

Renewable Energy

A solid network for a solid business

Introduction

Most of the countries are aiming to significantly increase the share of energy generated by renewable sources. In particular, the EU member states, have set more challenging targets than other countries in the region by the so called 3x20% objectives established in March 2007 (20% of greenhouse gas reduction, 20% of renewable energy share in final energy consumption, and increase of the energy efficiency by 20% by the year 2020).

We at CMS Cameron McKenna are continuously expanding our capabilities to work with clients to create sustainable energy supplies from renewable energy sources (RES), and to this end we have brought together a team of energy, projects, banking and environmental legal experts to provide a comprehensive advice on a range of issues, including, legal and regulatory framework affecting renewable energy, development of renewable energy projects, emissions trading, CDM, CCS and JI projects.

CMS Cameron McKenna is the founding member of CMS, with well-established full-service offices in eight key business centres of Central and Eastern Europe. CMS aims to be the leading organisation of independent European law and tax firms of choice for organisations based in, or looking to move into, Europe. We are committed to quality, the interests of our clients, and the development of our people.

Our focus is on providing efficient, commercial legal and tax solutions aimed at helping you achieve your business objectives.

CMS Cameron McKenna in Central and Eastern Europe is unique for its combination of local knowledge and international experience, which means that we can address both domestic and cross-border issues. We build strong, long term relationships, instead of just focusing on one-time transactions. Our partners are "hands on", very approachable and accessible. Finally, our clients praise our pro-active approach to alerting them to issues that their businesses might have to face.

Below we would like to present a snapshot of the factors affecting renewable generation projects, which would be of particular interest to investors, developers and lenders in the individual CEE countries where we are present. We would be happy if this document provides you with answers to some of the questions you might have about the investment climate in the renewable sectors of the region.

SWOT analysis of Bulgarian market

Strengths

- Significant RES potential especially water, wind, solar and biomass.
- 12 years PPA are available and there is an obligatory offtake by the National Electricity Company (NEC) or electricity distribution companies, and grid connection.
- EU funds available for such projects.
- National target for RES to increase over the years (8% by 2010, 12% by 2015 and 20% by 2020).
- Preferential offtake price.
- Independent regulatory body (SEWRC).
- Green certificates are likely to be introduced after 2011.
- Special support by the investment support legislation.

Weaknesses

- Bureaucratic and slow procedures – multiple entities involved in decision-making process and as counter-parties; Ministry of Economy and Energy, SEWRC, Energy Efficiency Agency, National Electricity Company, electricity distribution companies, etc.
- Increasing costs of land (wind projects); slow developments of the biomass and PV opportunities.
- Unwillingness to undertake interconnections, mainly by NEC; investments by the electricity distribution companies are only supported partially by the SEWRC (Energy Regulator).

Opportunities

- New Law on renewable and alternative energy sources and bio fuel (2007) and Ordinances (pending).
- New Energy Efficiency Act expected later in 2008.
- Availability of EU structural and cohesion funds.
- Privatization of some mid-sized hydro power plants expected in 2009.

Threats

- The national transmission grid needs significant upgrades to support all the announced RES capacities that are to be built over the next years.
- Lack of effective cooperation and streamlined administrative procedures.
- Likelihood of change in the support mechanisms for RES after 2011.
- Ecological considerations – many projects were delayed and even cancelled for ecological considerations – migration of birds, Natura 2000 Program, etc. Environmental Impact Permit is required.

Key assignments

- Advising Iberdrola Renovables on the acquisition of a 74MW wind farm project in northern Bulgaria. This the first wind farm acquisition project of Iberdrola Renovables in Bulgaria.
- Advising one of the world's biggest manufacturers and suppliers of products, installations and services in the renewable energy sector and a leading renewable energy producer with respect to its operations in Bulgaria, including agreements with landowners in Bulgaria for the installation of wind masts and regulatory services.
- Assisting SG Renewables, a subsidiary of our client SG Engineering, on their existing projects; providing them with regulatory, employment advice, etc.
- Advised PCC DEG Renewables on the acquisition of two hydro power plants. Work included advice on the prolongation of two water use permits under the Bulgarian Law on Waters, legal due diligence, etc.
- Advising leading international renewable company Econcern regarding their business activities in Bulgaria and helping in drafting agreements and rebranding issues



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“Clients consider the practice ‘exceptionally good, particularly the response times’.”

Legal 500 2008

SWOT analysis of Czech market

Strengths

- Specific legislation on the promotion of the production of electricity from RES entered into force on 1 August 2005.
- Entitlement to connect energy production facilities from RES to the transmission or distribution system.
- Guaranteed return on each unit of electricity produced from RES for a period of 15 years after commissioning.
- Tax incentives – income tax and real estate tax exemptions for RES.

Weaknessess

- Limited potential of RES caused by the natural conditions prevailing in the Czech Republic.
- Slow and bureaucratic procedure (many involved parties).
- Protests of municipalities and/or residents against certain renewable projects.
- Long-term orientation at the traditional energy sources (coal and nuclear) in the Czech Republic.

Opportunities

- Low share of electricity generation currently produced through the use of renewable energy (4.7 % in 2007) compared with the national indicative targets of 8% for 2010 and 13% for 2020.
- Support of RES from State programmes and EU funds.
- Increasing small end-users (namely households) favouring use of electricity from RES.
- Non-consolidated market in renewable projects.

Threats

- Inconsistency in manner of determination of purchase price of electricity from RES by the Energy Regulatory Office.
- Stricter conditions relating to the connection of electricity generation facilities using RES to the transmission or distribution system.
- Delay or cancellation of renewable projects due to environmental considerations (e.g. Natura 2000).

Key assignments

- Advising a strategic investor on the proposed investment in the first ever wind farm project in the Czech Republic. Work includes due diligence, structural advice as well as advice on the new regulatory framework.
- Advising a potential strategic investor on the proposed investment in the first major wind farm project in the Czech Republic. The work included: due diligence, advice on transaction structure as well as advice on the new regulatory framework.
- A global US-based power company on regulatory review of Czech renewable energy rules.



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“They have a splendid record of success, and provide immaculate service across the board.”

Chambers Europe 2008

SWOT analysis of Hungarian market

Strengths

- The share of renewable energy only adds up to 3.6 percent of total electricity generation which is below the economically exploitable potential. Hungarian government plans to raise this ratio up to 13% by 2020.
- Mandatory off-take obligations and favourable feed-in prices.
- Due to the vast agricultural areas of Hungary there is a considerable potential in biomass based electricity generation.

Weaknesses

- Concerns about the dispatchability of the uniform Hungarian grid prevent the proliferation of wind energy generation.
- Of the 600MW wind generation capacity expected to be licensed, 330MW has been licensed already.
- Grid operators are often unsupportive of renewable electricity generators when it comes to grid connection.
- No special VAT or other tax relief is awarded to renewable investments.
- Environmental consciousness is still rather modest in Hungary compared to Western European standards.

Opportunities

- Local authorities try to be cooperative when it comes to renewable energy generation initiatives.
- Hungary has a significant, yet fairly unexploited, potential in electricity generation from geothermal energy, biomass and biogas sources.
- A regime of green certificates will substitute the current regime of mandatory off-take, which is a more market oriented tool.
- EU structural and cohesion funds are available.
- Competition for generation licences is likely to become more transparent in the close future.
- Renewable energy comprises the smallest market share in Hungary.

Threats

- The regulations regarding renewable energy frequently change and these changes are sometimes disadvantageous.
- The technical capacity of the Hungarian electricity grid needs some upgrading for the development of wind and solar electricity generation facilities

Key assignments

- Advised Pannonpower in relation to the construction of a new bio (chopped wood) fuelled power plant in the city of Pécs (turnkey EPC contract, long term wood supply contracts, etc) and in connection with financing of the project.
- Advised Iberdrola Renovables on the acquisition and development of two wind parks (Mistral and Vento) in Hungary.
- Advised a major global energy company in relation to renewable energy facilities, including conducting diligence exercise regarding a wind farm project in Western Hungary.
- Advised Investkredit on the financing of a wind park in Hungary.
- Advising a major energy provider on financing a bioethanol power station and biofuel plant on limited recourse basis.
- Advised OTP Bank on a facilities agreement and security agreements relating to the development of a biodiesel plant in Slovakia.
- Carrying out a due diligence exercise for Babcock & Brown in connection with various wind farm projects in Hungary.
- Advising Raiffeisen Energy Services Ltd. on the acquisition of Hungarowind, a Hungarian company constructing and operating wind parks. Advised on two other wind park projects in Hungary



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"The added value of the firm is the way in which their partners contribute to the deal, they become part of it and don't just wait at the sideline to draft the documents"

Chambers Europe

SWOT analysis of Polish market

Strengths

- Significant RES potential (especially in relation to wind, biomass, biogas).
- Obligation on electricity suppliers to end-use customers to annually redeem documents certifying generation of electricity from RES (the "green certificates").
- Obligation on suppliers of last resort to purchase all electricity generated by RES connected to the electricity grid within the area of operation of the relevant supplier of last resort.
- Until 2010, RES only cover half of their actual grid interconnection costs; after 2010 this will only apply to RES of less than 5MW.
- Electricity generated from RES is exempt from excise tax.
- Transmission priority for energy produced from RES.
- Various exemptions for smaller RES (under 5MW), such as exemption from registration fees, stamp duties and annual generation licence fees.

Weaknesses

- Time consuming procedures of acquiring relevant permits and administrative decisions.
- Lack of local zoning plans.
- Lack of clarity with relation to long term leases of land.
- Opposition to RES projects - issues related to NATURA 2000 (governmental list vs. "shadow list" prepared by the NGOs).
- Difficulties with obtaining inter-connection.

Opportunities

- RES developers enjoy other benefits, such as subsidies from local environmental funds to finance their projects and low-interest loans available from the National Fund for Environmental Protection and Water Economy as well as the Bank for Environmental Protection.
- Several RES investments are being currently implemented and numerous other projects are in the pipeline.
- Presence of several active local developers.

Threats

- New provisions regarding the Environmental Impact Assessment procedure and participation by public and ecological organisations in proceedings related to the issuance of environmental decisions required for the construction of generation facilities.
- Shortage of investment in development of the grid infrastructure.
- Extensive final list of protected NATURA 2000 sites.
- Protests from local inhabitants, especially in relation to wind projects.

Key assignments

- Advising UPC on the development of a number of wind farms located in northern Poland.
- Advised a UK-based developer on Project Komarowo - the development of a 60MW wind farm located in the north-western part of Poland.
- Advised an international private investor on lease agreements and on title issues regarding several prospective wind farm sites in northern Poland.
- Assisted REG on developing, on a project finance basis, a 50 MW wind farm in northern Poland.
- Advising AES in connection with wind farm projects, in particular advising on Polish legislation affecting renewable energy projects and carrying out due diligence of a number of prospective wind projects.
- Advising a Czech-based international renewable energy company, being a major regional investor, on potential acquisition of a majority share, and development jointly with a local partner, of a wind farm project in north-western Poland.
- Advising a world leader in renewable energy on the potential acquisition and development of wind farm projects in the northern and western Poland.
- Advising a major international renewable energy company on the potential acquisition and development of a wind farm project in western Poland.
- Advising a UK-based international renewable energy company in connection with a wind farm project.
- Advising an Austria-based renewable energy company operating in CEE on the acquisition and development of a biomass CHP.
- Advising a renewable energy company on potential acquisition and development of wind farm projects.
- Providing legal services to a major Western utility in relation to the acquisition and development, and potential acquisition and development of wind farm projects in Poland.
- Advising a major Germany-based international renewable energy company in connection with implementation of waste incineration plant projects.



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The firm has developed expertise in renewable energy sources and emissions trading and is also recognised for housing “probably the best environmental law group in town.”

Chambers Global 2007

SWOT analysis of Romanian market

Strengths

- High RES potential (especially wind and biomass).
- National target for RES is steadily increasing (33% by 2010, 35% by 2015 and 38% by 2020).
- Combined compulsory quotas and trading of green certificates support mechanism (1 MW = 1 green certificate) until 2012.
- Each electricity supplier is obliged to acquire, every year, a specified number of green certificates. Defaulting suppliers are liable to the TSO for the maximum value of the remaining (not acquired) certificates multiplied by two.
- Generation from RES may qualify for priority dispatch on the Day Ahead Market subject to obtaining a priority dispatch certificate.
- Operators may benefit from special promotion systems for RES (e.g. accelerated depreciation of investments in renewable energy sources).

Weaknesses

- Time consuming procedures for obtaining the necessary authorizations, licenses and permits.
- High costs of the land (if the investor intends to enter into Land Purchase and Sale Agreements with private owners).
- There are no consistent supporting mechanisms or subsidies for the cost of interconnection to the grid.

Opportunities

- Availability of state aid for investors (a legal entity registered in Romania is a pre-requisite for filing an application with the relevant authorities).
- New legislation regarding the promoting system for RES providing for following:
 - Extension of term of the support mechanism (combined compulsory quotas and green certificates) until 2030.
 - New energy facilities may benefit of the supporting mechanism for a 15 year term from the start of operation.
 - Increased value of the green certificates.
 - From 2008 until 2015 a E-RES generator that qualifies for supporting mechanism shall receive 2 green certificates/1MW and starting 2016, 1 green certificate/1MW.

Threats

- Little clarity on the term and costs of mandatory public consultations for obtaining the environmental approval in case of NATURA 2000 sites.
- The national transmission grid needs an upgrade to support all the announced RES capacities that are to be built over the coming years.
- Lack of effective cooperation and streamlined administrative procedures.

Key assignments

- Advised Iberdrola Energias Renovables on its acquisition of various wind farm developments in Romania totalling over 1,000 MW.
- Advised UPC in their initiatives for capturing land for wind farm development of up to 500 MW in Romania and on permitting and renewable energy legal framework.
- Advising a leading Austrian renewable energy bank lender on the Romanian renewable energy legal framework on an ongoing basis.
- Advising Enercap Capital Partners on its acquisition of a wind farm development in Romania.



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“Profound international and domestic knowledge.”

Chambers Global

SWOT analysis of Russian market

Strengths

- Huge RES potential especially water, wind, tidal, geothermal and biomass.
- Eastern Siberian part of the Russian Federation has a huge hydro potential and perfect geographical conditions for developing large hydro generating schemes - 5 to 7 months of freezing-over allows to minimize the output of CH4 from reservoirs into the atmosphere
- Capacity and production of all new projects will participate in the competitive Wholesale Electricity Market, which will be fully liberalised by 2011.

Weaknesses

- Bureaucratic and slow procedures.
- Increasing construction costs.
- Complicated land (wind projects) and water use permits (hydro).
- Too many parties involved in the decision-making process and as counterparts to the investors – Ministry of Energy, Ministry of Natural Resources, Ministry of Economy, Ministry of Regional Development, Federal Grid Company, System Operator, electricity distribution companies, etc.

Opportunities

- The State is today an active investor in the power industry, providing for financing of the infrastructure part of new projects out of the Investment Fund
- The program for development of small hydro-power held by biggest Russian hydro generating company (RusHydro) - 383 potential projects are identified and undergoing pre-design studies for construction of small HPP in partnership with external investors.
- Additional legislation to the Federal Law # 35 "On Electricity" (Amendment # 250 to the Federal Law #35) regarding usage of renewable energy sources is in the process of negotiations.
- The new legislation will take into consideration the experience of the EU ("the 2020 targets" and CO2 emissions).
- The new legislation will determine national targets and the mechanism for construction of 59 GW of installed capacity by 2020 from RES, with 32 power plants of large, medium and small size: wind (about 20 GW), bio energy sources (approximately 5 GW), geothermal (0,3 GW), tidal (0,8 GW) and other RES.

Opportunities (con't)

- New Law on renewable and alternative energy sources will establish the markup in determining the price of electric power generated using RES on the wholesale and retail markets.

Threats

- The national transmission grid needs significant upgrades to support all the announced RES capacities that are to be built over the next years.
- Lack of effective cooperation and streamlined administrative procedures.
- Opposition to construction of hydro schemes because of flooding, etc

Key assignments

- Advising a major international energy company on a renewable project in Southern Russia.
- Advising HydroOGK on the project for the completion of Boguchanskaya hydropower station.
- OJSC UK Volzhskiy Hydroenergy Cascade – on varied aspects of the involvement of hydro generation companies in the proposed ancillary services market in Russia (the project is now completed).
- Advising Iberdrola Renovables on a renewable energy project in Krasnodar (Southern Russia).



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“The lawyers are well plugged in,” commented one client; “they know what is going on and they can act on it.”

Chambers Europe 2008

SWOT analysis of Ukrainian market

Strengths

- The “green tariff law” has recently been adopted by the parliament. This law: (i) permits the sale of “renewable” electricity directly to end-consumers or regional suppliers at contractual prices; and (ii) obliges wholesale electricity market (“WEM”) to buy at the “green tariff” (double wholesale electricity tariff, set by NERC) the remaining electricity, which has not been sold to consumers or regional distributors.
- The Government's target set for generation from RES is 19% of total generation by 2030. Pursuant to the Complex Wind Farms Construction Programme adopted in 1997, the total capacity of wind power generation in Ukraine is supposed to reach 1990 MW by 2010, while in the meantime it is around 100MW.
- Equipment for non-traditional and renewable energy sources is exempt from the Ukrainian VAT or import duties.

Weaknesses

- The local experience in renewable energy projects is not sufficient. The lack of technology experience in Ukraine makes the technology investment cycle long and as a result early technology development must be subsidised during early adoption, well ahead of commercialisation. So far, there are no special VAT benefits for sales of alternative energy or special corporate profit tax treatment for power generation out of the RES and the existing incentives (green certificates) for the consumers to purchase this type of electricity are not working yet.
- The wind energy tariff calculated by the producer, is approved and checked as to its compliance to the statutory calculation methodology by the National Electricity Regulation Commission (NERC), which creates an uncertainty as to whether the investment would be approved by NERC.

Opportunities

- The RES market is in its nascent stages.
- According to the recent legislation, state and municipal land plots, that are to be used for construction and operation of power stations and electric grids, shall be leased or sold without the auction.
- The Government's targeted capacity of wind power generation in Ukraine is not likely to be reached by the State by 2010 without relying on the help of investors. The state and local authorities seem to be very cooperative, when it comes to renewable energy generation initiatives, especially, given the fact that some regions of Ukraine still suffer from a lack of electricity.

Threats

- All the tax preferences and privileges remain dormant in Ukraine due to the absence of an implementation procedure and effective law on mechanisms that would support RES. The lack of incentives, adequate regulatory framework and “gaps” in the current Ukrainian legislation on electricity retard the development of renewable energy in Ukraine.

Key assignments

- Advising European private equity investors on various issues of the wind power plant, which would be one of the first privately owned in Ukraine. The work included: advice on regulatory, tax and real estate issues.
- Advising a UK company on a wind farm project to be developed by the JV with a local partner.



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“With a strong dedication to the CEE market, the firm benefits from an extensive network and the new team provides the firm with a particular strength in energy and oil.”

Chambers and Partners 2008

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