certificate is issued by the President of the ERA at the request of a generator of electricity from RES. The application for the certificate shall be submitted via the electricity system operator within 45 days from the day the given volume of electricity was generated. Property rights result from green certificates which are transferable and are a stock exchange commodity (transfer of such property rights results in the transfer of the green certificate itself).

Apart from the green certificates scheme, another instrument that supports the generation of electricity in RES installations and allows to certify of renewable energy is the guarantee of origin. A guarantee of origin constitutes a document confirming to the end user that the electricity injected into the distribution or transmission grid originates from renewable energy sources. Unlike a green certificate, no property rights arise from a guarantee of origin. Guarantees of origin are issued

in electronic form by the President of the ERA at the written request of the generator. The document is valid for a period of 12 months from the date of completion of electricity generation or until handed over to/redeemed for the benefit of the end user. Guarantees of origin are mostly used by large business entities and companies that want to increase the share of so-called green energy in their consumption and strengthen their image. Guarantees of origin typically constitute the subject of the corporate PPAs in Poland, i.e., they are transferred to the final customer or redeemed for the benefit of the final customer that collects electricity from the generator in RES installation under the corporate PPA.

### 7.2. Trading

Property rights result from green certificates which are transferable and are a stock exchange commodity. Transfer of such property rights results in the transfer of the green certificate itself.

Energy companies generating and/or trading in electricity and selling it to end consumers (connected to the national electricity grid) are obliged under Polish law to obtain and submit for redemption a given number of green certificates or to pay a substitute fee. For this reason, producers of electricity from RES can derive revenue from the sale of green certificates to entities obliged by law to redeem an adequate number of them.

Green certificates (property rights resulting from them) are subject to trade between market participants and their transfer is performed under bilateral contracts (quite often under long-term agreements concluded by energy companies generating electricity in RES in parallel with PPAs or as part of the PPAs) or on the Polish Power Exchange (*Towarowa Gielda Energii*) (the latter however requires either using the services of the commodities brokerage house or becoming a member of the Power Exchange). The price of green certificates is market-driven – through supply and demand. The sale and purchase of green certificates require maintaining an account in the green certificates register maintained by the Polish Power Exchange.

Guarantees of origin are traded on the basis of bilateral contracts, however, their transfer and/or redemption for the benefit of a particular entity has to be reflected in the relevant register maintained by the Polish Power Exchange.





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# CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RENEWABLE ENERGY 2023 ROMANIA



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## 1. SUMMARY

The development of renewable energy projects is going through a new boom in Romania in recent years. In line with the country's commitment to increasing the share of renewable energy in its energy mix and achieving its renewable energy targets, and catalyzed by the geo-political and climate change context, there is a lot of activity in the local renewable energy field.

According to data provided by the Romanian National Regulatory Authority in the Energy Field (ANRE), at the beginning of June 2023, Romania had approximately 18,931 megawatts installed in power production capacities, out of which around 4,450 megawatts in wind and solar projects.

In addition, according to information published by Transelectrica, the Romanian power transmission grid operator, as of April-May 2023 there were more than 49 gigawatts booked into the grid for wind and solar projects under development (including those developed by prosumers). The size of projects under development varies from a few megawatts to around one thousand megawatts in envisaged installed capacity. For example, a photovoltaic project of approximately 1,000 megawatts is now in the construction phase in the western part of Romania.

Developers tend to be mostly local individuals or companies, although an increasing number of international players are also stepping in and getting more and more involved in the development phase. Investors interested in acquiring renewable projects include large international energy companies, investment funds, and other local and international companies.

As more and more projects reach the ready-to-build stage, discussions with potential financing banks have also become more frequent. While there is a lot of interest from credit institutions to support renewable projects (including in relation to their own ESG targets), Governmental measures related to power prices taken as a consequence of the war in Ukraine slowed down the conclusion of power purchase agreements, a necessary instrument for the bankability of such projects.

Currently, there is no dedicated support scheme for renewable projects in Romania (the previous green certificates scheme was applicable for projects commissioned up to the end of 2016). However, renewable projects may be eligible to receive EU funds under various schemes, including the *Recovery and Resilience Plan*. In addition, the Romanian Government has been working on a Contracts for Difference scheme, for which renewable projects would also be eligible. The rules on this scheme are still work-in-progress, being expected to come into force this year.

Some of the issues faced by renewable projects in the previous development wave (mainly prior to 2013) are still relevant. For example, projects and developers are still competing for available connection capacity in the grid which has not been upgraded at the pace necessary to accommodate all new projects. Permitting also continues to be quite an intricate and lengthy process.

However, with a view to facilitating investments, several legal changes have been brought recently (although some of them are enforced by certain authorities in misalignment with their intended purpose, thus creating bottlenecks for the development of projects).

## 2. OVERVIEW OF THE COUNTRY'S RENEWABLE ENERGY SECTOR

### 2.1. Legal Framework

The rules relevant to the development and operation of renewable energy projects are set out in various legal provisions (including laws, ordinances, orders, and regulations of various regulatory authorities) and refer to matters such as capacity allocation, grid access, environmental impact assessment, power purchase agreements, operation and maintenance, distribution/transmission tariffs, electricity storage and securing land for renewable energy projects. Some of the relevant pieces of legislation apply specifically to energy/renewable power projects, while others apply generally to the energy industry or to the development of any building and/or infrastructure project.

#### Support Schemes

Romania complies with the general EU principles applicable to state aid. Any support scheme, including in the renewable energy field, must be notified and approved by the European Commission. As mentioned above, no dedicated support scheme is currently in force in relation to renewable power projects.

#### Access to Grid

Generally, access to the public power grid is regulated by ANRE. The connection to the grid is a mandatory service performed by the power transmission system operator and the power distribution operators. There are specific rules in place in relation to the booking of grid capacity and the situations in which access to the grid may be denied (mainly if the connection affects the security of the national energy system) or would require additional costs (e.g., related to grid reinforcement works).

## Interconnectivity and Power Purchase Agreements

Romania's power grid is interconnected to those of the neighboring countries. Moreover, additional steps have been taken by the Government for cooperating with the Republic of Moldova in order to develop projects of common interest for developing the necessary grid infrastructure for exporting energy also in this country.

After almost 10 years in which over-the-counter power purchase agreements on the whole-sale market were prohibited in Romania, they have been allowed again since 2021. However, the PPA market is not very liquid yet, with very few long-term over-the-counter power purchase agreements having been concluded recently. This is partly due to the difficulty of setting power prices for the long term, given Governmental control on power prices in the context of the war in Ukraine.

## Distribution/transmission tariffs

Transelectrica S.A. is the Romanian transmission and system operator (TSO), a state-controlled company. In addition, Romania is split into eight distribution regions, with one concessionaire operator holding exclusive rights to operate the distribution grid in that area.

Distribution and transmission tariffs are regulated by ANRE, being annually and individually approved for the TSO and each distributor, based on a specific procedure. Therefore, the transmission tariffs apply throughout Romania, while distribution tariffs may differ depending on the area the project is located.

## Securing Land

Land for the permanent structures in a renewable power project must be secured based on rights *in rem* – typically ownership or superficies. Superficies rights (granting the right to use the land and own the construction erected on it) tend to be the preferred choice due to several factors, including costs, restrictions to transfer of ownership over agricultural land, termination rights in case of non-viability of the project (for example due to non-issuance of an essential permit in a given deadline).

## Permitting Process

The permitting process for renewable power projects entails numerous permits, authorizations, and procedures, including, in some cases, the environmental impact assessment. Generally, renewable power projects must submit an application to the competent environmental authority which will decide whether the project must undergo the environmental impact assessment process.

## Operation and Maintenance

After the commissioning of the project, the developer usually enters into operational and maintenance (O&M) arrangements with various service providers.

## Electricity Storage

Electricity storage is not mandatory for projects developed in Romania. Certain provisions and regulations on this topic have been recently introduced in the legislation. Nonetheless, ANRE has recently recommended to those interested in investing in renewable energy sources to consider that at least 20% of the generation capacity should also have a storage component.

## Domestic Sales and Imports/Exports

Romania aims to increase the share of renewable energy sources in its energy mix, including through the development of new renewable projects.

While there are no clear targets for the import/export of renewable energy, the Romanian authorities have multiple times stated that one of the main focuses is achieving energy independence. Romania's energy targets include increasing its domestic production of renewable energy, reducing reliance on fossil fuels, and improving energy security, in line with the EU guidelines.

Grid capacity, including in relation to export and import, is still limited, with new production capacities competing for this. Although various works are ongoing for the upgrade of the grid (including the power transmission grid), the implementation calendars sometimes exceed the planned or desired commissioning dates for certain renewable projects.

## 2.2. Foreign Investment and Participation

Under the Foreign Direct Investment (FDI) regime in Romania adopted in 2022, investments in the energy sector may be subject to screening by the local authority (namely the Commission for the Examination of Direct Foreign Investments – CEISD) if the following conditions are met:

### a. The investment amounts to either:

i. a foreign direct investment, aimed to establish direct links between the foreign investor and the undertaking (i.e., the SPV that develops the project and is intended to be acquired by the foreign investor), conferring control (within the meaning of competition legislation) over the management of the undertaking to said foreign investor. This also covers the scenario where there is an indirect change in control (the ownership structure of the shareholders is changed, resulting in a foreign

investor controlling the Ro-manian entity).

**ii.** a new investment (greenfield) – namely an initial investment into tangible or intangible assets linked to (i) launching a new undertaking, (ii) extending the capacity of an exist-ing undertaking or (iii) diversifying the production of an undertaking (new prod-ucts/processes).

#### **b. The investment is made by a foreign investor**

A foreign investor is (i) a legal entity or natural person established outside of the EU or (ii) a legal entity established in the EU, but which is controlled by a legal entity or natural per-son established outside of the EU.

According to changes in legislation published in June 2023, FDI screening is mandatory also for EU investors.

#### **c. The investment exceeds EUR 2 million**

Foreign direct investment may be subject to FDI clearance even if below the EUR 2 million threshold if it is likely to affect security or public order. Aspects such as the foreign investor being controlled by governments of non-EU countries or prior involvement in activities affecting security or public order in a Member State may be considered when qualifying investments as likely to affect security or public order.

### **2.3. Protection of Investment**

Romania is a party to several international treaties and agreements in the energy sector.

As a member state of the European Union, Romania is bound by the EU treaties and regula-tions that govern various aspects of the energy sector, including renewable energy. These include the *Treaty on the Functioning of the European Union* (TFEU) and, therefore, all the European legislation, including directives such as the *Renewable Energy Directive* (RED) and the *Energy Efficiency Directive* (EED). These EU regulations set renewable energy targets and establish common frameworks for the promotion of renewable energy across member states.

Romania is a party to the UNFCCC, which aims to address climate change through interna-tional cooperation, and has also ratified the *Paris Agreement* in 2017.

Romania is also a member of the Energy Community, an international organization that pro-motes energy cooperation among its member states. The *Energy Community Treaty* aims to create an integrated energy market, increase energy security, and promote sustainable de-velopment in the member countries. It also includes provisions related to renewable energy promotion and targets.

These international treaties and arrangements influence the

regulatory policy on renewable energy in Romania. They provide guidance, set targets, and establish common frameworks for renewable energy development. Romania's renewable energy legislation and policies must align with the provisions and objectives of these international agreements to ensure compli-ance, promote renewable energy deployment, and contribute to global climate and energy goals. For example, a recent transposition of EU legislation for promoting renewable energy projects (namely *Directive (EU) 2019/2001*) is represented by the *Emergency Government Ordinance no. 163 dated 29 November 2022 for the completion of the legal framework pro-moting the use of renewable sources energy*.

## **3. DEVELOPMENT OF RENEWABLE ENERGY PROJECTS**

### **3.1. Granting of Grid Connection Rights**

In order to secure grid connection rights, the developer must obtain technical connection ap-proval from the operator of the grid to which the project is envisaged to be connected. In view of applying for the technical connection approval, the developer must first obtain the urbanism certificate issued for obtaining the building permit.

**(i) Technical Connection Approval:** The technical connection approval is the grid opera-tor's offer to the developer's connection request and includes the technical and financial conditions for the connection. It is issued based on the connection solution identified through the solution study and chosen by the user (if several such solutions have been identified). The technical connection approval is one of the most important documents when developing a renewable project, the main purpose being to reserve the much-coveted capacity in the grid.

**(ii) Connection Agreement:** Following the issuance of the technical connection approval, renewable energy project developers must enter into a Connection Agreement with the grid operator. The agreement typically sets out the works that need to be carried out in re-lation to connection, its calendar, and payment deadlines.

**(iii) Connection Certificate:** Following the construction of the project and connection to the project grid, the connection certificate attests to such connection, being valid for as long as the production capacity is maintained under the same parameters.

The connection certificate is issued by the grid operator, and it certifies the fulfillment of the requirements for connection and sets out the technical conditions for the use of the grid after the final connection.



### 3.2. Ownership by Foreign Companies

Both Romanian and foreign investors may develop renewable power projects. Please see Section 2.2 in relation to the FDI regime. There is no tender process for development rights per se.

However, the development, construction, and commissioning of renewable projects require obtaining various permits, authorizations, licenses, and consents. These are typically issued by relevant authorities (e.g., environmental, municipalities, ANRE) and third parties holding special rights (e.g., grid operators).

Rights to renewable projects (including those under development) are typically transferred via the transfer of the shares in the project company. While transfers of assets are also possible in theory, they are more difficult to achieve, as they would entail obtaining consent from third parties – including in relation to the transfer or re-issuance of permits, certificates and permits, authorizations, licenses, and consents. Moreover, certain permits or rights (e.g., concession rights over land) cannot be transferred.

### 3.3. Stages of the Development Process

In Romania, the development of renewable energy projects typically involves obtaining various authorizations and permits at different stages of the project. The specific authorizations and their validity terms may vary depending on the type and scale of the project, as well as the location of the project. However, there are several common authorizations to be obtained for almost every project, as follows:

#### I. Land Securing:

The development of renewable energy projects starts with securing adequate rights on the relevant land. These typically are rights *in rem*, such as ownership or superficies right (which allows the development of a construction on the land belonging to another owner and use of the relevant land). These rights must be secured based on agreements in notarized form and therefore notarial fees would apply.

The terms and conditions, including duration and financial obligations, are negotiated between the parties, with superficies rights being usually secured for durations or at least 30 years from the commissioning of the project.

In case the relevant land is owned by the state or the administrative-territorial units, the land can be secured via concession agreements, and awarded following a public tender procedure.

#### II. Grid Access

See Section 3.1.

#### III. Construction Permits

The process for obtaining the building permit for a renewable project is kick-started with the issuance of an urbanism certificate. The urbanism certificate is issued by the local municipalities in the area where the project is developed and informs the applicant on the legal, economic, and technical regime of land and existing buildings, establishes the urban planning requirements to be fulfilled, and provides a list of legal endorsements and permits necessary to be obtained as a prerequisite for the building permit. In short, the urbanism certificate should contain information about the possibility to develop a renewable energy project on the envisaged land. The urbanism certificate is the document that initiates the procedure for obtaining the building permit, as well as one of the prerequisites for obtaining the technical connection approval (see Section 3.1.).

The prerequisites listed by the urbanism certificate may include:

(i) Change of Land Use Category: This authorization is required in view of developing the renewable energy project, to the extent the use category of the land is not already suitable for this purpose (for example in case the land use category of the land is agricultural instead of buildable). It usually involves obtaining approval from the relevant authorities for changing the land's current use category to accommodate the project and is subject to several limitations depending on the applicable regime.

Per recent amendments, renewable energy projects (energy-producing capacities of solar and wind energy, biomass, bioliquid and biogas, electricity storage capacities, transformer stations, or any other similar systems) may be developed on poorly productive (soil class quality III-V) *extra muros* agricultural land of maximum 50 hectares having the land use categories arable, orchards and vineyards. Prior to this amendment entered into force in July 2022, in general, renewable energy projects could be developed on *extra muros* land only if such land was converted to *intra muros* through a zonal urbanism plan (in Romanian plan urbanistic zonal or PUZ). Following this amendment and also following the amendment of Law 50/1991 for the authorization of construction works, the renewable energy projects meeting the criteria above can be developed in *extra muros* without having the obligation to priorly prepare and approve urbanism documentations such as zonal urbanism plans (PUZ) and even without such documentation being in force in relation to the envisaged land.

**(ii) The Environmental Approval (*acord de mediu*):** The environmental approval is the administrative act with both technical and legal nature which sets forth the conditions related to environmental protection for carrying out a certain project. The environmental approval is issued based on the environmental impact assessment. The need to obtain an environmental approval depends upon the impact of a certain project on the environment.

In addition, depending on the location and other features of the project, multiple other prerequisites may have to be obtained, e.g., from neighbors, aeronautical authority (especially in the case of wind projects), Ministry of Defense, operators of various grids and infrastructures, etc.

**Setting-up Authorization:** The development and commissioning of any electricity generation capacity having an installed power above 1 megawatt requires the approval of the competent authority, namely ANRE, through the issuance of the setting-up authorization.

**Building Permit (*autorizație de construi*):** The building permit is the act issued by the relevant local public authority, setting out the parameters within which the relevant project may be built (specific location, height, layout, surface, etc.). The building permit is issued further to the request filed by the holder of the ownership right, superficies right, or concession right. Please refer to Section 3.3. I for more details in this respect. The building permit must be obtained within 12 months of the conclusion of the connection agreement, but no longer than 18 months of the issuance of the technical connection agreement. If the building permit is not obtained and presented to the grid operator within the two deadlines, the technical connection approval ceases to be valid and the connection agreement is terminated, in both cases automatically.

#### IV. Operational Permits

In view of operating the renewable energy project, the developer must obtain the following main permits and/or authorizations:

**(i) Power Generation License:** After the development, construction and commissioning of the project, the developer must request and obtain the power generation license to commercially exploit the plant (i.e., perform the electricity generation activity). The power generation is typically issued for a term of 25 years (which is also the maximum term). Prior to its expiry, the holder may apply to obtain a new license.

**(ii) Environmental Authorization:** Commissioning and operating a renewable power project is conditional upon obtaining the environmental authorization, which sets out the conditions and/or the parameters in which the respective activity can be

performed from an environmental standpoint. The authorization must be obtained by the entity performing the power generation activity (i.e., by the entity exploiting the project) before starting to perform the respective activity and must be maintained throughout the entire period of time during which the authorized activity is conducted by the operator. The environmental authorization must be obtained prior to filing a request to obtain the power generation license.

#### 3.4. Obligatory State/Public Participation

In Romania, the state or public/municipal bodies do not typically have an ownership interest or seek direct participation in the development of renewable energy projects. An increasing interest in direct involvement (mainly via setting up incorporated joint ventures) in developing renewable projects has been signaled by some local authorities.

The state is indirectly involved in the development of renewable projects via state-owned entities. For example, Complexul Energetic Oltenia, a state-owned operator of several coal-powered electricity production capacities, has selected via tender OMV Petrom S.A. and Tin-mar Energy S.A. as joint venture partners to develop eight solar projects with an aggregate installed capacity of approximately 730 megawatts.

However, the state indirectly benefits from foreign participation in the renewable energy sector through various fees and tariffs for permits, especially considering that local investors do not have the liquidity to undertake certain investment works such as grid reinforcement works, issuance fees, and taxes. In addition to all the taxes paid during the development phase, generally, a holder of a power generation license must pay each year a contribution which as of 2023 is computed by applying a percentage of 0.1 to their turnover in 2022.

#### 3.5. Risks to be Considered

The development of renewable energy projects in Romania entails various risks that must be assessed by investors when deciding to develop such projects, among which we note:

**i. Regulatory and Policy Risks:** The legal regulatory framework is frequently amended, creating unpredictability and uncertainty in certain situations. Changes in renewable energy regulations or government policies can impact project economics and viability. For example, following the recent amendments to the construction laws referred to in Section 3.3. III (i), the Ministry of Agriculture took a very narrow interpretation which effectively resulted in it not allowing the development of projects on land with a surface area larger than 50 hectares. This leads to delays in the development of larger renewable power projects. Generally, the uncertainty created by frequent legal and regulatory changes and their implementation by

various authorities may negatively impact the development of renewable power projects.

**ii. Permitting and Approval Risks:** Obtaining the necessary permits, licenses, and approvals can be a complex and time-consuming process. Delays, changes in relation to applicable procedures, or lack of uniformity in relation to the approach of the authorities on issuing the necessary permits represent challenges that might ultimately lead to project delays and increased costs.

**iii. Grid Connection Risks:** Securing grid connection and obtaining access to the transmission or distribution network can pose challenges, being the most important aspect of developing a renewable project. Given that Romania currently has limited or even lacks grid capacity in certain areas, investors may face delays or additional expenses for grid connection when developing a project.

**iv. Market Risks:** The electricity market dynamics, including pricing, demand-supply imbalances, uncertainty regarding the long-term stability of power purchase agreements (PPAs), and even lack of practice in concluding such PPAs, can affect the revenue streams of renewable energy projects and therefore their bankability and viability.

**v. Environmental and Social Risks:** Environmental impact assessment requirements and community acceptance can present risks to project development. Addressing environmental and social aspects adequately is crucial to mitigating reputational and operational risks.

**vi. Legal and Contractual Risks:** Contractual arrangements, such as superficial agreements, supply contracts, and PPAs, can entail different risks if not properly structured, leading to disputes or unforeseen liabilities.

To mitigate these risks as much as possible, investors in renewable power projects should take a hands-on approach to the development activity and should carry out a thorough due diligence analysis.

## 4. RENEWABLE ENERGY CONSTRUCTION AND PRODUCTION

### 4.1. RTB Status

In Romania, a renewable energy project is typically deemed to have reached the ready-to-build (RTB) stage, once several key authorizations, agreements, and permits are obtained/concluded: (a) the technical connection approval and the related grid connection agreement; (b) the building permit, including all pre-requisites such as environmental approval and the decision approving the removal from the agricultural circuit and/or preparing and approving urbanism documentation); and

(c) the setting-up authorization. For more information on such permits, please refer to Section 3.3.

In contractual arrangements (e.g., between the developer and a potential buyer) the parties typically agree in detail when the RTB milestone is reached, also taking into account the specifics of the project and potential remedial actions that need to be implemented.

### 4.2. Construction of Renewable Energy Projects

The construction of renewable energy projects in Romania entails specific matters and associated risks that must be taken into account by developers, investors, and providers of financing.

#### I. Specifics:

**a. Permitting and Regulatory Compliance:** Construction activities must adhere to relevant permits, authorizations, and regulations. Failure to comply or flaws in the relevant permits may create the risks of challenges against them (with potentially grave consequences such as the works being stopped or suspended).

**b. Infrastructure and Equipment:** Construction involves the installation and integration of renewable energy infrastructure, such as solar panels, wind turbines, or biomass facilities. Regarding the roads infrastructure used for the access to and from the project, in some cases, the development of renewable energy projects may entail the performance of works (e.g., to consolidate or widen them or to build new road curves either temporarily or on a permanent basis), especially if the developer envisages transporting high tonnage equipment like wind turbines.

**c. Grid Connection:** Ensuring a successful connection to the power grid is essential. This involves coordinating with the grid operator and implementing the necessary infrastructure and technical requirements for grid integration (such as grid reinforcement works). Moreover, in certain cases, different developers and/or investors must cooperate to develop the connection infrastructure for the project they are developing in a specific area, which may entail additional contracts and related liabilities.

**d. Construction Timeline:** The construction timeline is an important consideration, as delays can impact project economics, financing arrangements, and compliance with regulatory deadlines such as the validity term of the building permit. Efficient project management and coordination among contractors, suppliers, and stakeholders are crucial to meet construction timelines.

## II. Risks:

**a. Technical and commercial risks:** Construction projects can experience delays due to various factors, including adverse weather conditions, equipment delivery delays, permitting issues, or labor disputes. These delays can result in increased costs and postponed project commissioning. Moreover, construction costs can exceed initial estimates due to unforeseen circumstances. Renewable energy projects may also encounter technical challenges during construction, such as inadequate site assessment (for example identification of buried irrigation infrastructure that must be preserved or identification of objects of archaeological importance) which may delay the construction works or increase the development costs.

**b. Health and Safety Risks:** Construction sites pose inherent health and safety risks. Romanian legislation in the field of health and safety is complex, comprising specific requirements for construction sites. Implementing comprehensive health and safety protocols and ensuring compliance with relevant regulations is vital to safeguard workers' well-being and mitigate potential liabilities. Depending on the overall workforce volume and the length of the construction phase, prior notification of the local labor authority may be needed before starting the construction works. While certain health and safety services may be outsourced during the construction phase, the liability of the employer is not excluded. Specific requirements must be observed when several contractors and/or subcontractors operate on the same construction site.

**c. Environmental Impact:** Construction activities can have environmental impacts, such as noise, dust, and disruption to local ecosystems. Proper mitigation measures and compliance with environmental permits are necessary to minimize adverse effects and maintain environmental sustainability.

**d. Contractual and Legal Risks:** Construction contracts and agreements play a significant role in managing risks associated with timelines, costs, quality, and dispute resolution. Understanding and properly managing contractual obligations and potential legal risks are essential during the construction phase.

To mitigate these risks, project developers should conduct thorough due diligence, and implement effective project management and risk mitigation strategies. Adhering to best practices, regulatory requirements, and industry standards can contribute to the successful construction and commissioning of renewable energy projects in Romania.

## 4.3. Granting of Renewable Energy Production Licenses

The rules regarding the power production license are set out in *Law no. 123/2012*, as well as in implementing dedicated regulations issued by ANRE. The power generation license is issued by ANRE. Please see Section 3.3. IV (i) for additional information.

The granting of power generation licenses in relation to offshore wind projects is expected to be separately regulated, based on dedicated pieces of legislation.

## 4.4. Renewable Energy Production by Foreign Investors

There are generally no specific limitations or restrictions on foreign investors obtaining renewable energy generation licenses. However, per the *Licenses Regulation*, a foreign legal entity from outside the European Union can request the granting of authorizations/licenses only if it has established in Romania a secondary headquarters for the entire period of validity of the authorization/license, necessary to carry out its activities. Due to various reasons, the development of projects is anyway done via special purpose companies set up in Romania (whose shareholders may be foreign persons). Please see Section 2.2. for FDI clearance requirements.

## 4.5. Operation and Maintenance of Renewable Energy Projects

Regulations governing the operation and maintenance of renewable energy projects are generally covered by the applicable legal framework (please refer to Section 2.1. for more details). However, the general practice for developers and/or investors is to outsource such matters by entering into operation and maintenance agreements with specific rights, obligations, and split of liabilities.

## 4.6. Decommissioning Process

In Romania there are several general requirements regarding the decommissioning of renewable energy projects, as follows:

**1. Environmental Permit Obligations:** The environmental authorization may include several provisions regarding the decommissioning of the renewable energy project which can include obligations and procedures for decommissioning, obligations regarding site restoration, and disposal of equipment.

**2. Decommissioning Plan:** Investors should develop a decommissioning plan that outlines the process and measures for safely dismantling and removing renewable energy equipment. The plan should also address environmental remediation.



**3. Environmental Impact Assessment (EIA):** Depending on the scale and nature of the project, an EIA may be required in view of obtaining the demolition permit from the local authorities. The EIA assesses the potential environmental impacts of the project, including decommissioning activities, and provides recommendations for mitigating and managing those impacts.

**4. Waste Management:** The disposal of renewable energy equipment, such as solar panels or wind turbines, may be subject to waste management regulations. Investors must comply with the proper handling, treatment, recycling, or disposal of equipment in accordance with applicable waste management laws.

**5. Site Restoration:** After decommissioning, investors are generally required to restore the project site to its original or agreed-upon condition. This may involve removing infrastructure, restoring natural habitats, re-seeding vegetation, and addressing any soil contamination or erosion issues. The contractual arrangements for securing the relevant land (e.g., superficies or concession agreements) may also include specific obligations on the state in which the land must be returned.

**6. Financial Provisioning:** In some cases, investors may be required to provide financial assurance or security to cover the costs of decommissioning and site restoration. This ensures that the necessary funds are available for the proper closure of the project.

It is important for investors to closely follow the specific legal requirements and obtain guidance from relevant authorities, such as the environmental agency or local planning authorities, to ensure compliance with the decommissioning obligations. Failure to comply with these requirements may result in liabilities for the investor.

#### 4.7. Risks to be Considered

The development and operation of renewable energy projects in Romania entail various risks that investors should consider as further detailed in Section 4.2. II above. Moreover, the operation of renewable energy projects may entail production risks such as performance variability and operational issues. Meeting regulatory compliance obligations, including environmental standards, reporting requirements, and contractual obligations, is crucial to avoiding penalties and maintaining project viability. Moreover, ensuring the safety of personnel involved in the operation and maintenance of renewable energy projects is essential. Failure to maintain proper health and safety practices can result in accidents, injuries, and/or legal liabilities, including criminal proceedings against the persons responsible for incidents.

Decommissioning risks can include:

**i. Environmental Liability:** Inadequate decommissioning and site restoration can result in environmental liabilities, including soil contamination, habitat disruption, or failure to meet decommissioning obligations as specified in permits. Under Romanian law, the general principle governing environmental liability is “the polluter pays.” Thus, the operator will be solely liable for any damages brought to the environment, although part of such liability, mainly pertaining to waste management, may be delegated through certain contractual arrangements.

**ii. Financial Provisioning:** Insufficient financial planning and provisioning for decommissioning activities can pose risks to investors, particularly if the costs of dismantling, waste disposal, and site restoration exceed expectations.

It is important for investors to conduct thorough risk assessments, develop appropriate mitigation strategies, and seek professional advice to address these risks effectively. Understanding and managing these risks can enhance the success and financial viability of renewable energy projects in Romania.

## 5. BALANCING OF RENEWABLE ENERGY PROJECTS, STORAGE, SALES

### 5.1. Balancing of Renewable Energy Projects

The main rules on balancing renewable energy projects primarily are set out in secondary legislation, part of it issued with a view to implementing EU rules. Applicable obligations and rules are also set out in technical grid codes. The main requirements related to balancing concern the following:

**i. Balancing Responsibility:** Renewable energy project operators are financially responsible for the balance between their generated electricity and the electricity injected into the grid. They must ensure that the production of renewable energy matches the agreed schedules and forecasts.

**ii. Balancing Market Participation:** Renewable energy project operators may participate in the balancing market to manage deviations between the scheduled and actual electricity generation. Participation in the balancing market allows them to buy or sell balancing services to maintain grid stability.

**iii. Curtailment and Limitation of Production:** In certain situations, renewable energy projects may be subject to curtailment or limitation of production, based on dispatch orders by the transmission system operator (TSO) to ensure grid stability.



### 5.2. Storage

The legislation related to storage facilities for renewable power projects is not that developed yet, although certain changes in this respect have been recently implemented. These refer specifically to the development and operation of electricity storage facilities. Certain technical provisions on this matter have also been recently introduced in legislation.

### 5.3. Sales

There are no general limitations on the sale of power produced by renewable power projects. However, based on certain pieces of legislation issued in the context of the war in Ukraine, for a limited period of time, production capacities commissioned prior to April 1, 2022, must sell the majority of the energy produced through a centralized mechanism.

Leaving to one side the specific rules set out above, power producers may sell their production either via centralized markets or via over-the-counter power purchase agreements. For more information on the PPAs, please consult Section 2.1.

In addition, certain producers, benefitting from the previous renewable support scheme introduced in Romania, may trade the green certificates.

## 6. ROOFTOP, OFFSHORE, FLOATING AND AGRICULTURAL RENEWABLE ENERGY PROJECTS

### 6.1. Offshore Wind and Floating Photovoltaic Projects

Currently, there are no specific rules in place in relation to offshore wind and floating photovoltaic (PV) projects. Effectively, the development of offshore projects is not possible right now, while the development of floating photovoltaic projects on waters such as lake is conceivably possible.

However, Romanian authorities are currently working on a legal framework in relation to off-shore wind projects.

### 6.2. Rooftop Photovoltaic Projects

Rooftop photovoltaic projects may be developed in Romania based on the general legal framework for renewable energy projects. Lately, several such projects have been developed, by various consumers (commercial, industrial, and households), a large part of them having been registered as prosumers.

Prosumers benefit from an exception to the obligation to obtain a building permit in case of developing a rooftop photovoltaic project. An essential condition to be a prosumer is that electricity production does not represent the specific activity carried out by the interested investor.

### 6.3. Agrivoltaic Projects

There is no specific legislation specifically dedicated to agrivoltaic projects. However, recent amendments to the Construction Laws introduced the possibility of having dual use of *extra muros* land, for both agricultural activities and energy production, although more detailed guidelines as to how this is implemented in practice are still to be issued.

## 7. TRADING OF GREEN CERTIFICATES/ CERTIFICATES OF ORIGIN

### 7.1. Certification

The production of renewable power is certified based on an electronic document issued by ANRE to electricity producers, whose sole function is to provide a final customer with proof that the relevant quantity of power has been produced from renewable sources or in high-efficiency cogeneration. Guarantees of origin (GO) are issued for each power unit (i.e., 1 megawatt hour) of power produced and delivered to the grid and are valid only for a year following the production date of the power they are referring to. GOs are obtained based on an application submitted with ANRE based on the applicable procedures.

### 7.2. Trading

ANRE is entitled to transfer the guarantee of origin at the request of the holder of the guarantee of origin, based on a transfer request. Guarantees of origin are transferred as follows: (i) from one producer to another power producer; (ii) from a producer to a power supplier; (iii) from a supplier holding guarantees of origin to another supplier. Guarantees of origin can also be transferred to energy market participants from EU member states. Guarantees of origin may be transferred together with the power physically delivered or without.



Filip & Company

# CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RENEWABLE ENERGY 2023 SERBIA



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## 1. SUMMARY

Being a member of the Energy Community (EC) and with the commitment to its path of Euro-pean Union (EU) membership, the Republic of Serbia is devoted to harmonizing its legislation with the *acquis communautaire* of both the EU and EC, including the green transition. The ma-jor step in this respect has been the adoption of a new Law on the Use of Renewable Energy Sources in 2021 (*Official gazette of the RS*” no. 40/2021,” Law on RES), as well as several bylaws (e.g., *Regulation on Market Premium and Feed-in Tariff, Regulation on Model of Agreement on Market Premium in 2021/2022*). Previously, the renewable energy sector was scarcely regulated with only a few paragraphs of the Energy Law (*Official gazette of the RS*” no. 145/2014, 95/2018 – *other law and 40/2021*) and bylaws. Further development of the leg-islation is planned through the amendments of the Law on RES, which has been drafted at the end of 2022 and which has been subject to the public consultation that ended on 09 February 2023.

Before the adoption of the Law on RES, the major invest-ments in the field of RES were made in wind power plants. The subject trend has been fostered by this law and extend-ed to other types of RES power plants, such as solar power plants, biomass power plants, etc. Since the beginning of the application of the Law on RES, the transmission system operator faced a significant number of requests for connection to the grid for future RES power plants, precise-ly 14,000 megawatts hour power which greatly exceeds the current installed power of all power plants in the Republic of Serbia, being about 8000 megawatts hour.

Historically, the domestic market was mainly supplied with electric energy from thermopower plants. According to the latest available data published by the Energy Agency of the Republic of Serbia (AERS) in 2021, all types of power plants produced 35,656 gigawatts hour. The share of thermopower plants was approximately 60%, the share of RES power plants was ap-proximately 36% (out of which approximately 90% is old hydropower plants constructed by Elektroprivreda Srbije and the rest from other RES power plants), the share of com-bined thermo-thermal was approximately 1.5% while other power plants produced approximately 2.5%

RES projects are of high importance for the Ministry of Mining and Energy, which provides support for such projects, as well as the support provided through the Renewable Energy Sources Serbia association, which gathers investors. Moreover, the use of energy from the RES is defined as a matter of the public interest of the Republic of Serbia. In the course of the Law on RES, the state bodies are preparing the *INTEGRATED NATIONAL ENERGY AND CLIMATE PLAN* prof the Republic of Serbia for the period from 2021 until 2030

with a vision up to 2050, to achieve the main goals of the RES. Based on the preliminary targets, 49.6% of the RES in total power production should be achieved by 2040. The list of investors is ex-panding, and it is gathering reputable interna-tional companies in the RES sector, as well as an increasing number of experienced local players. International financial institutions and local banks are continuously supporting the development of RES projects in the Republic of Serbia. In parallel with this, local municipalities are providing subsidies to prosumers for the installation of roof solar power plants.

## 2. OVERVIEW OF THE COUNTRY'S RENEWABLE ENERGY SECTOR

### 2.1. Legal Framework

The Law on RES sets out the list of the power plants using RES as follows: hydro, biomass, biogas, wind, solar, geother-mal, biodegradable waste, landfill gas power plants, as well as all other power plants using RES. Potential investors in any of the listed power plants may be entitled to the incentive's measures. Please note that the power plants must be new or recon-structed to be eligible for incentives. Two types of mon-etary incentives are envisaged:

- Market premium, and
- Feed-in tariff.

#### Market Premium

Market premium represents the main incentive in the RES, by which the guaranteed supplier (Elektroprivreda Srbije – EPS) pays the market premium (determined in euro cents per kilo-watt hour) to the privileged producer in addition to the price for each sold kilowatt hour on the market.

An investor may be entitled to receive a market premium only after acquiring the status of a privileged producer. Such status is acquired through auctions. The Ministry of Mining and Energy (Ministry) organizes auctions, selects the best bids, and grants the status of a privi-legged producer. The auction is or-ganized for a single type of RES power plant. To conduct the auction, the Government of the Republic of Serbia (Govern-ment), *inter alia*, must de-terminine quotas for each RES power plant and the maximum amount of market premium that may be bided.

Currently, only for the wind power plants quota is determined at 400 megawatts hour, and the maximum amount of market premium is set out at 5.56 eurocents/kilowatt hour. The quotas and the maximum amounts of market premium for other RES power plants are still not determined.

The auctions consist of two phases, the bidding phase, and

the selection phase. In the bid-ding phase, all interested parties submit their bids with the amount of market premium which satisfies them. In the selection phase, the Ministry ranks bids by the criteria – from the low-est to the highest, comparing to the maximum amount of market premium, until the quota is met.

The obligation of the Government was to adopt a regulation on balancing responsibility within 6 months from the adoption of the Law on RES, which deadline expired in October 2021. So far, the Ministry has not organized auctions given that the said regulation is not adopted yet. According to the Ministry announcements, adoption of the regulation may be expected in the upcoming months, following the amendments of the Law on RES. When the Government adopts this regulation, all legal requirements will be met and there will be no further obstacles to organizing the first auction for wind power plants.

Participants whose bids are selected will acquire the status of temporary privileged producer and then they are entitled to execute an agreement on market premium with the guaranteed supplier. The content of the agreement is regulated and cannot be amended without the consent of the Ministry.

Such status lasts two years, and within this period, a temporary privileged producer must draft an environmental impact assessment (if necessary, see Section 3.3.) and obtain a construction permit. Upon fulfilling these conditions, the validity period of a temporary privileged producer is extended for three more years, within which period the power plant must be constructed and the usage permit obtained. After that, the status of a privileged producer may be acquired.

The status of a temporary privileged producer may be extended for one year in two cases: (i) if the powerplant is fully constructed but a usage permit is not obtained and (ii) in case of force majeure.

When the power plant becomes operational and the privileged producer commences selling electric energy on the market, the market premium is activated but it works in two directions, as follows:

- If the selling price is lower than the allocated market premium, then the guaranteed supplier shall reimburse the difference to the privileged producer. In this manner is guaranteed to the privileged producer that it will always collect the amount from its bid.
- If the selling price is higher than the amount of the market premium, the privileged producer is obliged to pay a positive difference to the guaranteed supplier (the difference between the selling price and the allocated market premium on the auctions).

The privileged producer is entitled to the market premium for a period of 15 years, starting from the first payment.

### Feed-In Tariff

Feed-in tariff represents incentives through guaranteed purchased price per sold kilowatt hour. This incentive may be acquired only for small projects (up to 500 kilowatts hour, or in the case of wind power plants up to 3 megawatts hour) and demonstrative projects.

The procedure of acquiring the status of a privileged producer and the incentive period for a feed-in tariff is the same as for the market premium.

### Additional Incentives

Apart from the above monetary incentives, the following incentives are prescribed:

- transfer of balancing responsibility; and
- access to the grid.

In respect of balancing responsibility, the Law on RES prescribes the balancing responsible party shall be a guaranteed supplier. The transfer of balancing responsibility from the privileged producer to the guaranteed supplier shall be regulated by the execution of an agreement on the transfer of balancing responsibility. As already mentioned, balancing is still pending to be regulated and it's the only obstacle to initiating the first auction.

Furthermore, the operator of the transmission/distribution system is obliged to, with priority, allow delivery of the electric energy from the RES in their system. This obligation applies to all producers of electric energy from RES, the ones with the monetary incentive system, as well as the ones without.

Amendments of the Law on RES envisage that only electric energy from the power plants with installed power less than 400 kilowatts hour will have the right to deliver energy in the system with priority. This threshold will be decreased to 200 kilowatts hour starting from January 1, 2026.

### Tariffs

The prices for access to the grid are regulated i.e., the Serbian regulator – the Energy Agency of the Republic of Serbia (AERS) – renders methodologies based on which the transmission/distribution system operator adopts its prices for access to the transmission/distribution system. Those prices are subject to the approval of AERS and are published on its website. Currently, the price for access to the transmission system is RSD 59.3603 per kilowatts hour and the price for transmitting the electric energy through the system is RSD



0.4742 (higher tariff) i.e., RSD 0.2371 (lower tariff) per kilowatt hour.

### Prosumers

One of the novelties introduced by the Law on RES is the concept of the prosumer. Now, both households and companies may install on its objects solar power plants, connect them to the grid, and consume the electric energy from their production. In case of overproduction, prosumers may deliver the surplus to the grid and take it back when needed.

The households do not need any special requirements to obtain the status of the prosumer, just to install a solar power plant and submit a request to access the grid and execute an agreement with the grid operator. The companies, having in mind that their solar power plants are bigger, must go through a certain constructional procedure, but it is much simplified than the construction of solar or other RES power plants for performing energy activity. For that reason, households and companies expressed a huge interest to become prosumers. According to the publicly available data, approximately 1,000 prosumers are registered so far in the register of prosumers.

Amendments of the Law on RES set out the limitation of 10 megawatts hour of installed power for prosumers i.e., prosumers cannot construct solar power plants exceeding this threshold.

### Trends in the RES field

Currently, a major part of the electric energy produced from the RES is generated in the hydropower plants and then wind power plants. So far, solar power plants and other power plants using RES participate in a minor part in the aggregate production of electric energy from RES.

### Hydropower plants

The major player in the electric energy market in the Republic of Serbia is EPS which has the following hydropower plants: i) Djerdap which has 28 hydro aggregates with a total power of 1,605 megawatts hour and an annual average production of 7,180 gigawatts hour, ii) Drinsko-Limske hydropower plants consist of 9 power plants with a total power of 1,390 megawatts hour and with an annual average production of 3,320 gigawatts hour and iii) mini hydro power plants with a total power of 21 megawatts hour and with an annual average production of 35 gigawatts.

In the following period, EPS is planning the construction of 2 hydropower plants i.e., the reversible hydropower plants Bistrica and Djerdap 3, with the fact that Djerdap 3 will be a unique, hybrid power plant, which would include both solar and wind power plants.

Apart from the EPS, which is a 100% state-owned company, there were numerous investors in mini hydro power plants in the Republic of Serbia. However, due to the negative impact of mini hydro power plants on the environment and protests from the locals, the Law on RES prohibits the construction of mini hydropower plants in protected areas. Exceptionally, the Government may allow hydropower plant projects in a protected area, if they represent projects of public interest.

### Wind power plants

Currently, 9 wind power plants are operational with a total power of 533 megawatts hour, while the major ones are:

1. Cibuk 1 near Kovin with a total power of 158 megawatts hour, owned by Masdar;
2. Kovacica, near Kovacica with a total power of 104,5MW, owned by Enlight Renewable Energy;
3. Kosava 1, near the City of Vrsac with a total power of 69 megawatts hour, owned by Fintel Energija;
4. Alibunar, near Alibunar with a total power of 42 megawatts hour, owned by Elicio.

The major ongoing wind power plants projects and plans are:

1. Fintel Energija plans to construct a wind power plant on the territory of the City of Subotica with a total power of 599,2 megawatts hour, which will be the biggest wind power plant in the Republic of Serbia. Fintel Energija is also planning to construct To-rak, with a power of 120 megawatts hour, Kosava 2, with a power of 68,4 megawatts hour, Kula 2, 3, and 4 with a total power of 30 megawatts hour, Dunav 1 and 3 (20 megawatts hour) and Ram (10 megawatts hour).
2. Naftna Industrija Srbije and MET Renewables are together constructing the wind power plant Plandiste with a total power of 102 megawatts hour;
3. Elektroprivreda Srbije is constructing its first wind power plant Kostolac with the power of 66 megawatts hour;
4. IEL OIE Balkan Renewable Energy is constructing the wind power plant Basaid in the vicinity of the City of Kikinda with a total power of 85 megawatts hour;
5. MK Group and ALFI Green Energy Fund are constructing the wind power plant Kri-vaca, in the vicinity of Golubac, with a power of 105.6 megawatts hour.

Additionally, currently in the territory of the City of Pancevo, 8 more projects with a total installed power of 1.345 megawatts hour, are in different stages of obtaining spatial plans for constructing wind power plants.

### Solar power plants

Unlike hydro and wind sources, so far solar energy is not much exploited. Currently, solar power plants in the Republic of



Serbia have a total power of approximately 11 megawatts hour. Major projects in this field are:

1. DeLaSol is constructing a solar power plant with a total power of 9.91 megawatts hour, that should be operational as of March 2023;
2. Elektroprivreda Srbije is constructing solar power plant Petka with total power of 9,95 megawatts hour and planning to construct Srednje kostolacko ostrvo with total power of 97,2 megawatts hour;
3. Holding Slovenske Elektrane is constructing a solar power plant in Prapretno with a total power of 16 megawatts hour;
4. CWP plans to construct a solar power plant on Pester in the vicinity of Sjenica with a total power of 50 megawatts hour;
5. CMC Europe intends to construct a solar power plant in the vicinity of the City of Sombor with a total power of 100 megawatts hour;
6. UGT Renewables intends to construct a solar power plant with a total power of 1 gi-gawatt.

## 2.2. Domestic Sales and Imports/Exports

According to the Energy Balance of the Republic of Serbia for 2023, in the structure of the planned total domestic production of primary energy (both electric and thermal energy) for 2023, RES participate with 26%, while the estimated value for 2022 was 25%. In 2023, it is planned to increase the production of primary energy from wind, biogas, and hydro potential compared to 2022 by 7%. The planned import (with transit) of electric energy in 2023 is 23% less in comparison to estimated imports in 2022, while the planned export (with transit) of electric energy in 2023 is 39% more than of estimated exports in 2022.

The increase in the production of energy from RES demands investment in the power grid. According to a recent press release from the Ministry, the Government plans to invest EUR 10 billion in the country's power grid over the next twenty-five years to support the growing demand for new renewable energy capacities.

In the next period, the Republic of Serbia will adopt new the Integrated National Energy and Climate Plan of the Republic of Serbia for the period from 2021 until 2030 with a vision up to 2050, by which is expected to be presented new targets for RES i.e., the share of 40% in total energy production.

EMS AD Belgrade (EMS), as the only transmission system operator in the Republic of Serbia, adopted the Transmission System Development Plan of the Republic of Serbia for the period from 2020 to 2029. Pursuant to this plan, the improvement of the transmission grid from 200 kilovolts to 400 kilovolts in Western and Central Serbia (known as a part of the

Transbalkan Corridor), as well as interconnections with neighboring countries (Montenegro and Bosnia and Herzegovina), are a pillar of development in the next 20 years. Additionally, numerous developments of local projects are envisaged.

On the European level, the European Network of Transmission System Operators for Electricity (ENTSO-e) currently prepares a Ten-Year Network Development Plan which envisages the construction of 5 interconnection projects in the Republic of Serbia: **(i)** Trans-Balkan Corridor, **(ii)** Interconnection line between Serbia and Croatia, **(iii)** Pannonian Corridor, **(iv)** North CSE Corridor, and **(v)** Central Balkan Corridor.

## 2.3. Foreign Investment and Participation

The Republic of Serbia does not impose restrictions on foreign companies in relation to acquisitions of interest in the Serbian energy sector.

Apart from the said, the *Law on Investments of the Republic of Serbia (Official gazette of the RS" no. 89/2015 and 95/2018)* lists benefits to foreign investors, such as the right to transfer profit, protection from expropriation, or similar acts, stability clause, national treatment, etc. However, the *Decree on Determining the Criteria for Awarding Incentives to Attract Direct Investments ("Official Gazette of RS", no. 1/2019)* provides that incentive funds for foreign investors cannot be allocated for the implementation of projects in the energy sector, to prevent double incentive system for a single sector.

For additional information please see Section 3.2.

## 2.4. Protection of Investment

The most important treaties in the energy sector are:

- the *Treaty establishing the Energy Community*, which the Republic of Serbia became party to in 2006. Pursuant to this Treaty and decisions of the EC bodies, the Republic of Serbia has concrete obligations to improve energy efficiency and the environmental situation related to network energy and to develop RES. The Republic of Serbia has a duty to implement *acquis communautaire* and the principles and targets in the RES fields adopted by the EC;
- the *Stabilization and Association Agreement*, entered into force on September 1, 2013, granting the Republic of Serbia the status of an associated country to the EU, by which agreement the Republic of Serbia, *inter alia*, undertook the obligation to be as much as possible harmonized with EU energy sector. In the end, the 2021 Republic of Serbia has fulfilled initial requirements in the energy sector and therefore has opened an energy chapter in negotiation with the EU;
- the *Paris Climate Accord* or *The Paris Agreement* is an international treaty on climate change adopted in 2015, which covers

climate change mitigation, adaptation, and finance. The Republic of Serbia is one of the 195 countries which signs this Agreement.

■ The *Sofia Declaration On The Green Agenda For The Western Balkans* was adopted on November 10, 2020, by the leaders of the Western Balkans, at the WB Summit under the framework of the Berlin Process initiative. This Declaration follows the main principles and goals of the European Green Deal; and

the *Agreement on the Implementation of the Project "Promotion of RES and energy efficiency in Serbia"*, executed between the Republic of Serbia and the German international cooperation agency GIZ – Deutsche Gesellschaft fuer Internationale Zusammenarbeit, on June 28, 2022, with the value of EUR 1.5 million.

Additionally, the Republic of Serbia executed numerous agreements on mutual incentives and investment protection, with over twenty such agreements with EU countries (*inter alia* United Kingdom, Germany, France, the Netherlands, etc.). The majority of the agreements are executed for a period of ten years with an automatic extension for the same period or an indefinite period.

### 3. DEVELOPMENT OF RENEWABLE ENERGY PROJECTS

#### 3.1. Granting of Grid Connection Rights

Pursuant to the Energy Law, producers of electric energy from RES have the right to access the grid. To exercise this right, producers must initiate an administrative procedure with the transmission/distribution system operator, in line with the *Regulation on Conditions for Delivery and Supply of the Electric Energy* ("Official Gazette of the RS" no. 63/2013 and 91/2018) and provisions of network code of the relevant system operator from which the producer is requesting connection to the grid. The connection request is submitted to the transmission/distribution system operator only upon obtaining a construction permit for the RES power plant.

If all conditions from the *Regulation on Conditions for Delivery and Supply of the Electric Energy* and network code of the relevant system operator are met, a system operator shall issue approval with the validity period corresponding to the necessary time for the construction of a power plant.

In addition to the connection to the grid, when the power plant is operational, it must have access to the grid. This means that the producer is obliged to submit a request for access to the system and upon approval execute an agreement on access to the system with the system operator to which the grid is connected. The connection to the grid means just a technical connection between two energy objects. Granting

access to the grid means that a producer has capacity in the grid and may deliver electric energy.

The prices for access to the grid are regulated (see Section 2.1.).

In case the system operator rejects to give its approval for connection or access to the grid, the producer is entitled to file an appeal to the AERS.

#### 3.2. Ownership by Foreign Companies

Serbian laws do not envisage any obstacles for a foreign investor to incorporate a company in the Republic of Serbia and to conduct any energy activity, including the production of electric energy. In this respect, no authorizations or special approvals are required.

The same applies to buying shares in a company that is licensed for the production of electric energy. If the foreign investor wants to sell its shares in a domestic company performing energy activity, it may do it freely. The only limitation is that foreign investors are not allowed to directly conduct energy activity, but through domestic companies, except for energy activity of wholesale supply of electric energy, which a foreign investor may perform.

Additionally, the *Law on PPPs and Concessions*, as well as Energy Law, provides the possibility for public-private partnership and concession projects in the energy sector, which encompasses the construction of power plants and performing energy activity production of electric energy. Nevertheless, in practice, energy projects are not principally implemented through public-private partnerships and concessions. However, several communal PPP projects included the production of energy from RES as an auxiliary activity to the main subject of the PPP.

#### 3.3. Stages of the Development Process

The process of developing RES power plant from the very beginning (preparatory actions for fulfilling all mandatory conditions for the construction of the power plant) up to obtaining a license for energy activity, commencing production of electric energy from RES, and acquiring the status of privileged power producer may be divided into several steps.

##### Land

The first step in the process is choosing a suitable location to build the RES power plant. One of the novelties in the *Law on Spatial Planning and Construction* in favor of potential investors is the possibility to construct RES power plants directly on agricultural land, without the need to change the purpose of the land from agricultural to constructional. Furthermore, no

special approval to build the RES power plant on agricultural land is envisaged. Having in mind that in the Republic of Serbia, wind and solar power plants are mainly constructed in the agricultural parts of the country, such a possibility facilitates the first step in the process. However, the investor must obtain either ownership right over the land parcel/s or execute a lease agreement with the owner of the land parcel/s to be eligible to obtain further necessary permits.

### Energy permit

Upon choosing the land for the power plant, and before obtaining the construction permit, an investor is obliged to obtain an energy permit for the future RES power plant. The Ministry is the competent state body authorized to issue energy permits upon the request of an investor. The energy permit is valid for three years and may be extended upon request of the holder but it is not transferrable.

In case an investor intends to construct a power plant with installed power up to 1 megawatt hour, it is relieved from this obligation. The same applies if the power plant is built through a private-public partnership or a concession.

### Participation in auctions for RES incentives

At this point and if the Ministry publishes auctions for the type of power plant that an investor intends to build, an investor through the domestic company – a future producer of electric energy, may participate in the auction for market premium (or feed-in tariffs). To be qualified for the first phase in the auction, a company must obtain, besides an energy permit, location conditions, and confirmation from the transmission/distribution system operator that the RES power plant may be connected to the grid.

Additionally, a company is obliged to provide to the Ministry security for the seriousness of the bid in the form of either (i) a bank guarantee or (ii) a deposit. The amount of security is 30 EUR per requested kilowatts hour, regardless of the form.

If a bid is accepted, a company may acquire the status of temporary privileged power producer (see Section 2.1.). Please note that this status may be acquired only if the power plant is not under construction.

### Environmental Impact Assessment and Construction Permit

Pursuant to Serbian laws, for the construction of power plants with installed power equal to or exceeding 50 megawatts hour conducting the environmental impact assessment is mandatory.

On the other hand, for the construction of power plants with installed power between 1 megawatt hour and 50 megawatts

hour (and for wind power plants between 10 megawatts hour and 50 megawatts hour), the competent state body shall decide on the need to conduct an environmental impact assessment upon request of an investor. If environmental impact assessment is not mandatory, the competent state body shall issue a confirmation in this respect.

When applying for a construction permit, it is necessary to submit to the competent state body an energy permit and environmental impact assessment (if those documents are mandatory to obtain).

### Usage Permit and Energy License

Upon obtaining a construction permit for the RES power plant, the investor may initiate a procedure before the transmission/distribution system operator to connect its power plant to the grid (see Section 3.1.).

A final step in the construction of the power plant is a usage permit. This permit is issued upon an investor's request within the deadline of five working days. Pursuant to the *Law on Spatial Planning and Construction*, if the competent body fails to issue a usage permit (although all conditions from this law are met) within the prescribed deadline, an investor is authorized by the law to use a power plant.

Having in mind that the Energy Law considers the production of electric energy as an energy activity for which the energy license is needed, at this point, an investor is obliged to initiate a procedure for obtaining an energy license (see Section 4.3.).

When all the above steps are taken, an investor is authorized to commence energy activity of the production of electric energy. However, at this point, an investor, pursuant to the Law on RES improves its status from temporary privileged producer to privileged producer and is entitled to receive a market premium (or feed-in tariffs) as an incentive.

### 3.4. Obligatory State/Public Participation

Pursuant to Serbian laws, private investors may freely incorporate companies in the Republic of Serbia, and perform energy activities, without state participation in form of either ownership or management of the company.

However, all energy entities are obliged to comply with the law and are under the scope of competence of AERS. Specifically, producers of electric energy are obliged to submit to the AERS data relevant to the supervision of the electric energy market as well as to keep records on production data in the power plant for a period of five years and to deliver it to the AERS upon request.

### 3.5. Risks to be Considered

The major risk in the RES sector is two direction market premia, meaning that if a privileged producer sells electric energy above the price allocated to it on the auctions, the privileged producer will be obliged to pay the positive difference (difference between market price and allocated market premium on auctions) to the guaranteed supplier, and has no right to keep the extra profit (see Section 2.1.).

Additionally, EPS, as the guaranteed supplier, for a long-time has had a problem with liquidity, as a result of, *inter alia*, low electric energy prices for guaranteed supply, resulting in delays in the payment for electric energy received from producers of the RES. From the perspective of current experience, the RES power plants, especially mini hydropower plants may incite the protest from locals at the construction sites.

## 4. RENEWABLE ENERGY CONSTRUCTION AND PRODUCTION

### 4.1. RTB Status

#### Plan of Detailed Regulation

As explained in Section 3.3., the first step is choosing a location in which the future RES power plant will be constructed. In this regard, it is necessary to obtain from the local municipality a regulation plan of the subject area to determine whether a chosen location is already determined for the power plant. If not, which is usually the case, first a local authority must adopt a new plan of detailed regulation of the subject area to include the power plant.

#### Location Conditions and Water Conditions

The next step is obtaining confirmation from the transmission/distribution system operator on the technical possibility to connect the future power plant to the grid. Simultaneously, an investor obtains location conditions, which encompasses all necessary data for drafting the technical documentation for a construction permit.

If the future power plant will have an impact on the waters, an investor must obtain water conditions that contain technical conditions for the construction of the power plant. In practice, for the RES power plants water conditions are relevant for the hydropower plants and other power plants if the transmission line connecting the power plant and grid needs to be constructed over water.

#### Environmental Impact Assessment and Energy Permit

Please see Section 3.3.

### Consent to the Technical Documentation

Upon drafting the technical documentation and project for the construction permit, which is based on the above documents, such a project needs to go through technical inspection. Only after a positive outcome of the inspection, an investor may apply for a construction permit. If water conditions are issued, an investor must also obtain water consent.

#### Construction Permit and Notice of Commencement of Works

For the construction permit please see Section 3.3. Additionally, to start performing construction works, an investor is obliged to submit a notice of commencement of works to the competent state body. After this step, everything is set for placing the foundation stone of the future power plant.

### 4.2. Construction of Renewable Energy Projects

Please see Sections 3.3. and 4.1.

### 4.3. Granting of Renewable Energy Production Licenses

Pursuant to the Energy Law, the production of electric energy is considered an energy activity for which the energy license is needed.

An energy license may be issued only to the domestic company (save for the license for the wholesale supply of electric energy which may be issued to the foreign entity). AERS is the competent body for the issuance of a license upon the request of the producer of electric energy if all criteria from Energy Law and relevant bylaw are met by the applicant. The energy license for the production of electric energy is valid for 30 years and may be extended upon request of the energy entity.

An energy license is not needed for power plants with an installed power of less than 1 megawatt hour.

### 4.4. Renewable Energy Production by Foreign Investors

Please see Section 3.2.

### 4.5. Operation and Maintenance of Renewable Energy Projects

It is worth noting that the producers of the electric energy from the RES are entitled to sell electric energy on the market without a license. However, only in the case of a supply of final consumers (natural and legal persons who buy electric energy for their consumption), the license for supply is mandatory.

No other specific regulations on the operation and maintenance of renewable energy projects are in force in the Republic



lic of Serbia.

#### 4.6. Decommissioning Process

Pursuant to the Law on RES, the privileged producer of electric energy must dismantle and remove the power plant after its lifespan and conduct sanitation of the land where the power plant used to be.

As a security that this obligation will be fulfilled, the privileged producers are obliged to deposit, on a monthly level, a certain amount in the special bank account of the Ministry. If a privileged producer fails to remove the power plant and conduct sanitation, the costs of those actions shall be covered by the deposited funds.

#### 4.7. Risks to be Considered

Please see Section 3.5.

### 5. BALANCING OF RENEWABLE ENERGY PROJECTS, STORAGE, SALES

#### 5.1. Balancing of Renewable Energy Projects

According to the Law on RES, the guaranteed supplier is obliged to take the balance responsibility from the RES producers.

This applies to the ones who are in the market premium system or are outside the incentive system, until the establishment of an organized liquid within-day electricity market. Also, the guaranteed supplier assumes the balance responsibility and bears the balancing costs for the RES producers who are in the system of feed-in tariffs, and until the expiration of the incentive period.

Proposed amendments of the Law on RES

The amendments of the Law on RES prescribe that the guaranteed supplier assumes balancing responsibility for users of the market premium, but such users are obliged to pay to the guaranteed supplier (i) a certain percentage from the allocated market premium per each produced megawatt hour, and (ii) positive difference between sold and produced electric energy, calculated based on the price on the day ahead market.

The guaranteed supplier shall be still the balancing responsible party for the feed-in users, but now other RES producers are excluded i.e., they will be responsible for balancing instead of the guaranteed supplier.

#### 5.2. Storage

Electric energy storage is introduced in the energy system of the Republic of Serbia by the latest amendments to the Energy Law. For this energy activity energy license is not required.

Pursuant to the Energy Law, an energy entity performing the activity of electric energy storage may, *inter alia*, provide storage services to the others market participants and buy and sell electric energy.

Additionally, the Law on RES prescribes that the prosumer has the right to store electric energy independently for their own needs. Although stipulated by the Law on RES, so far there are no such energy entities in the Republic of Serbia.

#### 5.3. Sales

Producers from RES may freely sell electric energy on the market and may execute bilateral power purchase agreements. Those agreements, apart from the general clauses from the *Law on Torts and Contracts*, must contain, *inter alia*, supply dynamics, method of calculation and terms of payment for the purchased electric energy, the method of informing the customer about changes in prices, and other conditions of electric energy supply, method of resolving disputes. Market participants may use the models of power purchase agreements provided that such agreements contain all specific mandatory clauses. For more information, please see Section 4.5.

### 6. ROOFTOP, OFFSHORE, FLOATING, AND AGRICULTURAL RENEWABLE ENERGY PROJECTS

#### 6.1. Offshore Wind and Floating Photovoltaic Projects

There are no such projects, as the Republic of Serbia is a landlocked country. Having this in mind, our legislation does not recognize these types of projects, only onshore wind and solar projects.

#### 6.2. Rooftop Photovoltaic Projects

Solar energy projects are the project with the biggest increment in the last few months, especially bearing in mind that Law on RES prescribes that the households and the industry are enabled to become prosumers. Households and industry are, thus, able to install solar power plants on their buildings and use the produced energy for their consumption, while storing the surplus or delivering it to the system, or leasing their rooftop capacities to the RES producers of electric energy. In particular, the investors have been expressing interest in leasing the rooftop of shopping malls to build solar power plants.

#### 6.3. Agrivoltaic Projects

The concept of agrivoltaics, combining the agricultural use of land with the production of electric energy by photovoltaics is starting to develop in the countries from the SEE region, with various projects at different stages of implementation. The Law on RES does not explicitly prescribe differences between



the types of solar projects, so there are no special rules for agrovoltaic projects compared to solar projects.

## 7. TRADING OF GREEN CERTIFICATES/CERTIFICATES OF ORIGIN

### 7.1. Certification

According to the Law on RES, a producer of electric energy from the RES who is not in the monetary incentive system is entitled to certificates of origin.

The certificate of origin is issued by the EMS in the following manner – one certificate of origin for every megawatt hour of electric energy produced.

The certificate of origin shall be valid for one year from the last day of the period of production for which it is issued and shall cease to be valid after its utilization, withdrawal, or expiry of a period of one year.

When issued in other countries, the certificates of origin shall also be valid in the Republic of Serbia under the conditions of reciprocity in accordance with ratified international treaties.

The transmission system operator is obliged to keep a register of certificates of origin (and those issued abroad) in electronic form and publish data from the register on its website.

### 7.2. Trading

Currently, the trading of certificates of origin is regulated with a bylaw adopted in 2017 based on the Energy Law and before the Law on RES and will be in force until new regulation is adopted. Pursuant to the applicable rules, the certificate of origin may be transferred only between energy entities registered with the transmission system operator as well as between the registered domestic energy entity with the foreign energy entity registered in the relevant register.



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