

Producing electricity from Renewable Energy Sources in Bulgaria



On 17 December 2008 the European Parliament approved with minor amendments the proposal of the European Commission for the adoption of a directive, which would bring major changes in the energy sector - the most crucial aspect of which would be the replacement of the current indicative targets for consumption of electricity produced from renewable energy sources with compulsory targets, which would have to be met by 2020.

Thus, Bulgaria would have an obligation to produce 16 % of its national annual electricity consumption from renewable sources as of 2020. In comparison, as of 2005 this share was 9,4 %. In order to achieve the compulsory target as set by the

future directive there would be options for state aid, exemption from tax and excise duty, preferential purchase prices for the electricity produced from renewable sources, etc.

Now that the goals seem to be clear but what is the current situation in Bulgaria.

Legal framework

The current Bulgarian legislation (primarily the Energy Act (EA) and the Renewable and Alternative Energy Sources and Bio-fuels Act (RAESBA) aims at incentivising the production of energy, produced from renewable energy sources.

At the end of 2008, a number of amendments were introduced to RAESBA, which finally provided the so much needed clear mechanism for defining the preferential purchase prices of “clean energy” and the terms of the statutory buyout of the electricity produced from renewable sources.

Preferential purchase prices

The production of energy from renewable sources is incentivised primarily by means of preferential buyout prices. These prices are set and approved by the State Energy

and Water Regulatory Commission annually (in March) based on a formula specified in the law. According to this formula the fixed price shall represent the total of two components:

a) a main component equal to 80% of the average sale price of the end supplier for the previous calendar year; and

b) an add-on defined by the SEWRC, which shall not be less than 95% of the add-on for the previous calendar year – this add-on differs for each particular type of energy source and depends on a number of factors such as production cost, investment return, profit, losses etc.

The preferential purchase prices for electricity, produced from an indirect use of biomass have been determined by taking into account investment and exploitation costs, lifespan of the assets, amortization, productivity, etc.

Under the existing legislation, the grid operator (the National Electric Company) is obliged to conclude contracts with the producers of clean energy for purchasing the energy produced by them at the prices defined by the SEWRC. The contracts shall be for a term of 25 years, for electricity

produced from geothermal and solar power and 15 years for electricity produced from any other type of renewable energy source, including electricity, produced from water energy plants up to 10 MW. The initial effective date of the abovementioned agreements for new entrants to the electricity market is the coming into operation of the power plant, but not later than 31 December 2015, respectively – 31 March 2009 for all other producers who already operate.

Please note that the annual preferential prices defined by the SEWRC are applied to all operators – existing and new. There is no legal possibility to set an individual price for a period longer than one year as in some other European countries.

The preferential purchase prices for 2009

On 30 March 2009 by Decision № II-04/30.03.2009, SEWRC determined the preferential purchase price of electricity, produced from renewable energy sources, such as water, wind, solar power, as well as from direct combustion of biomass. The prices are as follows:

a) For electricity produced from **wind** energy:

- for up to 2,250 fully effective working hours annually – BGN 189.00/ MWh;
- for above 2,250 fully effective working hours annually – BGN 172.00/ MWh;
- for a power plant with capacity of up to 800 kW – BGN 145.00/ MWh.

b) For electricity produced from **solar** energy:

- for up to 5 kWp – BGN 823.00/ MWh;
- for above 5 kWp – BGN 755.00/ MWh;

c) For power plants producing energy from:

- wood waste with capacity of up to 5 MW – BGN 217.00/ MWh;
- agricultural plant waste with capacity of up to 5 MW – BGN 166.00/ MWh;
- agricultural energy plants with capacity of up to 5 MW – BGN 187.00/ MWh.

d) For **water** power plants with installed capacity of up to 10 MW – BGN 105.00/ MWh.

e) For electricity produced by power plants by an indirect use of **biomass** from plant and animal substances:

- with installed capacity of up to 150 kW – BGN 197.90/ MWh;
- with installed capacity from 150 kW to 500 kW – BGN 181.60/ MWh;

- with installed capacity from 500 kW to 5 MW – BGN 165.30/ MWh.



Other incentives

In addition to the preferential purchase prices so far discussed the Bulgarian legislation provides certain additional incentives for investing in renewable energy production, namely:

- the developers in renewable energy projects are entitled to buy state or municipal land without the otherwise statutory tender procedure;
- subject to certain conditions certified investment projects operating for at least 5 years could benefit from shorter terms for administrative services, financial aid from the statutory budget for development of the technical infrastructure needed for the respective project (roads, water-supply systems, sewerage equipment, etc.).

What we can do for you

- drafting and execution of the documentation necessary for licensing of the power plants;
- accomplishing the procedure for licensing before the SEWRC;
- preparation and application for bank loans; project finance legal consultancy;
- advice on the legal status of collaterals;
- EU structured funds;
- other legal services related to the renewables sector.



Our experience

Below is a list of some of the landmark projects in the energy sector that we have been involved in:

Renewable Energy

Qohelet Solar – full scope legal advice with regard to the development of a number of photovoltaic power plants in Bulgaria;

Element Power (part of Hudson Clean Energy Partners) – full scope legal advice with regard to the development of photovoltaic power plant in Bulgaria;

Abasol Group – legal advice with regards to the potential development of a photovoltaic power plant in Bulgaria.

Electricity

National Electricity Company (NEC) – two legal opinions to the benefit of lenders, addressing the project finance transactional documentation, on the occasion of the various stages of the financial closing of the Maritza East III rehabilitation project (1999 and 2001)

Maritza East Mines – legal opinion, to the benefit of lenders, relevant to the financial closing of the Maritza East III rehabilitation project (2001) – refer above

Entergy, Inc. – assisting this client in the setting up of two joint venture companies with NEC, to own and operate the Maritza East III power plant after the rehabilitation (1999-2001) – refer above

AES, Inc. – assistance with the legal and regulatory aspects of developing the business plan of the Maritza East I project (2000-2001)

Tecnatom S.A. – legal advisory services in public procurement procedures organised by the Kozlodui Nuclear Power Plant; bid preparation; subsidiary incorporation; regulatory advice (2001-2003)

ENERGO-PRO – legal advisory services on business and regulatory aspects in power generation from water (2005-2006)

CEZ Bulgaria – second opinion on litigation concerning the privatization of the Western distribution company in Bulgaria; regulatory advice on pricing (2004)

Maritza East IV project – short-listed as part of a consortium bidding for advising Maritza East Mines on the development of a new thermal power plant (end of 2008); final offer not submitted on account of budget considerations

Undisclosed PV plant developer – selected legal advisors (2009)

Gasification

AMGA – buy-side legal advisors during the acquisition of its Bulgarian subsidiary, a licensed gas distribution company. Regulatory advice. Litigation. Other ongoing legal services (2001-2008)

Gruppo Societa Gas Rimini – company incorporation, regulatory advice in relation to new gas distribution tender regulations and licensing rules (2007-2008)

Oil and gas (service stations and retail)

Air BP – legal services related to the structuring of a contract with a major airport in Bulgaria – non-exclusive legal advisors (1998-2000)

Opet Aygaz Bulgaria – full scope ongoing legal advisors to one of the biggest LPG and petrol wholesale and retail company (2003-2007)

Shell – real estate related legal advisory services for the acquisition of a pool of petrol and gas stations (1997-1998)

PPP and other public projects

Montupet SA – legal advice and support in the negotiations between Montupet SA and the Bulgarian Ministry of Economy with regards to the funding by the State of the infrastructure required for the development of Montupet's project (a car parts factory). The project was awarded class A investment (the highest) by the Bulgarian Investment agency (2007-2008)

Trakia Highway – advising the Bulgarian State on the legal risks involved in one of the major infrastructure projects in Bulgaria – the concession of the main motorway in the country (2006)

In case you have questions or inquiries, do not hesitate to contact us.



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prehensive analysis of each item described. Before taking (or not taking) any action readers should seek professional advice specific to their situation. No liability is accepted for acts or omissions taken in reliance upon the contents of this alert.

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