

BULGARIA – AMENDMENTS TO THE ENERGY ACT IN RELATION TO REMIT TO BE REVIEWED BY THE COMPETITION PROTECTION COMMISSION

On 07 February 2018, the Bulgarian Competition Protection Commission ("**CPC**") initiated Competition Advocacy proceedings in relation to the recently proposed amendments to the Bulgarian Energy Act ("**EA**"), aiming to increase controlling and enforcement powers of the Bulgarian Energy and Water Regulatory Commission ("**EWRC**") in respect of possible energy market manipulations under REMIT (Regulation 1227/2011 on wholesale energy market integrity and transparency).

This is the second major proceeding opened by the CPC concerning the Bulgarian Energy Sector in the last three weeks, after the CPC announced on 22.01.2018 a Sector Inquiry into the Bulgarian electricity market, addressed in a previous [Client Alert](#) by Wolf Theiss.

THE AMENDMENTS TO THE ENERGY ACT

The Bill of Amendment and Supplementation of the EA, currently opened public discussion until 23 February 2018, extending the powers of EWRC to exercise control and investigate potential market manipulations on the liberalized electricity market under the REMIT.

In particular, in case of suspected market manipulation, the EWRC will have the power to request documents from market participants and information from any relevant person, to require access to telephone and data traffic records, to forbid any practice contrary to REMIT, to request a court to freeze or sequester assets or to impose a temporary prohibition of professional activities.

The Energy Regulator will be allowed to impose financial sanctions amounting up to BGN 150 000 (approx. EUR 293,374) for breaches of REMIT and EA.

It is worth mentioning that the EU Member States were required to implement such measures into domestic legislation by June 2013. Bulgaria was in delay, partly due to the lack of operating power exchange and actual liberalized electricity market.

REMIT

The REMIT establishes a multi-tier regulatory framework for electricity markets where the national energy regulatory authorities (EWRC in Bulgaria) could have joint powers with national competition authorities (CPC in Bulgaria) and financial markets authorities (the Financial Supervision Commission). As a result, a conduct of a market participant could

constitute a breach both under the REMIT and national or EU competition law and be subject to investigation and sanctions both by the EWRC and the CPC.

THE CPC AND REMIT

Considering the recent intensified activity of the CPC with particular focus on the energy market, one would expect the CPC to propose additional amendments to the EA to provide to CPC to monitor and investigate conduct of players on the electricity market along with the Energy Regulator in addition to its current authority. This option has been established by REMIT.

The proposed amendments to the EA and the intervention of the CPC to that end could be reviewed as a shift in the regulatory approach towards the energy market – from *ex-post* enforcement (i.e. the breach is investigated and sanctioned upon its occurrence) to increasing participation in *ex-ante* regulation (regulatory measures are considered in advance for compliance with competition law). Currently, *ex-ante* regulation is uniquely conducted, by the EWRC. *Ex-post* enforcement is carried out both by the EWRC and the CPC, but the latter has larger investigative and sanctioning powers, thus has been the most effective venue for *ex-post* enforcement, both in Bulgaria and on EU level.

By way of comparison it is worth noting that in other EU member states (Italy, Spain, Estonia) competition authorities have already taken an active role in the enforcement of measures against markets manipulations in the respective energy markets after the entry into force of REMIT.

It would be interesting to see whether the Bulgarian Parliament would consider the EWRC sufficient to monitor the growing electricity market and to enforce REMIT.

THE COMPETITION ADVOCACY PROCEEDINGS

The Competition Advocacy proceedings are designed to promote market openness and foster competition by addressing market distortion and anti-competitive developments resulting from legislative acts (primary or secondary legislation). In such proceedings the CPC conducts assessment of the conformity to Bulgarian and EU competition law of provisions of legislative acts or secondary legislation and may propose to the competent state authorities respective modifications or amendments to the draft legislative text. The CPC opinions and recommendations are not binding, however often they are adhered to. A number of Competition Advocacy proceedings have been conducted in the Bulgarian energy sector, concerning mainly regulation of renewables (in 2016 and 2015), the liberalized market (2014) and hydro power plants (2015).

The CPC has invited all stakeholders and interested parties to submit their comments by 15 February 2018. This is a good occasion for stakeholders, such as electricity traders, large consumers and electricity producers on the Bulgarian electricity liberalized market, to take part and raise their concerns on the competition and proper functioning of the electricity market.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:



Anna Rizova
Partner
anna.rizova@wolftheiss.com
T: +359 2 8613 700



Radoslav Mikov
Partner
radoslav.mikov@wolftheiss.com
T: +359 2 8619 700



Oleg Temnikov
Senior Associate
oleg.temnikov@wolftheiss.com
T: +359 2 8613 700

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

Wolf Theiss
Atanas Dukov str. 29
BG – 1407 Sofia

www.wolftheiss.com