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# RENEWABLE ENERGY IN UKRAINE



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### Bill on green auctions adopted at first reading

On 20 December 2018, the Verkhovna Rada of Ukraine adopted at first reading revised bill No. 8449-d *On Amendments to Certain Laws of Ukraine on Ensuring Competitive Conditions for Electricity Production from Renewable Energy Sources*. The bill (hereinafter also referred to as the “Law”) amends the Laws of Ukraine *On Renewable Energy Sources, On the Electricity Market, On the Regulation of Urban Development Activities*.

The need to pass the bill resulted from the far too high feed-in tariff for green electricity. As a result of the significant burden of feed-in tariffs on the wholesale price, the share of payments from the electricity wholesale market to electricity producers receiving the feed-in tariff was 7.5% in 2017 and 8.2% at the end of 2018. A high feed-in tariff in Ukraine, in particular feed-in tariff for solar power plants, leads to an excessive price burden borne by Ukrainian electricity consumers, which will continue to grow as new power plants are commissioned.

Moreover, the solar power price has dropped significantly in recent years. According to the IRENA report *Renewable Power Generation Costs in 2017*, one of the main reasons for this decline is the decrease in solar PV module prices by 81% since the end of 2009. The weighted average cost of solar power fell by 73% in 2010-2017, to USD 0.1 per kilowatt-hour (kWh).

That is, the solar power generation is becoming increasingly competitive compared to electricity generation from conventional sources, even without a state support. The European experience also shows a tendency towards a decrease in the promotion of solar power generation.

Therefore, a state support to electricity producers from renewable energy sources on a competitive basis, namely through the introduction of auctions and tenders, provides optimal support for electricity generation from renewable energy sources and helps to ensure that investors do not receive excessive compensation. For example, consumers should benefit from the reduction in green electricity prices as a result of the introduction of auctions.

The bill introduces the following significant changes:

### **1. Terms of participation in auctions**

With effect from 1 January 2020, the promotion of companies constructing renewable energy facilities with a certain capacity will only be possible subject to their participation in auctions for the allocation of quotas and their winning the auction. The capacity requirements for renewable energy facilities to participate in auctions are as follows:

- in 2020 – wind energy facilities with a capacity of more than 20 MW and facilities generating electricity from other renewable sources with a capacity exceeding 10 MW;
- in 2021 and 2022 – wind energy facilities with a capacity of more than 20 MW and facilities generating electricity from other renewable sources with a capacity exceeding 5 MW;
- from 2023 – all wind energy facilities with a capacity of more than 3 MW (except those with one wind turbine) and facilities generating electricity from other renewable sources with a capacity exceeding 1 MW.

The advantage of the new support system over the existing feed-in tariff system lies in the following aspects:

- a longer support period (20 years after the renewable energy facility commissioning);
- guaranteed off-take of the electricity generated by the electricity producers at a price that depends on the auction results (auction price).

Auctions shall be held twice a year, but no later than 1 April and 1 October. The auctions will be conducted until 31 December 2029.

### **2. Feed-in tariff duration**

The existing feed-in tariff scheme is guaranteed until 2030 and applied to:

- producers, already receiving the feed-in tariff, and economic entities that will construct and commission renewable energy facilities before 1 January 2020 (regardless of the installed capacity and renewable energy source);
- economic entities which will sign a preliminary power purchase agreement under a feed-in tariff with the Energorynok state-owned company before 31 December 2019 and will construct and commission the respective facilities within 2 years (for solar power plants) or 3 years (for facilities generating electricity from other renewable energy sources);
- economic entities that will construct renewable energy facilities after 1 January 2020, where the installed capacity is less than the capacity for which auctions are mandatory;
- electricity consumers legally authorized to install energy-generating installations with a capacity of up to 500 KW on buildings and structures roofs or facades and to sell surplus electricity at a feed-in tariff rate once they use the energy for their own needs.

### 3. Reduction of the feed-in tariff

With regard to the feed-in tariff rates for various renewable energy sources, the bill provides for the following amendments:

- in 2020, the feed-in tariff for solar power plants will be reduced by 25%, with the feed-in tariff being reduced by another 2.5% per year over the next three years (the current law, however, provides for a 10% feed-in tariff reduction in 2020);
- in 2020, the feed-in tariff for wind energy facilities will be reduced by 10%, followed by a further reduction of 1.5% per year over the next three years (the current law, however, provides for a 10% feed-in tariff reduction in 2020).

The proposed feed-in tariff reduction is based on calculations made by the National Commission for State Regulation of Energy and Public Utilities and IRENA data on capital expenditure (CapEx) reduction with regard to the construction of solar power plants and wind energy facilities.

### 4. Start of auctions

Auctions will be conducted to identify business entities eligible for support. Auctions will be held through an electronic bidding system in accordance with the procedure for conducting auctions, to be approved by the Cabinet of Ministers of Ukraine within three months after the entry into force of the Law.

The first auctions will be held in 2020 for the allocation of the 2020 quota. The Cabinet of Ministers of Ukraine was commissioned to conduct a pilot auction in 2019 (within six months from the date the Law enters into force).

The yearly quota for the next 5 years shall have been adopted by the Cabinet of Ministers of Ukraine by 1 December 2019.

### 5. Quota allocated through auctions

A yearly quota (a capacity of renewable energy facilities for the respective year within the limits of which the economic entities will be provided with state support) shall be allocated through auctions. Every year, on 1 December at the latest, the Cabinet of Ministers of Ukraine shall establish yearly quotas for the next 5 years, which should provide market players predictability in planning and implementing renewable energy projects.

A yearly quota is established on the basis of renewable energy development indicators set by Ukraine's international commitments and Ukraine's Energy Strategy, taking into account the results of the assessment by the transmission system operator of the adequacy of generation capacity and the transmission grid development plan. A yearly quota shall be split into 3 categories: solar power plants, wind energy facilities and facilities generating electricity from other renewable energy sources.

A guaranteed buyer is responsible for organizing and conducting the auctions. Currently, a separate unit of the Energorynok State Enterprise – Guaranteed Buyer branch – acts in the capacity of the guaranteed buyer. The main task of the branch is

to create conditions for the establishment of a state-owned company to act as a guaranteed buyer in the new electricity market.

### **6. Competition protection**

To protect competition in auctions:

- an auction participant, separately or together with other participants with whom they have the same ultimate beneficial owner, may be awarded with no more than 25% of the yearly quota;
- the procedure of conducting auctions should provide for a mechanism of protecting competition in the event that it is established during the auction that competition is insufficient.

### **7. Bank guarantee to participate in the auction**

To ensure a fair competition among bidders, the bill prescribes that bidders have to submit an irrevocable bank guarantee to participate in the auction and an additional bank guarantee on top in the case of winning the action as a performance bond to secure the obligations under the contract concluded with the guaranteed buyer.

The amount of the bank guarantee to participate in the auction shall be EUR 5,000 per 1 MW of capacity, in the distribution of which the business entity intends to participate. An additional bank guarantee shall be EUR 10,000 per 1 MW of capacity, in relation to which the auction winner guarantees the performance of their obligations to the guaranteed buyer.

### **8. The auction winner**

The auction winner is a bidder who has bid the lowest price for electricity at which this bidder is ready to generate the electricity from renewable energy sources and to feed it into the electricity grid (auction price).

At the same time, the bill provides for the auction price ceiling at the level of the feed-in tariff set by law for renewable energy facilities of the relevant category.

The auction price shall be converted into EUR as of the date of the auction at the official exchange rate of the National Bank of Ukraine on the given date.

### **9. Timeframes for the winner to commission a renewable energy facility**

The auction winner undertakes to construct and commission the renewable energy facility within 2 years (for solar power plants) or 3 years (for facilities generating electricity from other renewable energy sources) after signing the contract concluded on the basis of the auction results.

If the renewable energy facility is not commissioned within the specified timeframe and does not feed electricity into the power grid, the contract concluded on the basis of the auction results shall be deemed invalid and the obligations under the irrevocable bank guarantee shall be performed in favour of the guaranteed buyer.

### 10. Validity of new technical conditions for renewable energy facilities

The technical conditions for renewable energy facilities shall have the following validity periods:

- for solar power plants – no more than two years after the date of issue, regardless of the change of the principal;
- for facilities generating electricity from other renewable energy sources – no more than three years after the date of issue, regardless of the change of the principal.

In the event that the principal is a business entity awarded with the state support through an auction, the technical conditions for a renewable energy facility granted to this business entity shall be valid for the duration of the obligation to construct and commission the respective renewable energy facility.

### 11. Validity of already granted technical conditions

The technical conditions for renewable energy facilities issued more than 2 years before the entry into force of the Law shall be valid:

- for solar power plants – no more than one year after the entry into force of the Law;
- for facilities generating electricity from other renewable energy sources – no more than two years after the entry into force of the Law.

The technical conditions granted more than 2 years before the entry into force of the Law shall become invalid if, at the time of the entry into force of the Law, the economic entity concerned cannot provide a registered declaration of commencement of construction works or a permit for the performance of construction works for the respective renewable energy facility.

The technical conditions issued less than two years before the entry into force of the Law shall be valid:

- for solar power plants – no more than two years after the entry into force of the Law;
- for facilities generating electricity from other renewable energy sources – no more than three years after the entry into force of the Law.

It should be noted that the bill was only adopted at first reading. Amendments may be made to it before its final adoption.

### **Temporary VAT exemption on imports and simplification of land allocation for renewable energy facilities**

On 1 January 2019, the amendments to the Tax Code of Ukraine provided for by the Law of Ukraine *On Amendments to the Tax Code of Ukraine and Certain Other Legislative Acts of Ukraine on Improving Administration and Revision of Certain Taxes*

and Duties Rates of 23 November 2018 (as amended on 6 December 2018) took effect.

In particular, these amendments include (1) temporary exemption from value added tax on importation into the customs territory of Ukraine of some equipment used in renewable energy facilities construction, and (2) simplification of land allocation for the construction of renewable energy facilities.

**1. Temporary VAT exemption on imports**

Certain imports (according to the goods subcategories under UKT ZED (Ukrainian Classification of Goods for Foreign Economic Activity)) into the customs territory of Ukraine will be temporarily (until 31 December 2022) exempt from value-added tax. The goods exempted from import VAT include:

UKT ZED code	Name under UKT ZED	Explanation
8502 31 00 00	Electric generator sets and rotary converters used in wind power generation	Installations generating electricity from wind power
8504 23 00 00	Electrical transformers, static converters (e.g. rectifiers), inductors and throttles having the power handling capacity exceeding 10,000 kVA	Equipment necessary for the construction of power plants, particularly, those generating electricity from renewable energy sources
8504 40 88 00	Static converters having the power handling capacity exceeding 7.5 kVA	
8541 40 90 00	Photosensitive semiconductor devices, incl. photovoltaic cells whether/not assembled in modules/made up into panels	Components used in electricity generation from solar energy

These amendments result from those made to paragraph 64 of the Transitional Provisions of the Tax Code of Ukraine. They shall considerably simplify and reduce the cost of construction of wind and solar power facilities.

As a general rule, the date when the VAT liability arises in respect of imports into the customs territory of Ukraine shall be the date of the customs declaration submission. The tax base shall be determined on the basis of the contract price of goods, which, however, may not be lower than the goods customs value.

The tax rate is 20% of the tax base.

Thus, import value-added tax is not payable on the principal equipment that is imported for the wind and solar power facilities construction until 31 December 2022.

## 2. Simplification of land allocation for renewable energy facilities placement

The simplification resulted from amendments made to the Law of Ukraine *On Energy Lands and Legal Status of the Special Zones of the Energy Facilities*.

In particular, Article 14 of the Law was amended so that renewable energy facilities generating electricity from renewable energy sources (solar, wind, aerothermal, geothermal, hydrothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment gas, and biogas) could be placed on lands, designated as “lands of industry, transport, communications, energy, defence and other purposes” (paragraph “ж”, part 1 of Art. 19 of the Land Code of Ukraine), regardless of the designation assigned to such land plots.

This will allow the renewable energy facilities placement (construction and use) on land plots, without developing new land management projects for the allocation of such land plots. It will suffice if the existing land plot falls under the category of “lands of industry, transport, communications, energy, defence and other purposes”.

Such amendments considerably simplify the renewable energy facilities construction as they reduce the local authorities engagement in the necessary documentation preparation, which, in turn, significantly reduces the time before the renewable energy facilities construction starts.

These amendments will be most beneficial to those planning to additionally place a renewable energy facility on their land plot (e.g. to agricultural enterprises that consider putting in place biogas plants).

### Procedure for wind energy facilities construction simplified

On 4 October 2018, the Law *On Amendments to Certain Laws of Ukraine regarding the Investment Attractiveness of the Renewable Energy Facilities Construction* came into force. It was passed on 4 September 2018. Among other things, this Law introduces amendments to the Law On the Regulation of Urban Development Activities.

It is worth noting that the current legislation provides for the division of all structures into three consequence classes, from CC1 to CC3 (previously, buildings used to be categorized in five complexity classes).

The consequence classes of buildings and structures indicate the level of possible threat to the health and life of people who will permanently or periodically be in the building or outside the building, as well as material damage or social losses associated with a collapse or loss of integrity of the building or structure. The type of the consequence class determines the complexity and scope of the required documents and the procedure for construction.



The legislative amendments aim to prevent abuses in the field of construction and to improve the attractiveness of the renewable energy facilities construction, in particular, wind energy facilities.

Pursuant to Ukrainian laws, construction projects shall be assessed, inter alia, for compliance with the environmental legislation. In addition, such an assessment is mandatory for construction projects that are subject to an environmental impact assessment (in accordance with the Law of Ukraine On the Environmental Impact Assessment). Thus, it led to an overlapping of state approval procedures. Therefore, the entry into force of the Law of Ukraine On the Environmental Impact Assessment (which entered into force on 18 December 2017), highlighted the need to clarify the provisions of the Law On the Regulation of Urban Development Activities with regard to the scope of the mandatory assessment of construction projects for which an authorization has been granted by the competent environmental impact assessment body.

Moreover, it should be noted that renewable energy facilities, in particular wind energy facilities, by their nature are not considered buildings or structures. These are constructions, consisting of prefabricated elements whose quality is guaranteed and certified by the manufacturer. Therefore, for the purpose of ensuring a more transparent mechanism of classifying facilities into consequence classes that is understandable to investors, it was necessary to clarify the procedure for assessing the scope of material damage or social losses associated with a collapse or loss of integrity of structures, being constructed without public financing.

Pursuant to the new Law, damages incurred by contractors, constructing facilities without using funds raised from the state or local budgets, loans granted against state guarantees, funds of state and municipal enterprises and state-funded institutions shall not be included in the damage calculation while determining the scope of material damage or social losses.

In addition, in the list of structures characteristics, in the presence of which a building cannot be assigned to consequence class CC1, an exception has been made for wind energy facilities (provided that an authorization has been granted by the competent environmental impact assessment body). Besides, wind energy facilities whose construction started before the entry into force of the new Law and which were assigned to the third category of complexity no longer belong to consequence class CC2. Wind energy facilities now fall into consequence class CC1.

The Law will greatly simplify the process of obtaining permits required for starting the construction of wind energy facilities and create favourable conditions for financing and developing wind energy in Ukraine.

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