

LATEST AMENDMENTS TO THE BULGARIAN ENERGY ACT- ATTEMPT TOWARDS ELECTRICITY MARKET STABILITY AND LIBERALISATION

On 07.03.2015 a Bill of Amendment and Supplementation of the Bulgarian Energy Act has been published with an immediate effect. The Bill introduces amendments to the regulation of the entire energy value chain which affect electricity, gas and heat activities, and the functions of energy regulators.

Pursuant to public declaration of Members of Parliament, the primary task of the amendment was the recovery and stability of NEK EAD– the state incumbent electricity public provider. The Parliament adopted a package of legislative measures aiming to relieve the burden of NEK's mandatory purchase of electricity under long-term PPAs and preferential prices (mainly renewable energy and cogeneration).

New name, election procedure and structure for the energy Regulator

The Bill renames the energy regulator from State Energy and Water Regulator Commission into **Energy and Water Regulatory Commission** ('EWRC') in an effort to reaffirm its independence. The number of commissioners increased from 7 to 9 and will be elected by the Parliament following a public procedure, and not by the Government as previously done. The EWRC new structure provides for two separate "panels". One panel will regulate energy matters, while another will regulate water supply matters. The Parliament shall elect the new EWRC members within one month of the publication of the Bill.

New generic jurisdiction for appeal of EWRC decisions

The Bill introduces a major amendment to the appeal procedure of EWRC decisions before the administrative courts. With the new Bill, the appeals against individual and general administrative acts of the EWRC will be heard by the Administrative Court- Sofia City (ACSC) and not before the Supreme Administrative Court (SAC). The ACSC panels, which are composed of a single judge, will state as a first instance, while its decisions will be subject to cassation appeals before the SAC. Appeals against secondary legislation (such as the Ordinances of the competence of the EWRC.) will continue to be heard by the SAC both as first and second instance.

This amendment had an immediate effect, as the SAC panels before which cases of appeal against SEWRC decisions were pending started terminating the proceedings and referring the cases to the ACSC on the ground of the amended Energy Act. As a result, it is expected that the ACSC will be flooded by hundreds of cases against SEWRC decisions in the following months. Some of those cases were at their very final stage and will probably be delayed with at least several months.

Producers of heat and electricity for own consumption exempted from licensing regime

The Bill exempts the generators of electricity and heat for the purposes of their own consumption (e.g. industrial sites, small farms) from the obligation to acquire a generation licence. The supplementation extends further the exception already applicable to generators with installed capacity up to 5 MW.

Enhanced financial control over energy companies

With exception of small generators (up to 1 MW installed capacity) all energy companies operating under regulated prices, including preferential prices (Feed-in tariffs, irrespective of whether subject to licensing regime or not, will be under the checks and scrutiny performed by the Public Financial Inspection Agency (PFIA). The PFIA will control the reporting obligation, as well as the financial data of energy companies, and will further report to the EWRC and the Minister of Energy for its findings.

The PFIA and its inspectors will have the right to (i) free access to the premises of the energy companies and energy facilities; (ii) check all the available documentation in relation to reporting and financial data concerning regulated prices; and (iii) request employees and management of the energy companies to provide relevant documentation / information. The energy companies, along their respective management and employees, may not refuse to provide the requested documentation/ and information, even when the information in question is considered confidential. . In case of non-compliance with those provisions, fines are envisaged in the range up to BGN 50.000 (EUR 25,564.72). In case of provision of incorrect information, a fine may amount up to BGN 100,000 (EUR 51,129.78).

The announced purpose of this measure is mainly to provide the Ministry of energy and the energy Regulator with clear and reliable information on the financial flows within the sector and to ensure the application of public procurement rules.

Renegotiation of long-term PPA of coal power plants

The Bill repeals para. 16 of the Provisional and Final Provisions of the Energy Act, which provided that the long-term contracts for purchase of availability and electricity at fixed parameters (PPAs with AES Galabovo and Contour Global) and the associated guarantees, concluded by the National Electric Company EAD (NEK) prior to the adoption of the Act 2006), shall stay into force for the concluded duration. This measure allows NEK to renegotiate its long-term PPAs, mainly with the three thermal power plants in the East Maritza Basin. Similar processes in other CEE countries previously led to long-lasting disputes, including investment arbitration between the operators of such power plants and the respective state of domicile.

Public procurement no longer applicable to oil and gas exploration and prospecting activities and nuclear damage insurance

The Parliament adopted the Bill to transpose into Bulgarian law some of the provisions of Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. More particularly, the activities in relation to oil and gas exploration and the insurance contracts under the Vienna Convention on Civil Liability for Nuclear Damage have been excluded from the scope of application of the Public Procurement Act.

This measure aims to align the Bulgarian legislation with EU norms and further facilitate research and prospecting activities in Bulgaria. Those developments were particularly expected in view of the forthcoming exploration drilling in the Khan Asparouch exploration Block 1-21 and the prospective tenders for Silistar 1-14 and Teres 1-22 exploration blocks.

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