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BULGARIA - FURTHER LIBERALISATION OF THE ELECTRICITY MARKET AT PRODUCTION LEVEL

NEW DRAFT BILL AMENDING THE ENERGY ACT INTRODUCES A NUMBER OF MEASURES TO FURTHER INTEGRATE RES GENERATION INTO THE LIBERALISED MARKET AND ABOLISH ENERGY EXPORT FEES

On 22 March 2019, a new draft Bill for the amendment and supplementation of the Energy Act ("Bill") was introduced by MPs from the governing political party. The Bill is a continuation of the efforts of the state authorities to extend the number of stakeholders on the liberalised market at generation level, thereby increasing the liquidity of the Independent Bulgarian Energy Exchange ("IBEX"), and to abandon the former model of supporting RES producers through feed-in tariffs.

The Bill has already passed its first hearing before the Energy committee and the plenary session of the Bulgarian Parliament. On 24 April 2019 the second hearing before the Energy committee shall take place. Following the second discussion and voting on the text, the Bill is expected to be adopted by the Parliament and to be promulgated in the State Gazette by the President of the Republic to become effective. The Bill is expected to be adopted in time for the newly affected RES producers to enter the liberalised market before the start of the new pricing period on 1 July 2019.

RES PRODUCERS WITH INSTALLED CAPACITY ABOVE 1 MW TO SELL ELECTRICITY AT IBEX

In 2018, a previous bill for the amendment and supplementation of the Energy Act abolished the RES support scheme adopted in 2011 and introduced an entirely new payment scheme applicable to RES producers with installed capacity of 4 MW and above. Under the new support scheme, RES producers had to sell the electricity produced by them at IBEX at free market prices and were compensated by way of premiums for the difference between the previously applied long term mandatory feed-in tariff and the actual market price at IBEX. Under the new scheme the Fund Security of the Energy System ("FSES") substituted the old off-takers - the incumbent National Electricity Company and the End

Suppliers - and was responsible for paying compensation to the RES producers under Contracts for Compensation with Premium (CfCPs).

With the new Bill, smaller RES producers with installed capacity of 1 MW and above are now excluded from the old support scheme. Instead, they shall conclude CfCPs with FSES and receive compensation for the produced electricity sold at IBEX. The assumed rationale behind this change is to increase the market liquidity of IBEX and to further reduce the payments under feed-in tariffs due by End suppliers.

The proposed amendments are aimed to be in effect from July 2019; giving RES producers only 2 months to conclude agreements with FSES, with IBEX and with balancing group coordinators, including ensuring securities for these agreements and potentially renegotiating their credit facilities as well as to prepare for the new market conditions.

The position of the MPs is that as the impacted RES producers are smaller the negotiations should be easier and the credit institutions and FSES already have experience from last year's migration of the larger RES producers.

NEW HIGHLY-EFFICIENT COMBINED HEAT AND ELECTRICITY GENERATION TO BE BUILT ONLY AFTER A PUBLIC TENDER

In an attempt to harmonise the Bulgarian legislation with the Guidelines on state aid for environmental protection and energy 2014-2020 of the EC, the Bill proposes to only allow the new build of highly-efficient cogeneration of heat and electricity projects based on a public tender procedure and only if an existing installation is decommissioned or the allowed state aid budget may cover the cost of purchasing the expected highly-efficient combined energy production. The amendments should not affect operational highly efficient cogeneration installations including their modernization. The overall aim is to limit state aid for cogenerations and to regulate the market more strictly.

ELECTRICITY EXPORT FEES TO BE ABOLISHED

Another proposed change under the Bill is the limitation of those stakeholders paying access and transmission prices ("Export fee") to the Bulgarian TSO "ESO" EAD when exporting electricity. The long-disputed Export fee was a hidden funding in favour of ESO due by all stakeholders exporting electricity, including electricity traders, but without a clear legal provision establishing the obligation to pay and limiting the possibility to export electricity produced in Bulgaria if no Export fee is paid to ESO. Pursuant to the Bill, Art. 104 of the Energy Act will be supplemented to specify which stakeholders owe payment of Export fees to ESO and to specifically exclude electricity traders. The amendment is long awaited by the business and in particular by electricity traders and is expected to have positive effects along the entire electricity value chain. If this amendment is passed, Bulgarian legislation will be aligned with the Judgment in Case C-305/17 of the ECJ which provides that "Member States may not impose a charge on the export of electricity generated in their own territory."

AMENDMENTS SEEKING TO PROMOTE RES WITHOUT STATE FINANCIAL SUPPORT

The Bill proposes several amendments and supplementations which, according to the MPs, will promote RES generation without any form of state financial support. Among others, those amendments concern the following:

- Smaller RES producers (under 30 kW of installed capacity) shall report to the SESF only once per year instead of each month;
- RES producers not connected to the electricity transmission or distribution network, but using the generated electricity for own consumption, should not pay the "obligations towards society price";
- New rules provide the opportunity for smart metering devices to be installed to replace the existing commercial metering devices for clients with a capacity of 10 kW and above.

The idea is to stimulate manufacturers and plant owners to invest in their own PV plants, for example, without being charged additionally through the "obligations to society price". The reduction of the administrative burden will also ease RES generation on a smaller scale.

WOLF THEISS COMMENT

The proposed amendments and supplementations are expected and long-awaited measures towards the integration of RES producers into the liberalized market while increasing competition at electricity production level. This is expected to increase market liquidity and transparency while improving the opening of the liberalized market and further ensuring its quicker integration into the SEE regional electricity markets. The abolishment of Export fees for electricity produced in Bulgaria is a positive step in the right direction; although, strangely, keeping the import fee remained unaddressed. Although the proposed amendments seem clear and straightforward, the tight deadlines for ensuring compliance with the new provisions, combined with the little to no assessment of the effects of the amendments, may have questionable impacts on many market stakeholders.

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