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Alternative Energy & Power 2022

Bulgaria: Law & Practice
and
Bulgaria: Trends & Developments

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BULGARIA

Law and Practice

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1. GENERAL STRUCTURE AND OWNERSHIP OF THE POWER INDUSTRY

1.1 Principal Laws Governing the Structure and Ownership of the Power Industry

The main law that governs the structure of the Bulgarian power industry is the Energy Act. The Energy from Renewable Sources Act regulates certain aspects related to renewable energy producers and biofuels. The main legal acts are supplemented by multiple secondary regulations such as the Ordinance for the licensing of the activities in the energy sector and the Electricity Trading Rules.

The Bulgarian power industry includes a combination of state-owned and private investor-owned companies. Generation is secured through a mixture of state and private producers. Transmission is performed entirely by the state-owned transmission system operator. Distribution and supply are carried out by private companies.

1.2 Principal State-Owned or Investor-Owned Entities

The Bulgarian Energy Holding EAD (BEH) is the state holding company that owns several subsidiaries involved in the production, transmission and wholesale of electricity. The shareholder rights in BEH are exercised by the Minister of Energy. BEH owns the following subsidiaries:

- "NPP Kozloduy" EAD – a nuclear power plant with active capacity of 2000 MW providing more than a third of the produced electricity in the country.
- "TPP Maritza East 2" EAD – a thermal power plant using local coal stocks with installed capacity of 1,620 MW.
- "National Electric Company" EAD (NEC) – involved in both production (owner of 31 hydro power plants with total installed capacity of 2,737 MW in turbine mode and 931 MW in pump mode) and wholesale of electricity. NEC is also licensed as public supplier and in this capacity it guarantees the supply of electricity to household consumers on the regulated segment of the market.
- "Elektroenergien Sistemen Operator" EAD – the sole transmission operator (TSO) in the country responsible for the management and development of the transmission grid.

Electricity distribution is performed by four private companies, one of them operating only a small local grid. The three main distribution companies are:

- "Electrodistribution South" EAD (EVN group);
- "Electrodistribution North" AD (Energo-Pro group); and
- "Electrodistribution Grid West" AD (recently acquired by Eurohold from CEZ group).

The main suppliers to end clients are companies licensed as traders and end suppliers owned by the same groups mentioned above. End suppliers operate only on the regulated market and supply household consumers. Traders may supply both household and business consumers at freely negotiated prices.

In the past years the participants on the free market are increasing and currently there are 36 traders who have published their offers to end clients at the online comparison platform administered by the Energy and Water Regulatory Commission (Regulator).

1.3 Foreign Investment Review Process

Generally, there are no material restrictions on foreign investment in the power industry.

Restrictions on Foreign Investment

Pursuant to the Energy Act on economic and financial relations with companies registered in jurisdictions with preferential tax treatment, the persons controlled by them and their beneficial owners, companies registered in preferential tax treatment jurisdictions and entities controlled by them cannot directly or indirectly:

- participate in a procedure to obtain a license under the Energy Act; and
- incorporate or participate in an entity engaged in activities under the Energy from Renewable Sources Act.

The preferential tax treatment jurisdictions are determined with a list issued by the Minister of Finance and with the EU list of non-cooperative jurisdictions for tax purposes, which are subject the changes. Currently, the tax haven jurisdictions are: American Samoa; Antigua and Barbuda; Brunei Darussalam; Virgin Islands (USA); Grenada; Guam Island (USA); Dominican Republic; Guyana; Labuan; Macao; New Caledonia; UAE; Bahamas; Oman; Christmas Island; Cook Islands (New Zealand); Pitcairn; Vanuatu; Liberia; Maldives; Marshall Islands; Palau; Panama; Fiji; Sark; Saint Lucia; Samoa; Trinidad and Tobago; and Hong Kong (China).

Further, a licence under the Energy Act may be obtained only by companies registered in the European Union or in a member state of the European Economic Area. This requirement is not an obstacle as foreign investors are free to set up local subsidiaries or acquire shares in existing companies.

Bulgaria has not adopted local rules for a foreign direct investment screening mechanism under Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union.

Protection of Foreign Investment

Bulgarian law offers largely equal treatment to foreign and domestic investors (except for certain restrictions on the acquisition of agricultural land). No prior foreign investment approvals are required by the state. The Investment Promotion Act provides that investments, which are made before changes in the legislation imposing restrictions solely on foreign investments, are to be governed by the regulations that were effective at the time the investment was made.

Bulgaria is a party to the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Bulgaria has also ratified numerous bilateral investment treaties, which prevail over domestic laws.

1.4 Principal Laws Governing the Sale of Power Industry Assets

Under the Energy Act, the Energy and Water Regulatory Commission (Regulator) is authorised to provide permission for transactions with power industry assets. The purpose of such regulation is to ensure the security of electricity supply and to prevent the transfer of assets to companies that are not professionally capable to perform the activities.

Sale of Shares in Transmission and Distribution Companies

The Regulator provides permission for transfer of shares exceeding 20% of the registered capital of companies that perform transmission or distribution activities. The Regulator considers whether the security of the electricity supply, the national security or the public order may be jeopardised due to the transaction. The permission is provided after all the other necessary permits and approvals for the transaction enter into force, eg, the merger clearance. This procedure

is applicable only from 2018 and there are no detailed regulations on its implementation.

Transactions Performed by Licensees

All licensed companies under the Energy Act (producers with installed capacity over 5 MW, the TSO, the distribution companies and traders) must obtain permission from the Regulator in the following cases:

- reorganisation of the licensee – merger, division or change of the legal form;
- transfer of production facilities under construction or property that is used for the performance of the licensed activity;
- creation of pledges or mortgages over the property used for the performance of licensed activities;
- transactions that may impair the security of supply due to large debts of the licensee – issuance of bonds, loans with repayment period over one year, power purchase agreements with term exceeding one year; and
- transactions that exceed 10% of the assets of the licensee in accordance with the last audited financial statements.

The permission may be granted after the licensee applies to the Regulator and submits certain documents for each specific case. The Regulator examines whether: (i) the reorganised company meets the conditions for fulfilment of the licence obligations; (ii) the transferee has the technical, management and financial capacity to perform the licensed activity; and (iii) the respective transaction may lead to a material breach of the conditions for performance of the licensed activities or violations of the principles envisaged in the Energy Act.

The Regulator issues a permission for the transaction within one month of the application, except in the case of transfer of production facilities, where the deadline is three months.

1.5 Central Planning Authority

"Elektroenergien Sistemen Operator" EAD (ESO) is the Bulgarian transmission system operator. ESO is licensed by the Regulator to perform transmission of electricity on the entire territory of Bulgaria. ESO is also certified as an independent transmission operator in accordance with the unbundling model chosen by Bulgaria.

Pursuant to the Energy Act, ESO has the following responsibilities:

- the central management of the energy system and the availability of all necessary ancillary services;
- the transmission of electricity through the transmission grid and the provision of non-discriminatory access to the grid users;
- the maintenance and development of secure transmission grid in accordance with the environmental requirements and energy efficiency goals;
- the collection of fees related to the transmission and balancing of the grid;
- investment planning to ensure the long-term capacity of the grid to cover expected demand and supply; and
- the compatibility and the interconnection of the grid with neighbouring grids.

1.6 Recent Material Changes in Law or Regulation

There have not been any material changes in the laws regarding the power industry over the past year.

1.7 Announcements Regarding New Policies

The Ministry of Energy announced in May 2022 that it will propose an amendment to the Energy Act under which:

- the profits of the energy companies owned by the state will be used for compensations to

consumers due to the extremely high energy prices; and
- the operators of the transmission and distribution grids must conduct annual procedures where producers can reserve connection capacities.

1.8 Unique Aspects of the Power Industry

Currently, the security of the Bulgarian power industry is largely dependent on the operation of the thermal power plants that use local coal stocks as fuel. At the same time, Bulgaria is a part of the European Green Deal, which aims to achieve zero emissions of greenhouse gases by 2050. Thus, Bulgaria faces a serious challenge about the transition from coal to new green energy sources. The issue does not affect only the availability and cost of electricity, but also local economies, due to the large number of people employed in the sector.

2. MARKET STRUCTURE, SUPPLY AND PRICING

2.1 Structure of the Wholesale Electricity Market

Market Structure

The wholesale electricity market includes a regulated and a competitive segment.

On the regulated segment the public supplier (NEC) purchases certain quantities of electricity to meet the expected demand of household consumers. NEC sells the said quantities to the licensed end suppliers for the respective territory and the latter supply the household consumers. The prices on the regulated segment are determined by the Regulator for each one-year regulatory period (from 1 July of the current year until 30 June of the following year).

On the competitive wholesale segment, licensed traders purchase electricity mainly on the organised power market – the Independent Bulgarian Energy Exchange (IBEX). The traders supply all business consumers who must purchase electricity on the free market and the household consumers who have opted for a supplier on the free market.

As of 2018 the producers with installed capacity of at least 4 MW were obliged to sell at IBEX in order to stimulate free market trading. Currently, the threshold is reduced to at least 500 kW so that more producers are involved on the competitive wholesale market. As an exception, all renewable energy producers, who are put into operation after 1 January 2019, may sell via bilateral contracts over the counter.

Types of Markets

Pursuant to the Electricity Trading Rules, the electricity market includes the following integral elements:

- organised power exchange (IBEX);
- bilateral power purchase contracts over the counter;
- balancing market;
- ancillary services; and
- interconnection capacity market.

On the balancing market, the TSO purchases or sells electricity from certain market participants registered as balancing energy providers in order to cover the imbalances in the national market zone. The prices of balancing energy are determined by a complex methodology adopted by the Regulator. The financial responsibility towards ESO for the realised imbalances is assumed by the co-ordinators of balancing groups. The co-ordinators are generally traders which are also authorised by the Regulator to organise a balancing group. The producers and end consumers join a balancing group to shift

their balancing responsibilities to the co-ordinator for a certain fee.

Further, ESO purchases ancillary services through tender procedures. The ancillary services include capacity for participation in primary regulation of the frequency, automatic secondary regulation and manual secondary regulation of the frequency.

2.2 Imports and Exports of Electricity

Imports and exports of electricity to/from other jurisdictions are permitted.

Bulgaria has the following interconnections:

- 400 kV NPP Kozloduy (BG) – Tintareni (Romania);
- 400 kV NPP Kozloduy (BG) – Tintareni (Romania);
- 400 kV Substation Varna (BG) – Stupina (Romania);
- 400 kV Substation Dobrudzha (BG) – Rahman (Romania);
- 400 kV TPP Maritza East 3 (BG) – Hamitabat (Turkey);
- 400 kV TPP Maritza East 3 (BG) – Hamitabat (Turkey);
- 400 kV Substation Sofia West (BG) – Nis (Serbia);
- 400 kV Substation Red Hill (BG) – Stip (North Macedonia); and
- 400 kV Substation Blagoevgrad (BG) – Thessaloniki (Greece).

According to 2021 statistics of the TSO, Bulgaria is a net exporter of 8,819 GWh. Such exports lead to substantial revenues for the state-owned producers, especially in 2021, considering the high electricity prices at power exchanges.

2.3 Supply Mix for the Entire Market

According to 2021 statistics of the TSO, the generation facilities had approximately the following shares in the supply mix:

- Thermal – 48%.
- Nuclear – 34.5%.
- Hydro – 10.7%.
- Solar – 3.1%.
- Wind – 3%.
- Biomass – 0.7%.

2.4 Principal Laws Governing Market Concentration Limits

There are no statutory concentration limits regarding the percentage of electricity supply controlled in the market by any one entity.

From the perspective of the Bulgarian Competition Protection Act, the Competition Protection Commission (CPC) would suspect the existence of a dominant position if the market share of an undertaking is approaching 40%. The CPC may determine that an undertaking has a dominant position in the course of an antitrust investigation, a merger filing or a sectoral analysis. The determination is based on a comprehensive analysis, which includes more than an assessment of the relevant undertaking's market share.

If an undertaking has a dominant position, then certain restrictions on its market behaviour would apply such as prohibition on discrimination of trading partners, prohibition on refusal to deal with trading partners, clear pricing models, etc.

2.5 Agency Conducting Surveillance to Detect Anti-competitive Behaviour

The Regulator is entitled to monitor the energy markets and to prevent anti-competitive behaviour by the market participants. The Regulator cooperates with the Competition Protection Commission (CPC) and refers matters to the

CPC in order to initiate proceedings under the Competition Protection Act.

The CPC is authorised to investigate all types of competition breaches such as cartel agreements, abuse of dominant position, unfair competition practices, provision of misleading information about the offered goods and services, etc. The CPC may require the production of company records and the provision of oral or written explanations by the employees and management.

The CPC may also carry out dawn raids with the permission of the court, during which the inspectors must be provided with access to the premises and all records and electronic devices. The CPC may seize the relevant documents and in certain cases seal premises and vehicles to avoid tampering with potential evidence. In case of established violations, the CPC may impose monetary sanctions up to 10% of the turnover of the infringer for the previous financial year.

In addition, the Regulator is authorised to exercise control over the compliance with Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency. The Regulator's officials have similar powers to the CPC mentioned above. The Regulator may impose monetary sanctions up to 10% of the turnover of the infringer for the previous financial year, while employees and management who have personally committed an infringement may be imposed a fine up to EUR25,000.

3. CLIMATE CHANGE LAWS AND ALTERNATIVE ENERGY

3.1 Principal Climate Change Laws and/or Policies

Emission Trading System

Bulgaria has implemented the EU Emissions Trading System (ETS) with the Climate Change Mitigation Act. Under the ETS certain installations, including emission-generating power plants, and aviation operators, are obliged to buy emission allowances.

The EU ETS works on the cap-and-trade principle. There is a cap on the total amount of greenhouse gases that can be emitted by the installations covered by ETS. The cap is gradually reduced each year and respectively the total emissions fall. The EU-wide cap for 2021 from stationary installations is fixed at 1,571,583,007 allowances. The annual reduction corresponding to the linear reduction factor is 43,003,515 allowances.

The allowances under the EU ETS are offered at auctions or allocated for free. The persons that may bid directly at the auctions are installation operators, aviation operators, investment intermediaries, banks and association of operators. The auctioneer for Bulgaria is the Minister of Environment and Water.

For the latest phase of the ETS (2021-2030) Bulgaria has opted to continue allocating free allowances to electricity producers. The freely allocated allowances are deducted from the allowances eligible for auctions and may not exceed 40% of the allowances that are allocated to Bulgaria for the period 2021-2030.

Energy Efficiency

Pursuant to the Energy Efficiency Act, certain large companies in the energy sector are obliged

to participate in an energy efficiency obligation scheme for the period 2021-2030. End suppliers and power traders that sell more than 20 GWh to end consumers annually are among the obliged entities. Under the scheme, each obliged entity is assigned an annual goal for energy savings in the end consumption by the Bulgarian Agency for Sustainable Energy Development.

In order to reach the assigned individual goals, the obliged entities may offer energy efficiency services through a separate provider or trade energy savings certificates issued for already completed energy efficiency projects. Basically, the obliged entities must finance the implementation of measures that reduce the end consumption of energy, such as renovation of old buildings. All the measures eligible for accounting of energy savings and the methodologies for calculation of the achieved savings are regulated in the secondary legislation.

3.2 Principal Laws and/or Policies Relating to the Early Retirement of Carbon-Based Generation

Under Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, Bulgaria is not obliged to achieve minimum reductions by 2030.

As one of the countries with lowest GDP per capita in the EU and a power industry dependent on coal-powered plants, the early retirement of carbon-based generation is a serious issue for Bulgarian energy security and economy. Currently, there is no clear programme that regulates the timeline for decommissioning and the transition to alternative energy sources.

3.3 Principal Laws and/or Policies to Encourage the Development of Alternative Energy Sources

Bulgaria promoted the investment in renewable energy sources under a feed-in-tariff incentive model available for projects that were commissioned before March 2015. The renewable power plants were guaranteed a preferential purchase price under a long-term power purchase agreement – 20 years for solar and biomass and 12 years for wind. Currently, eligible for feed-in-tariffs are only small-scale new projects up to 30 kW, which are built on properties in urbanised areas.

The feed-in-tariff model was later replaced by contracts for premium. Briefly, the producers with installed capacity over 500 kW are obliged to sell the electricity at market prices on the power exchange and are compensated for the difference between the market price and the feed-in-tariff with a premium paid monthly by the Electricity System Security Fund (Fund). The amount of the premium is determined ex-ante by the Regulator for each one-year regulatory period based on a forecast market price.

The Fund raises the necessary amounts for the renewable incentive programmes through:

- monthly contributions from the electricity producers in the amount of 5% of the revenue without VAT;
- monthly contributions from the electricity and natural gas transmission system operators in the amount of 5% of the revenue from access and transmission charges without VAT;
- revenues received from tenders for sale of allowances under the EU ETS; and
- revenues received from the price “obligations to society” determined by the Regulator and ultimately paid the end consumers.

As an incentive for the development of new renewable and green hydrogen projects, such producers commissioned after 1 January 2021 do not owe monthly contributions to the Fund.

4. GENERATION

4.1 Principal Laws Governing the Construction and Operation of Generation Facilities

The construction and operation of generation facilities are regulated by various acts with different scope of application.

Energy

The main acts governing the operation of generation facilities are the Energy Act and the Energy from Renewable Sources Act. They are supplemented by multiple acts of secondary legislation such as the Ordinance No 6 for connection of producers and clients of electricity to the transmission or distribution grids, the Rules for the terms and conditions for granting access to the transmission and distribution grids, the Electricity Trading Rules and the Rules for Management of the Electricity System.

Environmental

Environmental matters are mainly regulated by the Environment Protection Act. Other essential legislation is the Ordinance for the terms and conditions for performance of an environmental impact assessment, the Biodiversity Act, the Protection of Agricultural Land Act, the Water Act and the Waste Management Act.

Construction

Construction of generation facilities is regulated by the general construction legislation, namely the Spatial Development Act and numerous secondary regulations. The technical parameters of the facilities must comply with the requirements under Ordinance No 14 for the technical rules and norms for design, construction and use of sites and facilities for production, conversion, transmission and distribution of electricity.

4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities

Construction Permits

The procedure to obtain a construction permit is regulated by the general construction legislation. Some of the key steps in the construction permitting procedure are:

- Adoption of a detailed zoning plan if such is not existing for the respective land or an amendment of the detailed zoning plan if the land plot is not designated for development of power plants. The zoning procedures require the announcement of the draft zoning plans to the public. However, only a limited scope of persons who are directly affected by the detailed zoning plan may submit objections, proposal and appeals.
- If the project affects agricultural land, a special procedure must be followed to change the designation of the land from agricultural to urban land suitable for development.
- Parcelling plans (special detailed zoning plans) need to be adopted for the development of elements of the technical infrastructure (eg, connection cable lines) beyond the boundaries of urban areas.
- The approval of the investment design by the competent administrative authority, in most cases the chief architect of the municipality. As an exception, renewable energy installations up to 5 MW built only for self-consumption in urban areas do not need such approval but follow a simpler procedure.
- The performance of the relevant procedure under the environmental legislation depending on the specifics of the project.

After obtaining all approvals and preparing the necessary documents, the investor applies for a construction permit issued by the chief architect of the municipality. Upon completion of the construction and the certification that it meets all applicable requirements, the investor may obtain an operational permit issued by the bodies of the National Construction Control Directorate. Generation facilities must also undergo 72-hour operational tests before their actual connection to the energy system.

Environmental Assessments

Pursuant to the Environmental Protection Act, certain investment proposals are subject to mandatory environmental impact assessment (EIA), while for others the necessity to conduct an EIA must be evaluated. In most cases the competent authority is the Regional Environment Inspection where the project will be located.

EIA is mandatory for the construction of thermal power plants with a nominal input heat capacity of at least 50 MW, as well as for nuclear power plants. An assessment for the need to conduct an EIA must be made for the construction of hydro power plants and wind farms.

If an EIA is mandatory or deemed necessary, the investor is obliged to prepare a detailed EIA report and to organise public consultations at the affected municipalities and regions. All citizens, non-governmental organisations and administrative bodies may participate in the hearings. As a final step, the investor submits the results and protocols from the public consultations to the environmental authorities and awaits a decision within 45 days.

In addition to the EIA, there is a separate procedure for ecological assessment of plans or programmes that are in the process of preparation or approval by central or local government authorities. The necessity to conduct an ecological assessment must be evaluated during the procedures for adoption of a detailed zoning plan or parcelling plan.

Further, if the respective plan or the investment proposal for the power plant affect a protected area, including the Natura 2000 network, they are also subject to the mandatory procedure for conformity assessment. Although this is an independent procedure, it is usually administered in parallel with the EIA or the ecological assessment.

Grid Connection and Access

The generation facility may be connected to the transmission or distribution grid. For that purpose, the investor must obtain an opinion from the respective grid operator specifying the terms and conditions for connection of the plant to the grid.

The investor and the grid operator conclude a preliminary grid connection agreement, under which the designs for the connection facilities must be prepared by the investor and approved by the grid operator. After the investor obtains the building permits for the power plant and for the connection facilities, a final grid connection agreement is concluded specifying the deadlines and conditions for the actual connection to the grid.

In order to commence generation activities and feed electricity in the grid, the investor must conclude an access agreement with the grid operator, a power purchase agreement with a trader and a contract for participation in a balancing group.

Licence for Production

Only producers with total installed capacity exceeding 5 MW must obtain a licence from the Regulator. The licensing procedure requires the submission of a set of documents that evidence

the applicant's technical, financial and management capacity to operate a power plant. The applicant must also provide a business plan for up to five years, which contains:

- investment programme;
- production plan;
- maintenance plan;
- social responsibility activities;
- forecast structure and volume of the expenses; and
- forecast annual financial statements.

The Regulator has three months to issue a decision on the licence application after the submission of all necessary documents.

4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities

Generally, the construction permit and the operational permit do not contain a detailed list of terms and conditions. The approved investment design, the EIA decision, or the assessment that an EIA is not required, are an integral part of the construction permit.

Amendments to the already approved investment designs are allowed only if they are non-material. As an exception, when material deviations from the already approved investment design are needed, eg, changes to the building structure or the route of cable lines and facilities, the investor may submit a request for amendment that must be supported by notary-certified consent of the interested parties as defined in the Spatial Development Act.

The EIA decision contains, inter alia, conditions for performance of the environmental obligations, including measures for prevention and, if possible, elimination of the harmful impacts to the environment and human health, as well as the deadlines for performance of such measures.

The grid connection agreement provides for the connection location, the placement and the types of the facilities at the power plant and the related easement zones, the ownership boundary of the electrical facilities, the stages and the deadlines for the installation, the type and technical parameters of the connection facilities and the price for connection. Amendments may be done by mutual agreement of the parties.

The licence for production usually contains the following provisions:

- the term (up to 35 years);
- conditions for the construction of the production facilities such as development in stages;
- conditions for the proper and safe exploitation of the facilities;
- any restrictions on transactions to be concluded by the producer;
- business plan requirements;
- required insurance policies;
- obligations for the provision of information such as annual reports for the performed activities, the annual financial statements, etc; and
- decommissioning obligations (if any).

4.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

The proponent for the construction of a generation facility must obtain land rights by acquisition of title or a right to build over the land. In any case, the investor may acquire the land by mutual agreement of the parties and at market prices.

Pursuant to the Energy Act, if the land is owned by the state or a municipality, the authorities may in certain cases grant a right to build on the land without a tender procedure. The price of the right

to build should be determined based on a valuation performed by an independent expert but not lower than the tax valuation. If the land is private property, the proponent may send a written request to the title holder specifying the grounds for the proposal, the offered compensation and a deadline for a response not shorter than one month. If the owner rejects the proposal, the land may be expropriated by the state and then provided to the investor. However, such expropriation is permitted only for state needs that cannot be otherwise met.

4.5 Requirements for Decommissioning

There are no explicit statutory requirements for decommissioning of renewable generation facilities, including funding obligations. If the producer is licensed, the licence may impose that decommissioning is allowed only in case of major accidents or the expiry of the term for safe exploitation of the facilities. If the producer decides to shut down the main facilities, the producer must apply for an amendment of the licence before the implementation of decommissioning activities.

Decommissioning of nuclear facilities is performed under a special legal regime envisaged in the Safe Use of Nuclear Energy Act and the Ordinance for safe decommissioning of nuclear facilities.

5. TRANSMISSION

5.1 Regulation of Construction and Operation of Transmission Lines and Associated Facilities

5.1.1 Principal Laws Governing the Construction and Operation of Transmission Facilities

The construction and operation of transmission lines and associated facilities are governed by the same legislation mentioned in **4.1 Principal Laws Governing the Construction and Operation of Generation Facilities**.

5.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Transmission Facilities

The same construction and operational approvals need to be obtained as mentioned in **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities**, except for the grid connection procedure. The transmission system operator needs to obtain a construction permit, an operational permit, environmental authorisations and a licence to perform transmission activities.

From an environmental perspective, the construction of overhead transmission cables with a voltage of at least 220 kV and a length of at least 15 km is subject to mandatory EIA.

Considering the importance of the national transmission network, some construction projects for the development of the network may be declared an object of national importance with a decision of the Council of Ministers. The necessary approvals for such projects are obtained by the respective highest authority and thus, they should be completed faster than the general case.

5.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate Transmission Facilities

Generally, the same terms and conditions are imposed in the approvals to construct and operate transmission lines as mentioned in **4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities**.

5.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

The proponent for the construction and operation of a transmission line obtains surface access and use through easements. Pursuant to the Energy Act, the following easements are established:

- right of passage for people and equipment;
- right to construct the linear energy objects; and
- restrictions in the use of the affected land plots and properties so that the energy objects may be used properly.

The above-mentioned easements arise by law when:

- there is an effective detailed zoning plan that sets the location and dimensions of the easements in the affected land plot; and
- the easement holder deposits or pays a compensation to the owners of the affected property.

The amount of the compensation is determined either by mutual agreement of the parties or by a commission assigned by the mayor of the municipality at market prices. The appeal of the compensation's amount does not suspend the easement rights.

5.1.5 Transmission Service Monopoly Rights

Pursuant to the Energy Act, the Regulator issues only one licence for transmission of electricity on the territory of Bulgaria. Thus, the licensed transmission operator is the only company that develops the network infrastructure and provides transmission services.

5.2 Regulation of Transmission Service, Charges and Terms of Service

5.2.1 Principal Laws Governing the Provision of Transmission Service, Regulation of Transmission Charges and Terms of Service

The transmission services and charges are regulated mainly by the Energy Act. The price regulation details are envisaged in Ordinance No 1 for the regulation of electricity prices.

5.2.2 Establishment of Transmission Charges and Terms of Service

Transmission Charges

The consumers and producers connected to the transmission network owe prices for access and transmission determined by the Regulator.

The prices for access and transmission are regulated ex-ante by the Regulator for each regulatory period (generally from 1 July of the current year until 30 June of the following year).

The Regulator determines:

- price for access to the transmission grid for end consumers;
- price for access to the transmission grid for producers connected to the transmission and distribution grids (other than wind and solar);
- price for access to transmission grid for renewable energy producers from wind and solar, connected to the transmission and distribution grids; and
- price for transmission, which is owed by the end consumers for covering the technical expenses related to the transmission.

Terms of Service

The TSO provides network services to end consumers and renewable energy producers under publicly available general terms and conditions approved by the Regulator.

Further, the TSO and the producer conclude an access agreement that regulates certain specifics of the access services. The TSO and the producer, in its capacity as a consumer for the electricity required for self-consumption from external sources, conclude a transmission agreement.

5.2.3 Open-Access Transmission Service

The transmission grid operator must provide equal and non-discriminatory access to the grid. In accordance with the Rules for Management of the Energy System, the operator may suspend or terminate the access to the grid if the user breaches the access conditions and such breach may cause damages to the grid or worsen the supply conditions for other grid users.

The transmission system operator is obliged to connect to the grid the generation facilities of each producer who:

- has concluded a grid connection agreement and has performed all the obligations under such agreement;
- has constructed the necessary electrical facilities in accordance with the applicable technical and safety regulations; and
- has concluded an access agreement.

The connection of new generation facilities depends on the technical capacity of the grid to work safely with the added loads. This is assessed on a case-by-case basis by the transmission system operator.

6. DISTRIBUTION

6.1 Regulation of Construction and Operation of Electricity Distribution Facilities

6.1.1 Principal Laws Governing the Construction and Operation of Electricity Distribution Facilities

The construction and operation of distribution facilities are governed by the same legislation mentioned in **4.1 Principal Laws Governing the Construction and Operation of Generation Facilities**.

6.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Distribution Facilities

Generally, the same construction and operational approvals need to be obtained as mentioned in **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities**. The distribution grid operator needs to obtain a construction permit, an operational permit and environmental authorisations to develop the infrastructure. A licence is also needed to perform electricity distribution activities.

In addition, the Energy Act provides for the development of a closed distribution network. Such network is intended for the territories of industrial parks where the activities of the network users are integrated, and the closed network is more suitable from a technical perspective. The operator of a closed distribution network cannot apply charges for access and transmission higher than the charges applicable for the territory of the respective distribution network operator where the closed network is located.

6.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate

The same terms and conditions are imposed in the approvals to construct and operate distribution facilities as specified in **4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities**.

6.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

The proponent for the construction and operation of electricity distribution lines has the same easement rights as specified in **5.1.4. Proponent's Eminent Domain, Condemnation or Expropriation Rights**.

6.1.5 Distribution Service Monopoly Rights

Only one electricity distribution licence is issued by the Regulator for a certain territory. The said territory must have at least 150,000 end clients connected to the distribution network and include at least one administrative district of the country. Thus, the licensed distribution operator is the only company that develops the network infrastructure within the same territory and provides distribution services.

6.2 Regulation of Distribution Service, Charges and Terms of Service

6.2.1 Principal Laws Governing the Provision of Distribution Service, Regulation of Distribution Charges and Terms of Service

The distribution services and charges are regulated mainly by the Energy Act. The price regulation details are envisaged in Ordinance No 1 for the regulation of electricity prices.

6.2.2 Establishment of Distribution Charges and Terms of Service

Distribution Charges

The prices for access and distribution through the grid are regulated ex-ante by the Regulator for each regulatory period (three-year regulatory period under the last decision of the Regulator). The Regulator uses the method "upper revenue limit" under which the revenue of the distribution operator and the quantities of distributed electricity are considered. The distribution charges are applied on non-discriminatory basis to all users of the grid.

Challenge of Charges and Terms of Service

The decisions of the Regulator, which set the transmission and distribution charges, may be appealed by the interested parties within 14 days of their publication before Sofia City Administrative Court. Further, the users of the grid may submit complaints to the Regulator in case the distribution operator breaches the applicable terms and conditions. The Regulator reviews the complaint within two months of its submission. If the complaint is well-founded, the Regulator provides mandatory instructions to the grid operator for the correct application of the law.

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Trends and Developments

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Energy Policies and Funding Opportunities

In recent years, Bulgaria has been going through a period of political instability, which has hindered the fast adoption of new green-friendly energy policies. In June 2022 a no-confidence vote in the Bulgarian parliament was successful, which most likely will lead to early elections, while in 2021 there were several failed elections and caretaker governments.

During the political turmoil, the Bulgarian government managed to finalise the National Recovery and Resilience Plan (NRR), which will be funded under the EU Recovery and Resilience Facility (RRF). The NRR is focused on investments that will develop the necessary infrastructure for alternative energy sources.

The key projects with envisaged funding under the NRR are:

- National infrastructure for storage of electricity produced by renewable energy sources (RESTORE), fully funded under the RRF in the amount of approximately EUR798 million. The project aims to solve the issue of the inability of renewable energy sources to fully participate in the balancing of the electricity system. The funding will be used for purchasing facilities for storage of electricity with total capacity of 6,000 MWh. The storage facilities will be strategically placed within the territory of Bulgaria close to the renewable generators. The operators of the storage facilities will not participate in the energy and balancing markets but will only provide storage services on a non-discriminatory basis.
- Production of green hydrogen and biogas, partly funded under the RFF in the amount of approximately EUR35 million.
- Construction of minimum 1.4 GW new renewable installations with batteries by 2026, partly funded under the RRF in the amount of approximately EUR341 million. The funding will be granted during five tender procedures on each six months starting from Q4 2022 for the provision of at least 285 MW during each tender period. The investors will have to build renewable generators in combination with a storage facility necessary for balancing purposes. The storage facility will need to have capacity of at least four hours and at least 30% of the total installed capacity of the generator.
- Combined production of heat and electricity from geothermal sources, fully funded under the RRF in the amount of approximately EUR175 million. The project will include an update of geothermal potential in Bulgarian and the development of installation for combined production of 10 MW electricity and 30 MW heat.

The timely implementation of the above-mentioned projects will depend on the adoption of multiple legal acts in the next few months that will allow for the disbursement of funds under the RRF.

Liberalisation of the Market

As of 1 July 2021, all non-household electricity consumers were obliged to switch to the free market. The business consumers are now supplied by traders at freely negotiated prices,

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which contributes significantly to the growth in the trading sector.

Pursuant to the goals specified in the NRR, the final steps for the full liberalisation of the wholesale market should begin in 2022. The role of the public supplier should be terminated, ie, the National Electric Company will no longer purchase certain quotas of electricity to meet the demand of household consumers. Even if such legislative changes are adopted, most likely they will enter into force in a few years.

It is also planned that the whole retail sector will transition to the free market in stages ending by 2025. During this transition, the government must implement a mechanism to handle energy poverty and to support the most vulnerable consumers.

Suspension of Incentive Scheme for Renewable Energy Producers

Currently, all producers with installed capacity of at least 500 kW were obliged to sell at the Independent Bulgarian Energy Exchange (IBEX) to support the transition to free market trade, including renewable producers who enjoyed high preferential prices under long-term bilateral power purchase contracts. In order to guarantee that the renewable producers will continue to receive the expected revenues from preferential prices, the premium incentive model was introduced. The premium payments should compensate the producer for the difference between the repealed preferential price and the market price achieved at IBEX. The amounts of the premium are determined ex-ante by the Bulgarian Energy and Water Regulatory Commission (Regulator) based on a forecast market price for a one-year regulatory period (from 1 July of the respective year until 30 June of the following year).

The premium incentive model was disrupted on 1 January 2022 when the Regulator issued a decision that updated the amounts of the premium to zero for a lot of the producers. The decision was issued due to record high electricity prices on IBEX, which allowed the producers to earn more than with preferential prices. The Regulator explained that the premium is not meant to support the renewable energy producers who are doing better on the free market than with preferential prices. For reference, the average monthly prices per MWh on the day-ahead market in H2 of 2021 were approximately:

- July–EUR94.60.
- August–EUR111.20.
- September–EUR124.60.
- October–EUR187.85.
- November–EUR208.15.
- December–EUR219.15.

Zero premiums should not be an issue for the producers when the market prices are very high and exceed the preferential prices. However, most renewable energy producers do not sell directly at IBEX but have a power purchase contract with the coordinator of their balancing group, under which the latter sells the respective quantities at IBEX. Generally, such power purchase contracts are concluded for a one-year period under a fixed price equal to the forecast market price as determined by the Regulator. In such case, the producer is not affected by fluctuations in the market price as the coordinator guarantees that it will pay the producer the fixed price. The problem comes when the amount of the premium is suddenly updated to zero and the producer is bound to receive only the fixed price until the expiry of its contract with the coordinator.

Despite numerous objections against the update of the premium, the decision of the Regulator is in force and no premiums are paid to the respective producers. It is expected that in the next regulatory period there will be again no premium

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payments for a lot of the renewable energy producers. Thus, the power purchase contracts on the free market will be the only source of revenue for the producers and should be carefully negotiated.

Compensations for Business Consumers Due to High Electricity Prices

From October 2021 onwards, the Bulgarian government implemented a programme to compensate business consumers of electricity as a lot of energy-intensive businesses were struggling due to the high prices on IBEX. Under the compensation mechanism, the suppliers reduce the amount of the invoices with the calculated compensation and the state reimburses the supplier afterwards. For the period May to June 2022 the compensation is in the amount of 80% from the difference between the average monthly day-ahead price on IBEX and the base price of BGN 200 per MWh. With an amendment to the State Budget Act, the Bulgarian parliament envisaged that the compensations will continue at least until the end of 2022.

Amendments to the Balancing Market Regulations

In December 2021 the Regulator amended the Electricity Trading Rules. In particular, balancing groups can no longer merge with common financial settlement. Basically, if one group has a negative imbalance and another group has a positive imbalance, the two groups cannot offset the imbalances so that the total result is reduced or equal to zero. In such case, the group with the negative imbalance will have to pay the price for shortage to the transmission system operator and the group with the positive imbalance will sell the surplus at a price, which is much lower than the market price.

Due to the fragmentation of balancing groups, the quantity of imbalances will rise and so will the imbalance costs for the market participants. As the imbalance costs are part of the final electricity price for consumers, higher imbalance costs generally mean higher electricity prices. Moreover, market participants will have an incentive to switch to the balancing groups of the biggest market players where the imbalance costs should be lower. The market will consolidate around the largest traders authorised to manage a balancing group, which is contrary to the energy liberalisation principles aiming for greater competition.

Outlook for New Investments in Renewable Energy Projects

Currently, all new large investments in renewable energy projects are made under market conditions without state subsidies. Nevertheless, investors are showing interest and in 2021 the transmission system operator received applications for connection of more than 8,000 MW new renewable installations. Some of the key issues that impede the actual development of the projects are the lack of information for free grid capacity and the slow administrative procedures related to land rights and environmental authorisations.

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