

## NEW INVESTMENT CLAIM AGAINST THE REPUBLIC OF BULGARIA IN THE ENERGY SECTOR

On 26.05.2015 the International Centre for Settlement of Investment Disputes ('ICSID') in Washington D.C., USA registered a new request for the institution of arbitration proceedings against the Republic of Bulgaria. The claimant is the Czech company ENERGO-PRO a.s..

ENERGO-PRO a.s. owns directly or indirectly several entities in Bulgaria, including an electricity trading company (ENERGO-PRO TRADING JSC), an electricity producer operating 16 Hydro Power plants (ENERGO-PRO BULGARIA), an end-supplier of electricity at regulated prices (ENERGO-PRO SALES AD) and an electricity distribution company (ENERGO-PRO GRIDS AD), operating in north-eastern Bulgaria.

At the moment no official information is available concerning the legal basis of the claim or its details. Currently, the sources of the information do not reveal whether, the claim is based on the Bulgaria-Czech Republic Bilateral Investment Treaty ('BIT') and/or on the Energy Charter Treaty ('ECT') and whether it concerns electricity distribution activities in Bulgaria only.

In 2013, ENERGO-PRO a.s. addressed the Republic of Bulgaria with a proposal for voluntary settlement of an investment dispute. This was in connection with the proposed regulation of electricity prices which resulted in reduction of the recognised costs for the operation of the electricity distribution company and the expected compensation to recover the mandatory costs for the purchase of renewable energy. A similar claim was initiated in 2013 against Bulgaria by EVN AG – the Austrian energy company, operating also an electricity distribution grid in Bulgaria and electricity and heat generation assets.

So far several foreign energy companies with investments in the Bulgarian energy sector have considered the possibility to initiate investment arbitration against the Republic of Bulgaria. On one hand, the investors in electricity distribution grid (EVN, CEZ and Energo-Pro) have seen their investments affected by decisions of the Bulgarian Energy regulator – the Energy and Water Regulatory Commission. On the other hand in the last two years these companies have faced an increasing pressure from the competition authority imposing significant fines reaching half a million euro per breach. At the same time as operators of renewable energy assets the three companies had their investments considerably affected by regulatory and legislative changes, aiming to reduce the burden of preferential feed-in tariffs on to the regulated end consumer prices.

Currently, several European member states are facing claims due to reduction of local incentive schemes granted by legislation to producers of electricity from renewable energy sources. The Kingdom of Spain is respondent in more than 10 investment arbitrations under BITs and the ECT by solar and wind producers. The Czech Republic is facing at least seven cases from producers of solar energy. Similar cases have been initiated or threaten also against the Republic of Italy and the Republic of Romania.

These examples, as well as the last case brought by Energo-Pro against the Republic of Bulgaria evidence the potential benefits the investment arbitration provides for solving disputes in the energy sector between investors and sovereign states. Still, in order to be available and effective, the possibility of recourse to investment arbitration shall be taken into consideration from the very earliest stage of the investment and during the entire projects development and operation.

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