Legal insight

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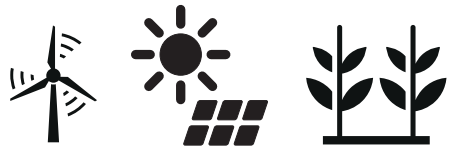

NEW ENERGY LAW IN SERBIA – A NEW CHANCE FOR RENEWABLES?

Serbia's potential in the renewable energy sector is huge though not utilized yet as a result of inadequate regulation. The new Energy Law is to be adopted in the near future and is currently subjected to public discussion, involving the major stakeholders on the market. The new law along with the relevant sub-legislation is expected to resolve some of the most important practical hurdles to the sector's growth, such as PPA's bankability, control over the grid construction process, transferability of the privileged producer status, and the like.

Serbia has a significant potential to generate energy from renewable energy sources consisting approximately of 63% of biomass, 14% of hydro, 14% of solar, 5% of wind and 4% of geothermal energy. The governmental strategies set the target at a 27% share of renewables in the overall energy production for 2020. Yet, the market is still facing notable challenges as the feed-in-tariffs and other incentives were introduced only for electricity generation and not for thermal power, while the implementation of renewable projects in the very electricity production is considerably hurdled by the lack of appropriate regulation to tackle the issues necessary for practical feasibility of these projects.

In particular, while the hydropower generation did experience notable development over the past few years, the wind and solar power projects are still on hold waiting for regulatory changes to allow for the resolution of major feasibility issues, such as (non)bankable PPA models, the investor's control over the grid construction, transferability of the privileged producer status and hands-on process of putting generation facilities into operation.

To meet these challenges and bring the regulation closer to the Third EU Energy Package (being the country's principal commitment under the Energy Community Treaty), the Serbian government has put forward the draft new Energy Law in December 2013 and formally opened public discussion. This came as a surprise to major stakeholders who were apparently neither informed on time nor consulted on the draft's content, addressing, inter alia, the mentioned practical issues. The stakeholders were, in effect, given only two weeks to provide their responses to the draft, which they did (mostly through professional associations), and are still awaiting for revisions by the government – as the entire process was postponed due to the general elections in March 2014 and the formation of the new Serbian government in late April 2014.

The draft new Energy Law - in its initial and currently the only publicly available version from December

2013 – does provide for certain improvements in the relevant area when compared to the existing legislation. The improvements include the transferability of the privileged producer status (both temporary and permanent) to third parties, the clearer incentives' entitlement scheme and the principal possibility for an investor, i.e. future generator, to construct the grid connection facility (and subsequently transfer the ownership to the state). However, the state operator incumbents are still allowed to refuse the generator's offer to construct the grid and reserve the right to do that by themselves (i.e. this is still a matter of their discretion), which may put at risk some of the prospective generators as to the overall feasibility of the project, especially in large-scale projects where financiers are likely to condition (further) financing upon clear guarantees for the efficient grid's construction and operability. Other downsides include the abolishment of the preliminary PPA concept - which may create a 'contractual vacuum' between the temporary and the permanent privileged producer status – as well as the lack of clear rules as to issuance of the energy licenses (being a pre-condition for the generation and sale of electricity), the commissioning of generation facilities and transparent inter-play between the energy and real estate related regulations.

The stakeholders noted many of these shortcomings to the government during the ongoing public discussion, seeing the draft as a chance to improve the overall legal environment for the renewable energy sector in Serbia. While the state representatives appeared officially willing to comprehend the need to improve the draft, it remains to be seen to what extent this will occur in the end.

The most recent hints from the market indicate that the government's revision of the draft new Energy Law is nearly completed - apparently, some of the stakeholders' proposals have been implemented in the revised draft, which is yet to be made publicly available. Supposedly, among other things, the generators will now become fully entitled to construct the grid, i.e. it will be an

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- Generators of renewable energy that qualify for privileged producer status become entitled to feed-in-tariffs which are ultimately passed down to consumers.

In order to benefit from the feed-in-tariff, the generator must enter into a power-purchase agreement (PPA) with the state supplier incumbent "EPS Snabdevanje d.o.o." as the buyer.

The agreement is normally for a 12 year term although it may be unilaterally terminated by the generator on a 30-days' notice.

- Current feed-in-tariff support levels range from 12,40 eurocents/kWh for hydro generating stations (up to 0,2MW) and 7,38 eurocents per kW/h (from 10MW to 30MW), to 15,66 eurocents per kW/h for biogas generating stations (up to 0,2MW) and 12,31 eurocents per kW/h (over 1MW), to 9,20 eurocents per kW/h for wind generating stations. Also, certain upper limits for using these incentives are legally set (i.e. the incentive measures apply until the total installed capacity reaches the value of (i) 10MW for solar generating stations, and (ii) 500MW for wind generating stations).

option available to them subject to their own discretion. However, it remains unclear whether the real estate permits (necessary for valid grid construction) are in such cases to be issued in the name of the generator or in the name of the state operator incumbent; in the latter scenario, such a solution could complicate the projects that are currently being developed and may also impede new projects if the relation between the state and the investor/generator as to the grid construction is not set out in a transparent manner. To this end, it would be of great importance that the new Energy Law sets out clear principal rules to govern such arrangements, whilst leaving further details or – preferably - concrete models to be regulated in the accompanying sub-legislation.

Importantly, the novel solutions (to be) adopted under the new Energy Law would also require significant sub-legislative activity on the side of the relevant state bodies in order to become fully operable. The by-laws necessary for the new law's implementation (either completely new ones or amendments to the current ones) would be needed to regulate in greater detail the matters related to PPA's content and entry into force (the new by-law providing for PPA models is currently in the drafting phase), the construction of the grid, the commissioning of both the grid and the generation facility, the transition between the temporary and the permanent privileged producer status, the obtainment of the energy license (without firstly requiring the issuance of the occupancy permit for the relevant facilities) and many other practically important matters.

Hopefully, this positive momentum emerging from the current public discussion and the resulting communication between the state and the relevant stakeholders will continue to grow in quality even after adoption of the new Energy Law and throughout the subsequent enactment of the necessary by-laws, allowing for the entire renewables sector to experience the growth it certainly deserves.

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