WOLF THEISS

THE WOLF THEISS GUIDE TO:

Generating Electricity from Renewable Sources in Central, Eastern & Southeastern Europe

2016 Edition

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This 2016 Wolf Theiss Guide to Generating Electricity from Renewable Sources in Central, Eastern & Southeastern Europe is intended as a practical guide to the general principles and features of the basic legislation and procedures in countries included in the publication.

While every effort has been made to ensure that the country guides were accurate when finalised, they should be used only as a general reference guide and should not be relied upon as definitive for planning or making definitive legal decisions. In these rapidly changing legal markets, the laws and regulations are frequently revised, either by amended legislation or by administrative interpretation.

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Foreword

Wolf Theiss is pleased to publish this seventh edition of The Wolf Theiss Guide to: Generating Electricity from Renewable Sources in Central, Eastern & Southeastern Europe for 2016.

Given the current European and global emphasis on green initiatives and reduction of carbon emissions, the guide has proven to be a popular publication over the last few years and Wolf Theiss has distributed thousands of hard copies and electronic versions of the guide to its clients and interested readers. The laws and regulations governing the generation of electricity from renewable energy sources (RES-Electricity) in the Central, Eastern & Southeastern European region remain of major interest to those companies and individuals who are focused on this sector.

This new edition of our guide reflects some notable modifications in the RES-Electricity legislation in several of the countries of our region. For example, Poland finally managed to enact its new RES Act in February 2015, which was anticipated to come into force on 1 January 2016 but has been delayed until 1 July 2016. After that date, two support systems for RES-Electricity (the existing one, based on green certificates and a new auction system) will exist in parallel in Poland.

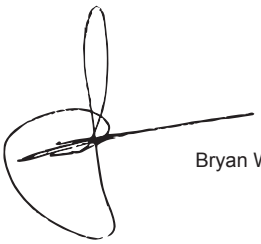
This seventh edition of the guide seeks to capture the new legislative changes that have occurred since February 2015, while retaining the fundamental structure of the previous editions of the guide. Hence, it remains a practical guide to the principal regulatory features of RES-Electricity projects in 15 jurisdictions, including the 13 countries where Wolf Theiss has offices or cooperation arrangements, as well as Kosovo and the former Yugoslav Republic of Macedonia.

The structure of the updated guide also remains consistent.

In the first part of the guide, we present an executive summary outlining the current regulatory framework applicable in each of the 15 jurisdictions.

The second chapter of the guide contains an outline of the main forces driving the development of RES-Electricity in our region. The regulatory framework applicable in each jurisdiction is described in more detail in the country chapters. To facilitate cross-referencing, all country chapters follow a uniform structure. Please note that defined terms in the country chapters apply only to that specific country.

My thanks to all of the teams at Wolf Theiss and our associated law firms who have enabled us to produce this seventh edition of the highly successful RES Guide for 2016.



Bryan W. Jardine • Partner, Wolf Theiss • February 2016

Main Driving Forces to Development of Res-Electricity in CEE/SEE

1. Renewable Energy Directive 2009

1.1 Background

In January 2007, as the mainstay of its new European Energy Policy[1], the European Commission proposed the core objective of a binding target of a twenty percent (20%) share of renewable energies in overall EU energy consumption by 2020[2].

During its spring meeting held in Brussels on 8 – 9 March 2007, the Council of the European Union adopted a comprehensive Energy Action Plan for the period 2007 – 2009, based on the Commission's Communication "An Energy Policy for Europe[3]." Among the priority actions of the Energy Action Plan adopted at that meeting, the European Council endorsed a binding target of a twenty percent (20%) share of renewable energies in overall EU energy consumption by 2020.

These actions have led to the adoption of a new directive to promote the use of energy from renewable sources ("**Renewable Energy Directive**[4]") which came into force in June 2009.

1.2 Mandatory national targets and indicative trajectory

The key achievement of the Renewable Energy Directive is to set mandatory national targets for the overall share of energy from RES ("**RE**") as a percentage of total final energy consumption and for the share of RE in transport (ten percent (10%) of final energy consumption in transport) for each Member State of the European Union. These mandatory national targets are consistent with a twenty percent (20%) target share of RE in the European Community's gross final energy consumption in 2020. Because the targets are defined with respect to "consumption" of energy, Member States can also satisfy these targets by promoting and encouraging energy efficiency and energy saving. On the basis of the mandatory national targets for 2020, the Renewable Energy Directive sets for each Member State an indicative trajectory with milestones for 2012, 2014, 2016, 2018 and 2020.

1.3 Principal obligations of Member States

In addition to their principal obligation to ensure that by 2020 the share of RE in gross final consumption of energy is at least their national overall target, Member States must also introduce measures effectively designed to ensure that the share of RE equals or exceeds their indicative trajectory. In order to achieve its targets, each Member State has the discretion to make use of support schemes or measures of cooperation provided for in the Renewable Energy Directive (i.e. arrangements for statistical transfers of specified amounts of RE, joint projects between Member States, joint projects between one or more Member States and third countries and joint support schemes).

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1 Communication from the Commission to the European Council and the European Parliament: An Energy Policy for Europe, Brussels dated 10 January 2007 {SEC (2007) 12}. This proposal comprised a sector enquiry, a strategic review and an Action Plan.

2 Another core objective of the new Energy policy for Europe is to create within three (3) years a European Gas and Electricity Grid, as well as a truly competitive internal Energy Market. Furthermore, the European Commission has proposed setting a binding minimum target of a ten percent (10%) share for bio-fuels in total vehicle fuel.

3 The three objectives of the EPE are: increasing security of supply; ensuring the competitiveness of European economies and the availability of affordable energy; and promoting environmental sustainability and combating climate change.

4 Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.

Each Member State has adopted a National Renewable Energy Action Plan ("**NAP**[5]") setting out targets for the RE share in transport, electricity, and heating and cooling in 2020, and adequate measures for achieving these targets. The NAPs will be evaluated by the European Commission, which will review in particular the adequacy of such adopted measures.

The Renewable Energy Directive does not provide for "penalties" in case a Member State falls behind its indicative trajectory (the Member State must then send an amended NAP with adequate and proportionate measures to re-join its indicative trajectory within a reasonable time frame) or on the mandatory national targets for 2020.

The Renewable Energy Directive also contains specific provisions regarding information and training, the removal of administrative barriers to the development of RE, guarantees of origin and access to the electricity grid for RE. Subject to issues regarding reliability and safety of the grid, Member States must in particular provide for either priority access or guaranteed access of RES-Electricity to the grid.

Member States may agree on the statistical transfer of a specified amount of RE from one Member State to another. Two or more Member States may cooperate on all types of joint projects relating to the production of electricity, heating or cooling from RE. The Member States may also cooperate with one or more third countries on all types of joint projects regarding the production of electricity from RE.

Member States are obliged to ensure that their national rules concerning the authorisation, certification and licensing procedures that are applied to power plants and associated transmission and distribution network infrastructures for the production of electricity, heating or cooling from RE and to the process of transformation of biomass into biofuels or other energy products are proportionate and necessary. In line with this principal obligation, the Renewable Energy Directive formulates a number of expectations regarding authorisation and public administration processes of the Member States.

Following the path of the RES-Electricity Directive[6], Member States are also obliged to ensure that a guarantee of origin is issued in response to a request from a producer of electricity from renewable energy sources. The guarantees of origin is issued for the purpose of proving to a final customer that a given share or quantity of energy was produced from renewable sources. A guarantee of origin can be transferred, independently of the energy to which it relates, from one holder to another. Any use of a guarantee of origin has to take place within twelve (12) months of production of the corresponding energy unit. The guarantees of origin should be mutually recognised by Member States.

1.4 Entry into force and repeals

The Renewable Energy Directive came into force in June 2009[7]. Provisions regarding the template NAP, submission of NAPs and forecasts by Member States had to be implemented immediately by the Member States. Other provisions had to be implemented by December 2010. Substantive provisions of the RES-Electricity Directive were deleted with effect from 1 April 2010, and the RES-Electricity Directive has been repealed altogether with effect from 1 January 2012.

1.5 Renewable energy target(s) for 2030

In late January 2014, the European Commission published its proposal for a climate/energy package for 2030. This package provided for a greenhouse gas emissions reduction target of forty percent (40%) compared to 1990 emissions. However, it did not provide any binding renewable energy targets for each Member State, as are currently in place under the Renewable Energy Directive, but only provided for an EU-level target (of twenty-seven percent (27%)) for renewable energy in the EU's energy consumption. These proposals from the European Commission were endorsed by the European Council on 23 October 2014.

5 The current status of the NAP in each country is summarised in the Appendix of this guide.
6 Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001.
7 Twenty (20) days after its publication in the Official Journal of the European Union of 5 June 2009.

2. Energy Community Treaty 2005 - Implementation of acquis communautaire for Renewable Energy

The Energy Community Treaty, establishing the Energy Community, was signed on 25 October 2005 in Athens between the European Community, on the one hand, and Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Romania, Serbia and the UN Mission in Kosovo ("**Contracting Parties**"), on the other hand. It entered into force on 1 July 2006. Bulgaria, Croatia and Romania subsequently became Member States of the EU. Moldova became a full-fledged member as of 1 May 2010, and Ukraine officially acceded to the Energy Community on 1 February 2011. Armenia, Georgia, Norway and Turkey currently take part as "observers," but Georgia has applied for full membership of the Energy Community. Whereas the initial Treaty provided that it is concluded for a period of ten (10) years since its entry into force (1 July 2006), the 11th Energy Community Ministerial Council held on 24 October 2013 in Belgrade (Serbia) decided to extend the duration of the Energy Community Treaty until 2026.

One of the principal activities of the Energy Community is the implementation by the Contracting Parties of the *acquis communautaire* for renewables, adapted to both the institutional framework of the Energy Community and the specific situation of each of the Contracting Parties. Initially, the acquis *communautaire* for renewables comprised only the RES-Electricity Directive[8] and Directive 2003/30/EC on the promotion of the use of biofuels and other renewable fuels for transport.

However, the Renewable Energy Directive 2009 specifically envisages that the measures of cooperation provided between Member States will become applicable to the Contracting Parties of the Energy Community if these countries, by virtue of a decision taken under the Energy Community Treaty, become bound by the Renewable Energy Directive.

At the 10th Energy Community Ministerial Council held on 18 October 2012 in Budva (Montenegro), the Ministerial Council decided to extend the relevant acquis communautaire in the area of renewables to include the Renewable Energy Directive 2009. Thus, each Contracting Party was obliged to bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive by 1 January 2014. The decision also sets out, for each of the Contracting Parties, the mandatory national target (for the share of energy from renewable sources in gross final consumption of energy in 2020).

These are:

CONTRACTING PARTY	2020 MANDATORY TARGET
Albania	38%
Bosnia and Herzegovina	40%
Croatia	20%
Macedonia	28%
Moldova	17%
Montenegro	33%
Serbia	27%
Ukraine	11%
Kosovo	25%

8 Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources.

Each Contracting Party was obliged to notify its National Renewable Energy Action Plan to the Energy Community Secretariat by 30 June 2013, and must report on the progress in the promotion and use of energy from renewable sources by 31 December 2014, and every two (2) years thereafter. The Energy Community Secretariat, which has the responsibility to monitor and review the application of the Renewable Energy Directive 2009 in the Contracting Parties, must submit an overall progress report to the Ministerial Council by 30 June 2015 (for the first report) and thereafter every two (2) years. In its Annual Implementation Report for 2013/2014[9], the Energy Community Secretariat noted however that "looking at the state of implementation (and pre-implementation) of Directives such as the Large Combustion Plants Directive 2001/80/EC or the Renewable Energy Directive 2009/28/EC there is reason to assume that not only a few Contracting Parties will fail to fully comply by 2017 and 2020 respectively. In the area of renewable energy, for instance, the Secretariat had to open infringement proceedings against the majority of them for not even submitting national renewable energy action plans (NREAPs)."

9 Dated 1 August 2014.

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ALBANIA

ALBANIA

Main permits required for RES-Electricity generating facilities

Environmental permit	Competent authority: Ministry of Environment, National Environmental Agency Required for any type of power generation installation. The procedure depends on whether an in-depth evaluation or a short-form evaluation will have to be performed under the guidelines set by the Albanian Environmental Impact Assessment Act. A water permit, granted in the form of an approval, authorisation or concession, is required for the use of water by hydro power plants.
Building permit	The mandatory process for the approval of construction requires obtaining three (3) different permits, i.e. (i) a development permit; (ii) a construction permit; and (iii) a use permit.
Authorisation under Energy law/ right (concession) to export natural resources	Either a concession or the prior approval of the Council of Ministers (pursuant to a three-phase process) is required.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	An energy licence is mandatory for electricity generation, except for a self-supporting facility that is not connected to the power system. The application is submitted to the Licensing & Monitoring Department of the Energy Regulatory Entity.
PROMOTION SCHEME	
Outline	The feed-in tariff is currently applicable to electricity generated from plants generating electricity from renewable sources with an installed capacity not exceeding 15 MW ("**Preferential Producers**"), and that have concluded an agreement with a term of up to fifteen (15) years for the purchase of electricity with the wholesale public supplier (presently KESH Sh.A.). Quota system obliging generators with installed capacity exceeding 100 MW to source two percent (2%) of their generated electricity from RES-Electricity.
Other financial incentives	New RES-Electricity generation installations are entitled to an exemption from customs duties on imported machinery and equipment used for capital investment, and a reimbursement of the custom and excise duties paid on the import of liquid or solid combustibles used for the production of power.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	Priority is only granted to RES-Electricity generators with an installed capacity of up to 15 MW.
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The generator bears the costs of grid connection and/or capacity upgrades, as well as improvements or expansion of the grid if they are made in the interest of the generator.

Special allowance/tolerance for intermittent generation in relation to balancing charges	Yes (+/- five percent (5%), however this must be compensated in kind in the week following the intermittent generation).
CARBON CREDITS	
Status	Ratified Kyoto Protocol, as a non-Annex 1 Party to the United Nations Framework Convention on Climate Change ("**UNFCCC**"). The necessary legal framework has already been adopted by national law.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

Renewable energy currently contributes ninety-five percent (95%) of the electricity generated in Albania, a percentage achieved almost entirely from hydro power generation. Due to its intensive utilisation of renewable energy, Albania has had little incentive to introduce additional legislation in support of renewable energy, other than hydro power generation.

The principal regulatory acts related to renewable energy in Albania are:

- The law "On the Electric Power Sector" (Law No. 43/2015 of 30 April 2015) ("**Energy Law**"), governs activities in the power sector. It also defines the rights and obligations of parties involved in the sector and sets out the procedures for selecting and developing a market model and the rules for an electricity market. The Energy Law also defines: (i) the authority of the Energy Regulatory Entity ("**ERE**"), as the regulator of the energy sector; (ii) the development of regional trade in electrical power; (iii) regulations of feed-in tariffs and tariffs for the commercialisation of electricity; and (iv) licensing requirements. This law has fully transposed into the Albanian legislation the requirements of the Directive 2009/72/EC dated 13 July 2009, concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC.
- Law No. 138/2013 dated 2 May 2013 "On Sources of Renewable Energy" ("**RES Law**") sets forth a new feed-in tariff calculation formula. However, the RES Law needs to be supplemented with additional sublegal acts to be effectively applied. The necessary sublegal acts must be issued by the Albanian Council of Ministers upon the proposal of ERE.
- The "Regulation on the Procedures for Certification of Electric Energy Generated from Renewable Energy," issued by ERE Decision No. 9 dated 21 February 2007, provides for the registration of power plants that generate renewable energy and the certification of energy generated from biomass, wind power, solar power, hydro and geothermal sources. The regulation also defines the procedures for obtaining certification.
- The "Rules for the Evaluation and Award of Concessions/Public Private Partnerships" (Council of Ministers Decision No. 575 of 10 July 2013) states the procedures for awarding concession contracts for the construction and operation of new electricity generation installations. It also provides for the feed-in tariff and the mandatory off-take of generated electricity.
- The Energy Community Treaty, to which Albania is a Contracting Party.

From time to time, the ERE issues decisions regulating the commercialisation of energy generated from power plants and offered for sale on the regulated energy market in Albania.

Albania is currently a candidate country for EU accession. Under Albania's Stabilisation and Association Agreement with the European Union and the Energy Community Treaty, it is obligated to implement the *acquis communautaire*, which includes developing the energy sector based on the principles of market economy and integration with the Eu-

ropean energy markets. The medium-term objective is to harmonise the entire legal framework with the *acquis communautaire* in order to align the Albanian energy market with European standards and norms. Another medium-term objective is to provide support for the integration of Albania into the regional and European electricity transmission grids.

1.2 Expected changes

Based on the Council of Ministers' Decision no. 64, dated 28 January 2015 "On approval of the general analytical programme of draft-acts, that shall be presented for evaluation by the Council of Ministers during 2015", the following decisions were expected to be approved by the Council of Ministers in 2015:

- Decision on a National Action Plan for Renewable Energy Sources 2015-2018;
- Decision on calculation and determining the National Objective for the use of energy from renewable sources; and
- Decision on the approval of methodology of determining the energy feed-in tariffs that shall be paid to the RES priority producer.

However, none of the above decisions have yet been approved. It is therefore expected that the Council of Ministers will approve the above decisions in 2016.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

2.1.1 Environmental Law

In principle, an environmental permit is mandatory for all natural/legal persons exercising activities that have, or may have, an impact on the environment ("**Environmental Permit**"). Such an Environmental Permit is issued by the competent authority at the request of the natural/legal person on the basis of the technical documentation submitted and an analysis of environmental impact studies.

An Environmental Permit is required for any type of power generation installation.

The competent authority for the approval of the Environmental Permit is the Ministry of Environment, and the National Environmental Agency. The activities requiring a permit fall into two categories, depending on whether an in-depth evaluation or a short-form evaluation will have to be performed under the guidelines set by the Albanian Environmental Impact Assessment Act. The Environmental Permit is supposed to be issued within five (5) weeks after the date of filing of the application.

A Water Permit, granted in the form of an approval, authorisation or concession, is required for the use of water by hydro power plants on the basis of Law No. 8093 dated 21 March 1996 "**On Water Reserves**". Concessions granted by the Government of Albania, or its contracting authorities for the construction, use and operation of hydro power plants, do not substitute the Water Permit. The Water Permit is issued by the water authorities at the local and central level for a period of up to thirty (30) years.

2.1.2 Territorial Planning Law

2.1.2.1 THE APPROVAL OF THE DEVELOPMENT PERMIT

Law No. 107/2014 dated 31 September 2014 "On territorial planning and development" ("**Territorial Planning Law**") is the legislation currently in force regulating the principles on construction and related aspects.

The mandatory process for the approval of construction begins with an application for the approval of a development permit, which must be obtained before commencing any new development.

Under Territorial Planning Law, each and every physical or legal person, local or foreign, who intends to carry out a new development in Albania, upon private or public property for which they enjoy legal rights in accordance with Albanian law, must apply for a development permit for any land development, or development of the structures upon it, or the carrying out of work with regards to such structures.

Two additional legislations have been implemented and are issued pursuant to the Territorial Planning Law. The first act is the Council of Ministers Decision no. 408, dated 13 May 2015 "On the approval of the regulation on territorial development", as amended ("**Territorial Development Regulation**"). The Territorial Development Regulation establishes the conditions and detailed procedures for the implementation of the development of management tools, as well as the content, structure and procedure of the adoption of the development control acts. The main purpose of this regulation is to define the rights and obligations of the authorities for the development of exercising the function of territorial development control, in accordance with Territorial Planning Law. More specifically, this regulation provides for the conditions and procedure for obtaining a construction permit for a specific activity.

The second act is the Council of Ministers Decision no. 671, dated 29 July 2015 "On approval of the regulation on territorial planning" ("**Territorial Planning Regulation**"). The Territorial Planning Regulation establishes uniform rules for the structure, content and procedure for the design and implementation of, as well as monitoring the implementation of plans. The competent public authorities shall strictly act in accordance with this regulation and also apply this regulation during the entire process involving the design, implementation and monitoring of various territorial plans.

2.1.2.2 BUILDING PERMIT

The issuance of a building permit is also regulated by Territorial Planning Law.

A building permit is required for new constructions, repair and restoration work, the erection of temporary structures, or demolition of existing structures, except where the implementing legislation referenced above may otherwise provide. A building permit is only granted upon completion of a review and certification of compliance of the application with the effective building regulations and/or the stipulations contained in the development permit. Building permits which are contrary to the territorial planning legislation are considered null and void, and the term for commencing any work under the building permit is one (1) year.

Each and every building permit must be issued based upon a specific application, which must be considered by the relevant authorities within sixty (60) days from the date of its submission.

The ultimate competent authority for approving and issuing a building permit in relation to an energy generation plant is the National Territory Council.

2.1.2.3 THE USE PERMIT

At the end of the development process and construction of the installation, the responsible planning authority issues the use permit for the structure. This use permit confirms the completion of work in compliance with the development

permit and/or building permit conditions, or in conformity with any special requirements contained in the planning and development control documents (for those cases where work is carried out via a preliminary declaration of work).

The use permit is issued if the records of control confirm the performance of work in conformity with the permit conditions and safety requirements, according to the stages set forth in the development control regulations regarding, but not limited to, the foundation, framing, mechanical, plumbing and insulation work, finishing and outside systems.

If a use permit is refused, an observation act of non-compliance is issued. This act of non-compliance must detail the data and arguments evidencing the determination of non-compliance and specifying their importance. It must also describe how this conclusion was reached, and provide suggestions to the developer on how to remedy the non-complying elements.

The use permit is reviewed and granted in accordance with the procedure and time limits provided for in the relevant legislation on the monitoring of building work.

In those cases where a decision has not been made within the time limits prescribed by the relevant legislation, and the applicant has fulfilled all the required administrative steps and requirements, the use permit is deemed approved, and is granted by the responsible planning authority within fifteen (15) days following the request of those concerned, and is then published in the Territorial Planning Register.

Any work carried out pursuant to Territorial Planning Law and which impacts ownership must be recorded in the relevant real property registers, based upon the use permit issued in accordance with the stipulations set forth in Territorial Planning Law.

2.1.3 Energy Law

Unless a new electricity generation installation is constructed in the framework of a concession agreement entered into with the Government of Albania or any of its contracting authorities, the project developer is bound, under Energy Law and the Council of Ministers' Decision No. 822, dated 7 October 2015 ("**CMD 822**"), to obtain the approval of the Council of Ministers ("**CoM Approval**") for the project.

The application for the construction of a new power plant consists of three (3) phases, specified in CMD 822:

- an initial evaluation of the documentation submitted with the application for CoM Approval, as provided under Article 12 of CMD 822;
- the issuance of preliminary approval, which allows the applicant time for the preparation of key project development documentation, as provided under Article 19 of CMD 822; and
- the issuance of CoM Approval under Article 21 of CMD 822.

Pursuant to Article 4 of CMD 822, foreign entities, which have established an Albanian subsidiary or a representative office in accordance with Albanian law, are eligible to apply for the CoM Approval.

Following the application, a country-wide publication of the project application is made, allowing objections to be collected from the public. Thereafter, the application is reviewed by a commission specially set up for the purpose of such review, which will decide whether to grant preliminary authorisation. If more than one application for CoM Approval is submitted, a commission will select the most advantageous proposal and preliminary authorisation will be granted for that proposal.

The preliminary authorisation grants the developer time to prepare relevant project documentation, including the economic, financial and technical feasibility study and the business plan, to obtain permits such as the environmental permit, and to secure real estate rights, among other things.

The regulatory framework for the third phase, which relates to the issuance of CoM Approval, provides for an obligation for the applicant to enter into a contract with the Ministry of Economy and Industry ("**MEI**") once the approval has been granted to the applicant on the one hand, and penalties if the applicant fails to deliver the project in accordance with the criteria and timing set out in the authorisation on the other.

CMD 822 provides that at least two percent (2%) of the annual electricity production generated by a thermal plant, or the monetary equivalent thereof, shall constitute a royalty under the licence.

In addition to the above, the CoM Approval may provide an obligation for the project developer to sell a certain amount of electricity to the Albanian Energy Corporation Sh.a., which is the public wholesale supplier of electricity in Albania.

2.2 Process for obtaining the right (concession) to exploit natural resources

The concession right is understood as the right to perform services using public resources that would otherwise be provided by a public/government entity. In order to be granted a concession right to exploit natural resources that are publicly owned (such as hydro power), a tender procedure must be organised in order to ensure that the concessionaire with the best proposal is selected.

The tender procedure is initiated either by a public authority or as a result of an unsolicited proposal submitted to the public authority by a private entity. The unsolicited proposal may be granted "bonus" points, which are taken into account during the selection of the best proposal for the award of the concession.

With regard to the mandatory tender procedure, the public authority shall evaluate the technical and financial feasibility of the concession project. Consequently, the concessionaire is usually selected in a two-stage tender procedure. The first stage is referred to as the pre-qualification procedure. In this first stage, the public authority shall draft an invitation to participate in the pre-qualification procedure. However, there are provisions which enable the public authority applicant to bypass the pre-qualification procedure where it deems that the pre-qualification procedure is not required. In the second stage, the bid submission and evaluation shall take place.

The bids shall be evaluated by comparing the technical, financial and commercial proposals, taking into account the: (i) technical soundness of the bid; (ii) compliance with environmental standards; (iii) operational efficiency; (iv) quality of services and the existence of measures ensuring their continuity; (v) social and economic development potential offered by the proposals; (vi) present value of the proposed tolls, unit prices and other charges over the concession period; (vii) present value of the proposed direct payments by the contracting authority, if any; (viii) costs for design and construction activities, annual operation and maintenance costs; (ix) present value of investments and operation and maintenance costs; (x) extent of financial support, if any, expected from a public authority of the Republic of Albania; and (xi) soundness and viability of the proposed financial arrangements.

The Council of Ministers may also determine any additional criteria, depending on the importance of the specific sector to the development of the economic investment volume and employment level, priorities for the development of particular areas of the country, other sector-specific indicators, as well as the proposed price or fee.

Under Energy Law, the construction of new power plants, which are not subject to concession, or any new power plants up to 2 MW, is approved by the minister responsible for energy. The construction of new power plants of over 2 MW, which are not subject to concession, is approved by the Council of Ministers, with the proposal of the minister responsible for energy.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

Energy Law provides that the exercise of the following exhaustive list of activities in the electricity sector requires a licence:

- generation of electricity;
- operation of electricity transmission systems;
- operation of electricity distribution systems;
- supply of electricity in retail and wholesale;
- trade of electricity within Albania or abroad; and
- operation of the energy market.

Thus, an Energy Licence is mandatory for the activities of electricity generation. However, no generation licence is required for:

- the operation of a self-supporting facility that is not connected to the power system, or when the connection to the national grid is implemented for reasons of maintenance of its production unit; and
- producers, including self-producers, connected to the national grid, with an installed capacity up to 1 MW.

For such a purpose, interested persons must establish and maintain a company in Albania for the entire period of validity of the applicable licence.

The validity of the Energy Licence may not exceed thirty (30) years.

The application for obtaining the licence is submitted to the Licensing & Monitoring Department of ERE.

3.2 Designated/preferred legal form of investment vehicle

There are no mandatory requirements as to the legal form of an investment vehicle in the renewable energy sector in Albania.

An investment vehicle may, under the Albanian law on companies (Law 9901/2008), be organised in the form of a: (i) general partnership; (ii) limited partnership; (iii) limited liability company (*sh.p.k.*); or (iv) joint stock company (*Sh.A.*) – which may be set up either as a joint stock company without a public offering (non-public) or with a public offering (public). A foreign company may choose to conduct business in Albania by establishing a subsidiary or a branch.

Investors generally prefer to set up their investment vehicle as a limited liability company (*sh.p.k.*). This is because sh.p.k.s are lightly regulated, offering, among other things, limitation of liability[1] of its shareholders to the share capital of the sh.p.k., and a higher degree of flexibility for its management.

1 The Albanian legislation, however, provides for certain conditions which trigger a piercing of the corporate veil.

3.3 Anticipated time frame for the issuance of licences/authorisations

Once the application has been submitted, the following procedural steps take place:

- the Licensing and Monitoring Department submits a report to the Board of the ERE regarding the initiation of the licensing procedures within three (3) days;
- on the basis of the above-mentioned report, the Board of the ERE decides whether or not to initiate the licensing procedure. In the event the Board resolves to refuse the initiation of the licensing procedure, the ERE will notify the applicant about the reasons behind such refusal and provide further instructions within five (5) working days;
- in the event the Board resolves to initiate the licensing procedure, within three (3) days, but no later than fourteen (14) days from the date of the application, the ERE, will publish the relevant information on the application in written media and will invite comments/complaints from any interested persons within two (2) months, during which the application documentation is open to public inspection. The ERE shall, on the basis of the applicant's request, decide what information or documentation should be treated as confidential. During this period, the ERE may request further information from the applicant; and
- after the "waiting period" of two (2) months, and depending on its outcome, the Board of the ERE will decide whether to issue or refuse the licence. It will do so no later than ninety (90) days after the first publication regarding the initiation of the application procedure.

4. Promotion System for the Production of RES-Electricity

In 2013, Albania introduced a new legislation which amended, among others, the feed-in tariff applicable to electricity generated from plants generating electricity from renewable sources with an installed capacity not exceeding 15 MW ("**Preferential Producers**"), and that have concluded an agreement with a term of up to fifteen (15) years for the purchase of electricity with the wholesale public supplier (presently KESH Sh.A.).

The feed-in tariff is set forth under RES Law. However, the Law still needs to be supplemented with additional implementing legislation to be effectively applied. The necessary implementing legislation must be issued by the Albanian Council of Ministers under the proposal of the ERE, and the deadline for the approval of the implementation of this legislation was 1 January 2015. Although this deadline has already expired, to date the sublegal acts to be implemented have not yet been approved. We expect that the sublegal acts related to RES Law shall be approved in the course of 2016.

However, under Law the following formula shall be taken into account for the calculation of the electricity selling price - to be determined by ERE on a yearly basis - on the basis of which a Preferential Producer shall be allowed to sell its energy to the wholesale public supplier.

$$Fit = \frac{I}{FLH}\left(\frac{WACC}{I=\frac{1}{(1+WACC)^2}}\right) + \frac{C_F}{FLH} + C_V\,[ALL/MWh]$$

Whereby:

"Fit" means the selling price of the electricity (fixed price), using the renewable resources technology (ALL/MW);

"I" means the average specific cost of investment (ALL/MW) as defined by the ERE every three (3) years;

"FLH" means the average hours of work with maximum power per year (hours per year);

"WACC" means the weighted average rate of capital cost, based on the average loan rate applicable in the Albanian market, equity interest rate (investor's capital), as well as capital structure (equity/loan) as defined by the ERE every three (3) years;

"T" means the term of guaranteed price in years (fifteen (15) years for the preferential producers);

"CF" means the average specific costs related to operation and management (ALL/MW/years) as defined by the ERE every three (3) years;

"CV" means the average costs of fuel and other various costs related to management (used as a definition only for centrals with two types of fuel that also use a small quantity of fuel aiming to maintain stable flames) (ALL/MWh), as defined by the ERE every three (3) years.

Preferential Producers, who have obtained the right to construct and exploit resources of renewable energy, are entitled to request the implementation of the above formula for the sale of electric energy they produce. Preferential Producers are permitted to apply for the application of the new price calculation formula only once.

Under RES Law, based on the action plan on renewable resources of energy, the ERE shall define the total maximal capacity installed for each technology of renewable resources every three (3) years.

A quota system is in place, whereby generators with an installed capacity exceeding 50 MW are obliged to source three percent (3%) of their generated electricity from RES-Electricity. However, the quota system is superfluous, as Albania relies entirely on local generation of RES-Electricity (in the form of hydro power) and imports energy generated from traditional resources.

4.1 Applicability of promotion scheme

The feed-in tariff promotion system targets RES-Electricity generated from projects with an installed capacity not exceeding 15 MW and that have concluded an agreement with a term of up to fifteen (15) years for the purchase of electricity with the wholesale public supplier (presently KESH Sh.A.).

4.2 General description of promotion scheme

The electricity generated from Preferential Producers with an installed capacity not exceeding 15 MW may conclude an agreement with a term of up to fifteen (15) years for the purchase of electricity with the wholesale public supplier (presently KESH Sh.A.).

4.3 Procedure for determining the feed-in tariff

For determining the feed-in tariff for Preferential Producers, please see the calculation formula discussed in Section 4.

4.4 Revision and/or indexation of the feed-in tariffs

The feed-in tariff shall be revised and approved every year by the ERE. However, please see the calculation formula provided in Section 4.

4.5 Other financial incentives for RES-Electricity

Financial incentives for RES-Electricity producers are granted under Law No. 8987 dated 24 December 2002 "On incentives for the construction of new electricity generation capacities" ("**Incentives Law**").

The Incentives Law provides that investors who build new electricity generation capacities that use renewable energy sources are entitled to benefit from an exemption from customs duties on imported machinery and equipment used for capital investment. Such investors are also reimbursed for the customs and excise duties that they have paid upon importing liquid or solid combustibles used for the production of power.

The Incentives Law does not provide any criteria regarding the incentives to the application of capital investment in renewable energy projects, thus making them available without discrimination to all new electricity generation capacities that use renewable energy.

On the other hand, legislation which entered into force on 1 January 2015 aimed to facilitate and incentivise new investments, including the construction of new RES-Electricity generation capacities from hydropower plants. The adopted legislation (i.e. Law No. 92/2014 "**On Value Added Tax in the Republic of Albania**") exempts equipment and machinery from the payment of any value added tax (which is currently twenty percent (20%)) upon their importation. The incentive is applicable to new projects with a total investment value exceeding ALL 50 million (approximately EUR 360,000).

4.6 Support scheme for cogeneration

To date, there is no support scheme in place for cogeneration.

4.7 Guarantees of origin and green certificates for RES-Electricity

The guarantees of origin and green certificates are issued by the ERE, *inter alia*, for: (i) all the energy produced from hydro power sources on an annual basis (less energy used for pumping reserves); (ii) the annual production of energy generated from biomass, wind power, solar power, and geothermal sources; and (iii) the amount of energy produced in cogeneration systems if the amount of energy from non-renewable sources does not exceed five percent (5%) of the total energy generated.

The issuance of the guarantees of origin and green certificates requires that the power plant that generates renewable energy is first qualified as such by the ERE. The qualification procedure lasts up to ninety (90) days.

Upon request, the ERE will issue the guarantee of origin annually for the actual (real) amount of electricity produced by the already qualified plants and only if the plant is already in operation. Green certificates are issued by the ERE for a period of twelve (12) years.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

Producers generating electricity from renewable energy sources ("**RES-Electricity producers**") have priority in accessing the electricity grid. The transmission system operator ("**TSO**"), which is a state-owned legal entity, is obliged to allow RES-Electricity producers access to the national electricity grid to the extent that allows the secure operation of the national electricity grid, based on transparent criteria. However, only green producers with an installed capacity of up to 15 MW are prioritised in the connection to the transmission system. In practice, however, it is unclear how the priority right is implemented, as there are no implementing regulations in place.

5.2 Liability and responsibility for connection and/or capacity upgrades, improvements or expansion of the grid

The producer bears the costs of grid connection and/or capacity upgrades, and improvements or expansion of the grid if they are made in the interest of the producer. However, the responsibility for conducting such work is contractually agreed with the transmission system operator.

5.3 Special allowance/tolerance for intermittent generation when determining balancing charges in case of unscheduled deviations

Albania makes some special allowances or expresses tolerance for intermittent generation when determining balancing charges in the case of unscheduled deviations. To date, such allowances apply at a rate of +/- five percent (5%) and must be compensated in kind in the week following the intermittent generation.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all the jurisdictions is the prohibition of incompatible state aid, which is contained both in the EC Treaty and in the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission's new Guidelines on State Aid for Environmental Protection and Energy adopted on 9 April 2014, be considered as compatible with the common market.

Energy Law in basic terms, and the Albanian Energy Market Model approved by decision of the Council of Ministers ("**Market Model**"), as well as the Energy Market Rules passed by the ERE ("**Market Rules**") in more specific and detailed terms, set forth the framework under which contracts between the various electricity market participants may be entered into. Under both acts, a regulated market and a free market for the sale of energy are established as described further below. The regulated market involves contractual relations that are subject to contractual terms determined, and most importantly tariff regulations established, by the ERE.

Two (2) types of Power Purchase Agreements ("**PPAs**") are stipulated: (i) regulated PPAs, where mandatory content is set forth by the ERE; and (ii) non-regulated PPAs, where the parties enjoy a high degree of flexibility in negotiating the terms and conditions of the agreement, being bound, however, to observe the mandatory provisions of the Market Model and the Market Rules passed by the ERE.

The purpose of regulated agreements is to protect the captive/tariff consumers against the risk of market price variations. Therefore, there are some legal limitations applicable to regulated PPAs, such as the price for the sale of energy from a generator to the wholesale public supplier.

Under the current Market Model and Market Rules, small power plants (which are connected to the distribution network) with a licence for generation may sell electricity to qualified suppliers, traders, or the Distribution System Operator on freely negotiated terms. Furthermore, such power plants may sell power to the wholesale public supplier at a regulated price.

By contrast, an independent power producer ("**IPP**") connected to the transmission network may apply for a qualified supply licence if it chooses to sell directly to eligible customers. Furthermore, under the unregulated market terms, IPPs may sell capacity or energy to traders, qualified suppliers or traders at market prices, or to the wholesale public supplier at a regulated price and pursuant to a contract that must be approved by the ERE.

The regulated contracts are renewed on an annual basis, as the price for the sale of energy is also revised each year. The prices of trading electricity through regulated PPAs are set by the ERE. A framework of the regulated PPAs is available on the official Web site of the ERE.[2]

It has become common practice for PPAs in Albania to be entered into for the duration of one (1) year. This mostly applies to contracts that are subject to ERE regulation. The reasons that have led to short term PPAs being entered into are mainly the revision of the prices for the exchange of electricity by ERE on an annual basis, and the limited overall number of operators in the electricity market which operate mostly under the regulated market terms.

Unregulated contracts must be disclosed to the transmission system operator, at least with respect to the contracting parties, the amount of electricity contracted, and the starting date and duration of the contract. Unless such disclosures are effectively made, an unregulated contract shall not become effective.

7. Carbon Credits

Albania ratified the Kyoto Protocol ("**KP**") with Law No. 9334 on 16 December 2004 as a non-Annex I Party to the UNFCCC. As a "developing" country under the Protocol, Albania had no quantified greenhouse gas ("**GHG**") emission reduction targets during the first commitment period (2008-2012), but participates in the global carbon market under the Clean Development Mechanism ("**CDM**").

In order to facilitate the CDM scheme, Albania has passed the necessary legal framework consisting of:

- The Council of Ministers' decision No. 1553, dated 26 November 2008, "On establishment of the Designated National Authority clean development mechanism, within the framework of the implementation of commitments under the Kyoto Protocol"; and
- Regulation of the Ministry of Environment, Forests and Water Administration No. 1, dated 25 March 2009, "On the evaluation procedures and approval of Clean Development Mechanism projects."

To date there has been only limited engagement in CDM activities in Albania. However, it is estimated that Albania has high potential for the cost-effective reduction of GHG emissions which are generated as a result of: (i) an outdated and inefficient energy sector; (ii) abundant, but relatively unexploited, sources of renewable energy (solar and hydro); and (iii) the presence of several GHG-rich industries (e.g. aluminium). In addition, the country's proximity to the European Union, electricity interconnection with European grids and prospects for European Union integration could create market advantages if Albania increases its capacity to deliver on CDM projects.

2 **www.ere.gov.al/**

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Main permits required for RES-Electricity generating facilities

Environmental permit	Competent authority: Generally speaking, provincial governments with a right to appeal to the Federal Administrative Court. Environmental Impact Assessment ("**EIA**") required for: (i) wind power projects with a total capacity of at least 20 MW or 20 wind turbines each with a nominal output of at least 0.5 MW (or, under specific circumstances, wind power projects with a total capacity of at least 10 MW, or 10 wind turbines, each with a nominal output of at least 0.5 MW); (ii) hydro power plants with a maximum capacity of at least 15 MW (or, under specific circumstances, 10 MW, or in the case of power plant chains); and (iii) certain facilities combining waste management with power generation. Even if no EIA is necessary, a water use permit, issued by the relevant district authority or, under specific circumstances, the relevant provincial governor, may be required.
Building permit	Competent authority for permitting procedure: mayor of the relevant municipality, based upon provincial statutes. Usually, three stages: (i) issuance of a declaration on the construction site (*Bauplatzerklärung*); (ii) issuance of a building permit prior to commencement of the construction works (*Baubewilligung*); and (iii) issuance of an operating permit upon completion of the construction works (*Benützungsbewilligung*).
Authorisation under Energy law/ right (concession) to exploit natural resources	There is no Austrian legislation requiring the participation in a prior tender procedure in order to be granted the right (concession) to exploit natural resources. Provincial electricity statutes generally provide for permitting procedures for the construction and operation of power plants, including a facilitated procedure for power plants generating electricity from RES.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	No licence required, but a facility operation permit pursuant to the applicable provincial electricity statutes as well as other regulatory permits may be required.
PROMOTION SCHEME	
Outline	Green electricity facilities, recognised as such under the Green Electricity Act, are guaranteed the off-take of the generated electricity by the Green Electricity Settlement Centre at supported feed-in tariffs (set annually by the Federal Minister of Science, Research and Economy). Facilities eligible for official recognition are: (i) facilities run exclusively on the basis of RES; (ii) specific hybrid plants; and (iii) specific mixed combustion plants.

	The duration of the mandatory statutory obligation to off-take electricity generated in officially recognised RES-Electricity facilities at guaranteed feed-in tariffs (general mandatory contracting period) is generally thirteen (13) years or fifteen (15) years for solid and liquid biomass and biogas facilities, starting from the date from which RES-Electricity is off-taken by the Green Electricity Settlement Centre. After this period, the Green Electricity Settlement Centre is obliged to offer the operator of the RES-Electricity facility to off-take the electricity at the prevailing market prices, less the costs of balancing energy.
Other financial incentives	Investment allowances to entities constructing/renovating certain hydro power plants and Combined Heat and Power ("**CHP**") plants amounting to a certain percentage of the investment costs – e.g. up to ten percent (10%) in the case of medium-sized hydro power plants. Support scheme for cogeneration – operators of existing and modernised CHP-plants are compensated for costs arising from the maintenance of such CHP-plants.
GRID CONNECTION	
Priority access to the electricity grid system given to RES-Electricity	Priority access is provided for the transport of RES-electricity (including electricity deriving from CHP-plants) for the purpose of supplying such electricity to customers but only in case of insufficient capacities of the system.
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The costs of the grid connection are borne by the energy producer in the form of a one-off payment to the distribution grid operator. The costs of grid reinforcements, improvements, upgrades and other similar costs are borne by end-customers and grid operators by way of an annual payment.
Special allowance/tolerance for intermittent generation in relation to balancing charges	No
CARBON CREDITS	
Status	Austria has ratified the Kyoto Protocol as an Annex I party to the UNFCCC. The necessary framework for obtaining carbon credits has been implemented into national legislation.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

The following federal acts or ordinances are the principal regulatory acts related to renewable energy in Austria:

- The Green Electricity Act (*Ökostromgesetz 2012*; Federal Gazette No. I 75/2011 as amended; "**Green Electricity Act**") is the central regulatory act for promoting green energy in the Austrian electricity market.

  The Green Electricity Act 2012:

  - defines new targets that shall be achieved by 2020;
  - provides for the reduction of waiting periods for wind energy, photovoltaic and hydro power;
  - contains changes in the calculation of caps;

- takes steps in order to reduce tariffs;
- establishes administrative improvements for RES-Electricity generating facilities; and
- changes the financing support scheme.

In order to facilitate the transparency of the new targets that shall be achieved by 2020, the Green Electricity Act provides for absolute numbers:

- hydro power: + 1,000 MW as far as sites are available;
- wind energy: + 2,000 MW as far as sites are available;
- biomass and biogas: + 200 MW as far as resources are verifiable available;
- photovoltaic: + 1,000 MW.

Electricity derived from renewable energy sources in Austria comprised nearly eighty percent (78.4%) of the total electricity production in Austria in 2013.

- The Federal Electricity Industry and Organisation Act (*Elektrizitätswirtschafts- und –organisationsgesetz 2010*; Federal Gazette No. I 110/2010; "**Federal Electricity Act**"), together with provincial electricity statutes, sets the principal regulatory framework for the generation, transmission, distribution and supply of electricity and the organisation of the electricity market in Austria.

- The Federal Act on Combined Heat and Power (*KWK-Gesetz*; Federal Gazette No. I 111/2008; "**CHP Act**") provides a support scheme for the operation and modernisation of existing combined heat and power ("**CHP**") plants.

- The Ministerial ordinance on feed-in tariffs for the off-take of electrical energy from green electricity facilities on the basis of contracts concluded through the Green Electricity Settlement Centre from 1 January 2016 until the end of 2017 (*Ökostrom-Einspeisetarifverordnung 2016*; Federal Gazette No. II 459/2015; "**Green Electricity Feed-in Tariffs Ordinance 2016**"), enacted jointly by the Minister of Science, Research and Economy, the Minister of Agriculture, Forestry, Environment and Water Management and the Minister of Labour, Social Affairs and Consumer Protection, sets standardised feed-in tariffs for electricity generated from renewable energy sources.

- With regard to energy efficiency, the Energy Efficiency Act (*Bundes-Energieeffizienzgesetz*, Federal Gazette No. I 72/2014; "**Energy Efficiency Act**"), which is based on EU Directives 2006/32/EC, 2009/28/EC and Directive 2012/27/EU, aims at improving energy efficiency by twenty percent (20%) until 2020, at increasing security of supply as well as the share of renewables in the energy mix, and at reducing greenhouse gas emissions. These goals are to be achieved through compulsory implementation of energy efficiency measures and respective reporting obligations. Parts of it entered into force in the summer of 2014, while the remaining parts entered into force on 1 January 2015.

- Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market has been fully implemented with the adoption of the Austrian Green Electricity Act (*cf.* Article 3). The current regulatory framework of the Austrian Green Electricity Act is in compliance with Directive 2001/77/EC (now repealed by Directive 2009/28/EC of 23 April 2009).

- Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity has been implemented through amendments to the Austrian Federal Electricity Act.

- Directive 2009/28/EC of 23 April 2009 of the European Parliament and of the Council on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC has been implemented by the Green Electricity Act .

- Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC has, *inter alia*, been implemented by the Federal Electricity Act.

- Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC has been implemented by the Federal Electricity Act as well as the Green Electricity Act.

1.2 Expected changes

The regulatory regime relating to renewable energy has undergone several amendments in recent years. In general, the recent legislative actions have addressed the issue of a more efficient allocation of support funds and have aimed at a quicker approximation of the green electricity facilities to real market conditions.

The regulatory regime is likely to undergo similar amendments in the years ahead. However, there are currently no indications of anticipated fundamental changes to the regulatory regime governing RES-Electricity in Austria in the near future.

Nevertheless, although no definite changes are yet to be expected, it is still noteworthy that in October 2014 the European Council set itself a new target of at least twenty-seven percent (27%) renewables by 2030. According to the European Commission, in order to reach this target and as part of the EU's plans for an Energy Union, a new Renewable Energy Directive, (including a post-2020 framework), will be needed. In that respect, the European Commission identified potential areas which will need attention. These include: (i) new control mechanisms to ensure that the target will be achieved at EU-level; (ii) measures to empower consumers on renewable energy solutions; (iii) cutting emissions in the heating and cooling sector; (iv) removing market entry barriers for renewables; and (v) boosting the use of renewables in the transport sector.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

2.1.1 Environmental Law

The construction of a power plant may be subject to an Environmental Impact Assessment ("**EIA**") permitting procedures under the Federal Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz 2000*; Federal Gazette No. I 697/1993; "**EIA Act**"). The types of renewable energy power plants that are subject to an EIA permitting procedure include:

- wind power projects with a total capacity of at least 20 MW or 20 wind turbines each with a nominal output of at least 0.5 MW (or, under specific circumstances, wind power projects with a total capacity of at least 10 MW, or 10 wind turbines, each with a nominal output of at least 0.5 MW);
- hydro power plants with a maximum capacity of at least 15 MW (or, under specific circumstances, 10 MW, or in the case of power plant chains); and
- certain thermal facilities, e.g. combining waste management with power generation.

The EIA procedure constitutes a combined permitting procedure that replaces other applicable regulatory permitting procedures. The procedures of the EIA Act provide for extensive participation by the public.

The provincial government of the federal province where the power plant is to be located has competence for the EIA procedure. Under the EIA Act, the provincial government generally must decide upon an application – depending on the type of the respective project – within nine (9) months or six (6) months (e.g. in case of wind power projects) after the submission of an application. The decision of the provincial government is – since 1 January 2014 – subject to ap-

peal before the Federal Administrative Court (*Bundesverwaltungsgericht*). Taking into consideration the preparation of all relevant documents, the permitting procedure can last up to two (2) years or even more.

If the regulatory regime under the EIA Act does not apply, the power generating facility (in particular hydro power plants) may in any case require the issuance of a water use permit. The water use permit is usually issued by the relevant district authority or, in case of hydro power plants with a maximum capacity of more than 0.5 MW, the relevant provincial governor (*Landeshauptmann*) in accordance with the conditions set forth in the Federal Water Act (*Wasserrechtsgesetz 1959*; Federal Gazette No. I 215/1959; "**Water Act**").

2.1.2 Building Law

Setting up a power generating facility will in most cases require a permit under the applicable building laws. Building laws fall within the sole competency of the federal provinces of Austria. Therefore, regulations regarding the construction and operation of a building vary across the provinces of Austria.

In general, a hierarchy of provincial zoning and construction plans determines the sites on which a power plant may be set up. Provincial building laws contain rules regarding the construction of the building and the administrative permitting procedure. The permitting procedure can usually be separated into three stages: (i) the issuance of a declaration on the construction site (*Bauplatzerklärung*); (ii) the issuance of a building permit prior to commencement of the construction works (*Baubewilligung*); and (iii) the issuance of an operating permit after completion of the construction works (*Benützungsbewilligung*).

The competent authority in the permitting procedure is usually the mayor of the relevant municipality. This decision is subject to appeal to the municipal council in most of the federal provinces. In some federal provinces (e.g. Tyrol), commencing from 1 January 2014 such decision is subject to appeal to the relevant Provincial Administrative Court (*Landesverwaltungsgericht*). According to the general administrative procedural rules, the authorities have to issue a decision within six (6) months after submission of an application.

2.1.3 Energy Law

The legislative competency in matters of electricity is shared between the Federal State (*Bund*), which has competence for enacting the framework legislation in the electricity sector, and the Federal Provinces (*Länder*) of Austria, which are responsible for the implementing legislation. The Federal State has adopted the Federal Electricity Act, which contains directly applicable provisions of law and sets out the legislative framework to be further specified by the nine Austrian Federal Provinces. The Federal Provinces have enacted provincial electricity statutes in accordance with the framework provisions of the Federal Electricity Act. As a consequence of this split of competencies, the Austrian legal structure regulating electricity is rather heterogeneous.

As a general rule, the implementing provincial electricity statutes provide for a permitting procedure for the construction and operation of electricity generating facilities on the basis of objective, transparent and non-discriminatory criteria, relating only to the facility. Usually, an electricity permit will only be issued if the construction and operation of the power plant will not negatively affect the life and health of human beings and does not constitute an unacceptable nuisance to the neighbours of the facility. Further, it should not interfere with any rights *in rem* or any provincial regulatory provisions. Further criteria in the permitting procedure usually relate to regulatory requirements in the areas of, e.g. environmental protection, zoning, water management, forestry management, public traffic, employee protection, and energy efficiency. The competent authority issuing a permit under the provincial electricity statutes is the respective provincial government or district authority.

As to RES-Electricity plants, all provincial electricity statutes provide for a facilitated permitting procedure or a notification requirement for power generating facilities based on renewable energy sources (up to a certain maximum capacity). Detailed technical criteria determine when the facilitated permitting procedure will apply, depending on the capacity of the facility, the type of energy source and other relevant criteria. Such facilitated procedural rules, which vary from province to province, might provide for a reduced involvement of the general public or a shortened decision

period for the administrative authority (e.g. three (3) months rather than six (6) months as stipulated by general rules of administrative law). Such facilitated permitting procedures under the provincial electricity statutes will only be applicable if the power generating facilities are not subject to the permitting procedure under different regulatory regimes, such as the trade regulations, water laws, etc.

Power generating facilities are exempt from the permitting procedure under electricity laws if they serve mainly for the operator's own consumption[1]. Such facilities are subject to the permitting procedure under the Federal Trade Act (*Gewerbeordnung 1994*; Federal Gazette No. I 194/1994; "**Trade Act**"). Moreover, the issuance of the electricity permit can be encompassed within the permitting procedure under another regulatory regime (e.g. waste management law). Further, the construction and operation of a power plant may require additional permits under different regulatory regimes (e.g. environmental law, water law, mining law, forestry law, construction laws, etc.)[2].

2.2 Process for obtaining the right (concession) to exploit natural resources

There is no Austrian legislation requiring the participation in a prior tender procedure in order to be granted the right (concession) to exploit natural resources. Hence, the Austrian legislation does not foresee the possibility of triggering a public tender by way of an unsolicited proposal. Consequently, no specific act prescribing the award of concessions for the right to exploit natural resources by way of a public tender or the mandatory conclusion of a concession contract with some public entity as legal basis for such right has been enacted.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

Pursuant to Art. 2 No. 20 Trade Act (*Gewerbeordnung*), operating an "electricity undertaking" is not subject to the provisions of the Trade Act. Therefore, the regular rules under the Trade Act relating to the requirement of a business licence (*Gewerbeberechtigung*) do not apply to the operator of an electricity undertaking.

The electricity laws do not provide for any licensing requirement on the part of the operator itself in order to lawfully operate a power generating facility. Such requirement, *inter alia*, exists in relation to the operation of a distribution system. Therefore, operators of power generating facilities (*Elektrizitätserzeuger*) are not subject to any licensing requirement under Austrian electricity laws.

However, operators of power generating facilities will usually have to obtain a facility operation permit under the applicable provincial electricity statute as well as other regulatory permits in relation to the specific electricity generating facility to be constructed and/or operated. In this context, please refer to the outline of the permitting procedures for respective RES-Electricity generating facilities as set out above for further details.

Furthermore, the operator of a power generating facility is subject to several statutory obligations with respect to the operability of the power generating facility (e.g. membership in a balancing group [*Bilanzgruppe*], notification duties relating to the power generation schedules, etc.).

1 Hauer, ElWOG (2007), 146 et seq.
2 Hauer, ElWOG (2007), 142.

3.2 Designated/preferred legal form of investment vehicle

We are not aware of any preferred specific legal form of investment vehicle in the renewable energy sector in Austria. As a matter of general business practice, the legal entity operating a green electricity facility will usually be a limited liability company (*Gesellschaft mit beschränkter Haftung*) or a joint stock corporation (*Aktiengesellschaft*).

3.3 Anticipated time frame for the issuance of licences/authorisations

The provincial electricity statutes may stipulate a facilitated administrative procedure for RES-Electricity facilities as a statutory privilege. Such facilitated procedure usually grants the authority a period of three (3) months for a decision on the application, which is substantially shorter than the standard six (6) month term. Provided the power generating facility is recognised as a RES-Electricity facility under the Green Electricity Act and there are no valid objections to a power generating facility, the time frame for the issuance of a permit under the provincial electricity statutes will be three (3) months.

The power generating facility might, however, be subject to permitting procedures under other regulatory regimes (e.g. general industry law, environmental law, water law, mining law, forestry law, waste management law, etc.). Such procedures and, in particular, the permitting procedure including an EIA will usually require a much longer time frame.

As a general rule, the competent authority for the permitting procedure under the electricity laws is the provincial government of the respective Austrian province. The competent authorities under other laws will differ.

4. Promotion System for the Production of RES-Electricity

4.1 Applicability of promotion scheme

The promotion of renewable energy sources in Austria takes the form of direct support to operators of electricity generating facilities based on renewable energy sources via mandatory contracting at standardised feed-in tariffs. In addition, the Green Electricity Act provides for the possibility of investment allowances for certain hydro power facilities and new combined heat and power ("**CHP**") generating stations using fossil fuels.

Initially, RES-Electricity facilities must be recognised as such under the Green Electricity Act. Such official recognition takes the form of a decision issued by the provincial governor of the Federal Province where the facility is located. Upon recognition, electricity generated in such facilities benefits from a purchase guarantee from the Green Electricity Settlement Centre (*Ökostromabwicklungsstelle*) at pre-determined prices (guaranteed feed-in tariffs) for a certain period of time. The guaranteed feed-in tariffs are set by the Minister of Science, Research and Economy with the mutual consent of the Minister of Agriculture, Forestry, Environment and Water Management as well as the Minister of Labour, Social Affairs and Consumer Protection on an annual basis (or more often) by ministerial ordinance. These tariffs are essentially based upon the average production costs for cost-efficient, state-of-the-art production facilities.

The Green Electricity Settlement Centre allocates electricity purchased from recognised RES-Electricity facilities at guaranteed feed-in tariffs to electricity traders supplying end customers in Austria according to valid market rules. Electricity traders are obliged to purchase electricity allocated to them at the acceptance price (*Abnahmepreis*) under the Green Electricity Act as well as to pay the price for the certificate of origin (*Herkunftsnachweis*). The acceptance price is the price that has to be paid by electricity traders for electricity deriving from RES-Electricity production facilities that is allocated to them by the Green Electricity Settlement Centre. The certificate of origin is a certification that proves from which RES-Electricity source(s) the electricity is derived. The price for the certificate of origin is set by administrative ordinance of E-Control, the supervisory authority, on an annual basis. The acceptance price is based on the hourly day-ahead spot market price for the area Austria/Germany of an acknowledged, representative electricity exchange with trading activities on seven (7) days that runs supply areas in Austrian control zones (*Regelzonen*).

The financing of the support for RES-Electricity is, as in the past, mainly borne by the customers. Apart from the revenues deriving from the sale of green energy as well as certificates of origin to electricity traders at the acceptance price, the two main sources of revenue of the Electricity Settlement Centre are the Green Energy Allowance (*Ökostrompauschale*) and the Green Energy Promotion Contribution (*Ökostromförderbeitrag*), both set by administrative ordinances of the Minister of Science, Research and Economy[3]. Basically, under the Austrian system, customers bear the financial burden.

4.2 General description of promotion scheme

As a matter of statutory obligation, the Green Electricity Settlement Centre (*Ökostromabwicklungsstelle*) off-takes the electricity generated in officially recognised RES-Electricity facilities on the basis of set feed-in tariffs and in accordance with contractual terms and conditions approved by E-Control as well as for the time period regulated in the Green Electricity Act.

The task of exercising the functions of the Green Electricity Settlement Centre is conferred by way of a concession issued by the Minister of Science, Research and Economy for the entire Austrian territory. The functions of the Green Electricity Settlement Centre are currently exercised by the joint stock corporation *OeMAG Abwicklungsstelle für Ökostrom AG*, owned by grid system operators, banks and industrial corporations.

The feed-in tariffs are set by the Minister of Science, Research and Economy in agreement with the Minister of Agriculture, Forestry, Environment and Water Management as well as the Minister of Labour, Social Affairs and Consumer Protection on an annual basis (or more often) by ministerial ordinance.

Mandatory contracting (*Kontrahierungszwang*) at the guaranteed feed-in tariffs is only applicable to RES-Electricity generated in facilities that have been particularly recognised under the Green Electricity Act.

Facilities eligible for official recognition are: (i) power generating facilities that are run exclusively on the basis of RES (*Ökostromanlagen*); (ii) specific hybrid plants (*Hybridanlagen*); and (iii) specific mixed combustion plants (*Mischfeuerungsanlagen*). The guaranteed feed-in tariffs for RES-Electricity deriving from recognised facilities depend on the prices at the time of application. The compensation for recognised RES-Electricity facilities is based on the produced electricity that is fed into the public electricity grid system.

Furthermore, mandatory contracting only applies if RES-Electricity generated in a recognised facility and fed into the public grid system is provided to the Green Electricity Settlement Centre over a period of at least twelve (12) months.

The duration of the general mandatory contracting period and the mandatory statutory obligation to off-take electricity generated in officially recognised RES-Electricity facilities is generally thirteen (13) years as well as fifteen (15) years for solid and liquid biomass and biogas facilities from the date on which the Green Electricity Settlement Centre off-takes RES-Electricity. However, it ends at all events at the end of the twentieth (20th) year of operation of the facility.

After expiry of the mandatory contracting period, the Green Electricity Settlement Centre is obliged to offer to the operator of the RES-Electricity facility to off-take the electricity at the market prices for an indefinite period of time.

RES-Electricity deriving from specific facilities such as from hydro power plants with a peak capacity of more than 10 MW as well as from animal meal, waste lye (*Ablauge*) and sewage sludge (*Klärschlamm*) cannot be made subject to mandatory contracting at the guaranteed feed-in tariffs. In those cases, the Green Electricity Act might under certain circumstances provide for specific investment grants.

3 *Cf.* for 2016: *Ökostrompauschale-Verordnung 2015* (Federal Gazette No. II 359/2014) and *Ökostromförderbeitragsverordnung 2016* (Federal Gazette No. II 458/2015).

4.3 Procedure for determining feed-in tariffs

The guaranteed feed-in tariffs are set by the Minister of Science, Research and Economy in agreement with the Minister of Agriculture, Forestry, Environment and Water Management as well as the Minister of Labour, Social Affairs and Consumer Protection on an annual basis (or more often) by ministerial ordinance. These tariffs are essentially based upon the average production costs for cost-efficient, state-of-the-art production facilities.

The tariffs shall foster achieving the purposes of the Green Electricity Act, especially with a view towards an efficient use of funds, and should be designed in such a way that the production of RES-Electricity increases continuously. However, an increase of the production of RES-Electricity deriving from RES-Electricity facilities depending upon sources can be pursued only where such sources are verifiably secured.

4.4 Revision and/or indexation of feed-in tariffs

The applicable legislation and regulations do not provide for any indexation mechanism. Basically, feed-in tariffs are reviewed on a yearly basis and determined for one (1) full year. However, if it is necessary, they may be set for two (2) or more years. The determination of feed-in tariffs for a period of less than one (1) year is also legitimate.

Until the entering into force of a new ordinance providing for the determination of new feed-in tariffs, the tariffs of the former ordinance apply with a reduction of eight percent (8%) in respect of facilities on the basis of photovoltaic, one percent (1%) in respect of wind power and also one percent (1%) in connection with other RES-Electricity technologies.

4.5 Other financial incentives for RES-Electricity

The Green Electricity Act provides for investment allowances granted to the entity constructing or renovating certain hydro power plants and CHP-plants.

Besides the Green Electricity Act, the Federal Act on the Climate and Energy Fund (*Klima- und Energiefondsgesetz*; Federal Gazette No. I 40/2007; "**Climate and Energy Fund Act**") is the legal basis for subsidies from the Austrian climate and energy fund granted for projects relating to energy efficiency and sustainability (e.g. for photovoltaic facilities with a peak capacity of up to 5 KW).

However, there are no significant investment incentives for renewable energy producers other than the promotional framework of the Green Electricity Act.

The investment allowances granted to the constructing (or renovating) entity of certain hydro power plants and CHP-plants under the Green Electricity Act amount to a certain percentage of the investment costs (e.g. maximum ten percent (10%) in the case of medium-sized hydro power plants) and are processed by the Settlement Centre for Investment Allowances (*Abwicklungsstelle für Investitionszuschüsse*).

In addition, the Federal Provinces may enact individual incentive mechanisms within their legislative competence. Such investment incentives usually relate to the construction of photovoltaic and biogas facilities operated on a private level.

4.6 Support scheme for cogeneration

The CHP Act provides for a support scheme for the operation and modernisation of existing CHP-plants. Further, the Green Electricity Act provides for investment allowances granted to the operators of CHP-plants based on waste lye under certain conditions. The operators of existing and modernised CHP-plants are compensated for the costs arising from the maintenance of on-going operation of CHP-plants. Neither the Green Electricity Act nor the Combined Heat

and Power Act expressly provide for the possibility to cumulate the support scheme for cogeneration with the support scheme for RES-Electricity.

4.7 Certificate of origin for RES-Electricity

E-Control monitors the issuance, transfer and invalidation of certificates of origin. The operator of the grid system to which recognised RES-Electricity facilities are connected is obliged to issue a certificate of origin in relation to the quantities of RES-Electricity that have been fed into the grid upon request of the facility operator.

The certificate of origin has to contain the following information, namely the: (i) quantity of generated electricity; (ii) type and peak capacity of the generating facility; (iii) time period and place of power generation; (iv) type of energy sources used; (v) kind and extent of investment subsidies; (vi) kind and extent of potential subsidies; (vii) date of the beginning of operation of the facility; and (viii) date of issuance and the identification number.

For every unit of produced energy, only one (1) certificate of origin can legitimately be issued. A certificate of origin must be used within the year following the year of production of the relevant energy unit. A certificate of origin has to be invalidated after use.

Operators of RES-Electricity facilities and electricity traders selling electricity deriving from RES-Electricity facilities to other electricity traders or to the Green Electricity Settlement Centre have to provide the buyer with certificates of origin upon request.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

In principle, the relationship between the distribution grid operator, electricity producers and end-customers within a distribution grid system is subject to the principle of mandatory grid connection (*Anschlusspflicht*). As a rule, the operator of a grid system has to grant access to the grid system on the basis of approved terms and conditions and certain tariffs. This means that customers are entitled to claim access to the grid system for the delivery of electricity under electricity supply contracts concluded with any electricity producer, electricity trader or other electricity undertaking. The operators of electricity undertakings (including RES-Electricity producers) can also claim access to the grid system on behalf of their customers.

In the event of insufficient capacities of the system, Austrian provincial laws have to provide for priority access for the transport of electricity deriving from renewable energy sources and from CHP facilities in order to supply customers. However, the obligations set out under Regulation 2009/714/EC must be observed.

Additionally, Austrian provincial laws have to provide for denial of access to the grid system if – under specific circumstances – electricity deriving from: (i) long-distance heating; (ii) environment and resource conserving; as well as (iii) technically and economically reasonable CHP facilities or facilities using renewable energies would be displaced.

Regarding the transport via transmission grids between “control areas” in Austria (*Regelzonen*), the Austrian electricity market is geographically divided into three control areas, each of which are made up of all grid operators in the respective area and are technically administered by a control area operator. Since 1 January 2012, the three control areas in Austria are run by a single control area operator, namely the Austrian Power Grid AG (“**APG**”). The transport of RES-Electricity for the purpose of supplying such electricity to customers is to be granted priority access to the grid system in case of insufficient capacities of the system.

5.2 Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid system

The grid connection is regulated by a grid connection contract (*Netzzugangsvertrag*) between the distribution grid operator and the network user. The distribution grid operator is statutorily obliged to conclude a grid connection contract with end-customers and energy producers at the officially-published general terms and conditions and must establish the necessary technical installations for the grid connection. The costs of the grid connection (*Netzzutrittsentgelt*) are borne by the energy producer (network user) via a one-off fee paid to the distribution grid operator for the connection to the grid system[4], whereas the costs of grid reinforcements, improvements, upgrades and other similar costs are borne by the end-customers and grid operators, who draw electricity from the grid, by way of an annual payment for the use of the grid system (*Netznutzungsentgelt*)[5].

As to the maintenance of the grid system, the grid system operator has to take all necessary technical measures in order to ensure the stable operation of the grid system. In particular, the grid system operator has to guarantee the functionality (technical safety) of its grid system through long-term investments. However, there is no concrete and enforceable legal obligation of the grid system operator to upgrade and strengthen the grid system in case of bottlenecks.

5.3 Special allowance/tolerance for intermittent generation in relation to balancing charges for unscheduled deviations

In case of unscheduled deviations in electricity generation, the control area operator (*Regelzonenführer*) in cooperation with the balancing group coordinator has to provide for the settlement of those unscheduled deviations within the control area. Austrian law does not provide for special allowance/tolerance for intermittent generation in case of unscheduled deviations for renewable energy sources.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all jurisdictions is the prohibition of incompatible state aid, which is contained both in the EU Treaty on the functioning of the European Union and in the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission's new Guidelines on State Aid for Environmental Protection and Energy, adopted on 9 April 2014, be considered as compatible with the Internal Market.

In Austria, electricity traders and other providers supplying end-customers on a standardised basis have to publish their general terms and conditions under which they regularly conclude electricity supply contracts. For consumer protection reasons, such general terms and conditions have to fulfil certain minimum criteria, but they do not have to be approved by the regulatory authority (i.e. E-Control). However, the general terms and conditions must be notified to E-Control in electronic form as well as be appropriately published before entering into force. Further, invoices have to include a chart displaying the energy sources used for the supply of electricity.

Electricity traders and other providers supplying end-customers on a regular basis are obliged to conclude a supply contract on the basis of the published general terms and conditions if end-customers invoke their entitlement to the provision of basic supplies (*Grundversorgung*).

4 Art. 54 of the Federal Electricity Act.

5 Art. 52 of the Federal Electricity Act and *Systemnutzungsentgelte-Verordnung* 2012 (Federal Gazette No. II 440/2011; "**SNE-VO 2012**") as amended by *Systemnutzungsentgelte-Verordnung* 2012 - Novelle 2016 (Federal Gazette No. II 428/2015; "**SNE-VO 2012-Novelle 2016**").

Thus, there are no specific legal limitations applicable to Power Purchase Agreements ("**PPAs**") for RES-Electricity. Nevertheless, PPAs have to comply with the general rules applicable, especially, under civil law (*inter alia*, consumer protection law, if applicable) and competition law.

PPAs for electricity from third countries for domestic demand are not permitted if the electricity comes from generating facilities not using state of the art technology or constituting a direct or indirect hazard to the life and health of people, animals and plants in Austria, or if the supplier cannot provide appropriate proof for the correct waste management of the waste produced in the electricity generating process. This rule has turned out to be of little practical relevance.

PPAs with a duration of more than one (1) year and a volume of more than 500 million KWh per year, governing electricity supply from the European Union for domestic demand, have to be notified to the energy regulatory authority (i.e. E-Control). The regulatory authority registers such PPAs in order to obtain an overview of the most important electricity import contracts.

7. Carbon Credits

Austria has, as an Annex I party to the UNFCCC, ratified the Kyoto Protocol. The necessary framework for obtaining carbon credits has been implemented under the Environment Support Act (*Umweltförderungsgesetz*; Federal Gazette No. I 185/1993, as amended; "**Environment Support Act**"). The implementation of the project-related instruments (Joint Implementation ("**JI**") and the Clean Development Mechanism ("**CDM**")) is laid down in the Environment Support Act and the Austrian JI-/CDM-Programme. The Directive (*Richtlinie*) for the Austrian JI-/CDM-Programme contains detailed regulations regarding the purchase of Emission Reduction Units within the JI- and CDM-mechanism.

The consulting firm *Kommunalkredit Public Consulting GmbH* ("**KPC**") has been appointed as the central managing coordinator for the purchase of Emission Reduction Units from JI- and CDM-projects as well as Green Investment Schemes ("**GIS**") on behalf of the Minister of Agriculture, Forestry, Environment and Water Management. As of 2003, KPC has concluded Emission Reduction Purchase Agreements for the purchase of carbon credits from no less than 76 JI-/CDM-projects. These projects constitute a total volume of up to 71 million metric tons of carbon dioxide and include, for instance, landfill gas projects, wind farm projects, hydro power projects and biomass plants.

The Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009, amending Directive 2003/87/EC to improve and extend the greenhouse gas emission allowance trading scheme of the Community, has been implemented by the Emission Trading Act 2011 (*Emissionszertifikategesetz 2011*; Federal Gazette I No. 118/2011; "**Emission Trading Act**").

WOLF THEISS

BOSNIA & HERZEGOVINA

BOSNIA AND HERZEGOVINA

Main permits required for RES-Electricity generating facilities

Environmental permit	The entity-level ministry assesses those cases in which it is necessary to conduct an Environmental Impact Assessment ("**EIA**") and to obtain an environmental permit. A water-use permit is required for plants that use or affect water resources.
Building permit	Before construction can begin, the concessionaire must obtain a construction licence issued by the electricity regulatory agency. Moreover, the concessionaire must obtain urban approval and a construction permit, both of which are issued by the entity-level ministry for spatial planning. In addition to the building permit required for construction of the facilities, as of 1 January 2016, an energy efficiency certificate will also be required in RS.
Authorisation under Energy law/ right (concession) to exploit natural resources	In general, a concession is required for construction of an electricity generating plant (except for thermal power plants in FBiH). In FBiH, in each particular case, the competence of the public authority depends on the type and location of the respective concession. The competences are divided among several public authorities and in FBiH also among the public authorities of FBiH and the cantons. In RS, the RS Government is competent for the concession granting procedure; in practice, the RS Government will undertake the procedure through the competent ministry.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	A generation licence issued by regulatory energy authorities, at the level of the relevant entity, is required.
PROMOTION SCHEME	
Outline	In both RS and FBiH, there are feed-in tariffs applicable to RES Electricity plants with installed capacity defined by the relevant law depending on the type of facility in question. The FBiH promotion system is determined for the production of RES-Electricity for eligible producers[1] who have concluded a contract on compulsory purchase with the RES Operator[2].

1 According to the Law on RES and Cogeneration of FBiH, an eligible producer means a producer that, in an individual generation facility, generates electricity using waste materials or renewable sources of energy in an economically adequate manner, including an environmentally safe combined cycle of generation of thermal energy and electricity. A producer may be granted this status through a decision of the Regulatory Commission of FBiH.

	In RS, the promotion scheme for RES-Electricity generators is intended to benefit any generator which meets the set conditions, depending on the type of the promotion. There is no promotion system in place in BD.
Other financial incentives	There are no particular financial incentives for energy producers using RES in BiH, but only general tax exemptions applicable to entrepreneurs in FBiH.
GRID CONNECTION	
Advantages to access to the electricity grid given to RES-Electricity	Yes
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The costs of the connection to the distribution grid and transmission grid are borne by the electricity producers connecting to the grids.
Special allowance/tolerance for intermittent generation in relation to balancing charges	No
CARBON CREDITS	
Status	BiH signed the Kyoto Protocol in 2007, as a non-Annex 1 Party. The Kyoto Protocol entered into force on 15 July 2007.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

Bosnia and Herzegovina ("**BiH**") consists of two separate entities, i.e. the Federation of BiH ("**FBiH**") and the Republic of Srpska ("**RS**"), and one special autonomous district under direct sovereignty of the state, i.e. Brčko District ("**BD**"). In each of these parts different legal regimes essentially apply, however certain legal matters are regulated by laws enacted on the state level and as such are applicable in all parts of the country. Furthermore, in many cases the relevant legislation of the entities regulating a particular matter is harmonised, however differences may occur in terms of the application and interpretation by different entities' courts and institutions.

The following are the principal energy regulations at the national, entity and BD level:

BiH

- Law on Transmission, Regulator and System Operator (Official Gazette of BiH Nos. 7/02, 13/03, 76/09 and 1/11);
- Law on Establishing a Company for Electricity Transmission (Official Gazette of BiH Nos. 35/04, 76/09 and 20/14);
- Law on Establishing an Independent System Operator for Transmission in BiH (Official Gazette of BiH No. 35/04);
- Law on Concessions (Official Gazette of BiH Nos. 32/02 and 56/04);
- Rulebook on Licensing (Official Gazette of BiH Nos. 87/12 and 98/15);

2 The FBiH RES Operator was established and became operational in 2014. Until the RS RES Operator is established, the public electricity provider (*elektroprivreda*) will perform the duties of the operator.

- Rulebook on Access (Official Gazette of BiH Nos. 95/08, 79/10 and 60/12);
- Indicative Plan on Development of Generation from 2009 until 2018. The Energy Community Treaty, to which BiH is a Contracting Party;
- Energy Charter Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) in 2001;
- FBiH Law on Electricity (Official Gazette of FBiH Nos. 66/13 and 94/15);
- Law on RES and Cogeneration (Official Gazette of FBiH Nos. 70/13 and 5/14). ("**FBiH Law on RES and Cogeneration**");
- Law on Application of Tariff System for Electricity (Official Gazette of FBiH No. 6/04);
- Law on Concessions (Official Gazette of FBiH Nos. 40/02 and 61/06);
- Decision on Establishment of RES Operator (Official Gazette of FBiH No. 90/13);
- General Conditions for Distribution of Electricity (Official Gazette of FBiH No. 89/14);
- Rulebook on Licensing (Official Gazette of FBiH No. 43/14);
- Rulebook on RES Micro-facilities for Generation of Electricity (Official Gazette of FBiH no. 50/14);
- Rulebook on Acquiring the Status of the Eligible Producer of Electricity (Official Gazette of FBiH no. 53/14) Annual Tariff Decision.

RS

- Law on Electricity in RS (Official Gazette of RS consolidated text Nos. 8/08, 34/09, 92/09 and 01/11);
- Energy Act in RS (Official Gazette of RS No. 49/09);
- Law on RES and Cogeneration (Official Gazette of RS Nos. 39/13 and 108/13). ("**RS Law on RES and Cogeneration**");
- Law on Incentives for Electricity Production Using Renewable Energy Sources and Efficient Cogeneration (Official Gazette of RS No. 52/14);
- Law on Concessions (Official Gazette of RS No. 59/13);
- General Conditions for Electricity Delivery and Supply (Official Gazette of RS Nos. 85/08, 79/10, 67/12 and consolidated text 90/12);
- Rulebook on Incentives for Electricity Production Using Renewable Energy Sources and Efficient Cogeneration (Official Gazette of RS Nos. 114/13 and 88/14);
- Rules on Realisation of Incentive System adopted in January 2012 by the Mixed Holding "Elektroprivreda Republike Srpske" as the Operator of Incentive System;
- Rulebook on Licensing (Official Gazette of RS Nos. 39/10 and 65/13);
- Rulebook on Issuance of Certificates for Production Facilities that Produce Electricity by Using RES or in Cogeneration (Official Gazette of RS No. 112/13);
- Rulebook on Issuance of Guarantees on the Origin of the Electricity (Official Gazette of RS No. 1/14);
- Decision on the Amount of Feed-in tariff and Premium for RES and Efficient Cogeneration Facility Generating Electricity (Official Gazette of RS No. 88/14);
- Decision on Methodology of Determining the Level of Prices for RES-Electricity Produced in Plants with Installed Capacity of up to 5 MW (Official Gazette of RS No. 71/04);
- Decision on Amount of Compensation for Incentives of RES Generated Electricity (Official Gazette of RS No. 116/13).

BD

- Law on Electricity in BD (Official Gazette of BD Nos. 34/06, 28/07 and 4/13).

BiH signed a Stabilisation and Association Agreement ("**SAA**") with the European Union in June 2008. The SAA aimed at the harmonisation of BiH legislation with the legislation of the European Union. Such harmonisation process should be completed within six (6) years from the day of signing the SAA, but market related legislation must be adjusted within the first two (2) years of implementation of the SAA. To a large extent the local legislation has been aligned with the legislation of the European Union, but this process is still on-going. As a result of a slow implementation process, progress towards European Union accession has also slowed down for BiH. The Contracting Parties to the Energy Community Treaty have agreed to set up a legal and economic framework to support the "Energy Network" markets. For Contracting Parties, this entails adopting and implementing the *acquis communautaire* on energy, environment, competition and renewable energy. In order to guarantee an efficient operation of Energy Network markets, the Contracting Parties have agreed to set up a specific regulatory framework and have committed themselves to the principle of mutual assistance in case one party experiences problems in the operation of its energy networks.

1.2 Expected changes

The energy market in both entities is still subject to on-going changes and adjustments in order to harmonise the sector with the applicable European Union legislation as well as with the existing trends and market developments therein.

The recent liberalisation of the energy market is the process which commenced in 2006 and its fourth and final stage commenced on 1 January 2015. The aim of this process is to fully open the market to all qualified buyers including domestic households, and to promote an open and competitive energy market. All customers are eligible customers; which means they have the right to buy electricity on the open market and conclude a supply contract with the supplier of their choice. Also, those households and small customers who do not choose their supplier have the right to purchase electricity from the public supplier, i.e. to be supplied with electricity of standard quality at economically justified, easily and clearly comparable and transparent prices (universal service). Previously, the supply of electricity was conducted through the state owned enterprises and public suppliers, and no private undertaking was able to join the market. Although it is considered as one of the most significant developments in this market, this process is still ongoing, as technical problems pose an obstacle to full liberalisation. There are no further obstacles in obtaining the permit for supply of electricity, but rather problems in balancing and the costs arising therefrom. These are the challenges that are expected to be resolved in the future in order to achieve the full benefits of the liberalisation of the BiH electricity market.

In this respect, the Independent Operator of the BiH Transmission System ("**ISO**") has adopted Market Rules, that apply as of 1 January 2016, which address this issue, and which are expected to eliminate the above-referenced obstacles.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

The matters of approval, certification and licensing of generating facilities are under the jurisdiction of the respective entity authorities and (in FBiH) also the cantonal authorities. Issuance of energy permits falls within the competency of the relevant entity ministry of energy. Licences for generation, distribution and supply are issued by the relevant entity regulatory commission. Finally, permits relating to concessions, environment and construction lie within the competency of the relevant entity and cantonal ministries (depending upon the place of the construction, installed capacity and importance of the generator).

2.1.1 Environmental Law

Not all industrial plants require an environmental permit; this requirement usually depends on the size and capacity of the planned facility. In particular, the relevant entity legislation distinguishes between two types of projects, i.e. ones for which the investor has to conduct an environmental impact study and obtain an environmental permit and projects for which the entity-level ministry competent for spatial planning, construction and ecology determines whether it is necessary to conduct an environmental impact study or to obtain an environmental permit.

An environmental impact study must be prepared by a certified institution cooperating with the applicant and must be approved by the entity-level ministry competent for spatial planning, construction and ecology. Prior to approval, the ministry must solicit opinions from all relevant institutions and must conduct a public discussion concerning the project. The applicant must then amend the environmental impact study to incorporate changes from the ministry and the public meeting. The ministry will then issue a decision approving the environmental impact study. As for the environmental permit, the applicant is required to submit an application and enclose a relevant set of documentation (which typically includes certain sub-licences such as for example the urban approval, etc.), as provided by the law. In any case, in practice the process usually takes on average between seven (7) months and one (1) year.

The environmental permit is issued for a period of five (5) years. The applicant is subject to inspection by the competent inspection authorities; usually the inspection is focused on the fulfilment of conditions set forth in the environmental permit as well as compliance with other obligations set forth by the relevant legislation. In case the inspection determines violations of such conditions, it usually orders correction thereof, whereas it can also impose monetary fines depending on the type of the given violation.

If a water-use permit is required, this must be applied for with the ministry competent for water management. Usually, these permits are required for plants that use or affect water resources.

2.1.2 Building Law

Before construction can begin, as well as in the course of the construction of the given facility, the investor must obtain a number of approvals.

In particular, prior to the construction work, the investor must obtain urban approval and a construction permit, which is typically issued by the entity-level ministry competent for spatial planning, construction and ecology. Furthermore, the investor is also obliged to obtain approval for construction of a RES-Electricity generating facility issued by the entity-level energy regulatory authorities.

After having obtained the above-listed licences, the investor must commence construction work within three (3) years in RS and one (1) year in FBiH. In the course of construction work, the investor is obliged to fulfil certain obligations such as notification to the competent local administrative unit that the construction work has commenced, ensuring that the construction work is performed and supervised by the certified entities/persons, etc. The competent

inspection authority can perform inspections in the course of the construction work with the aim of verifying whether all conditions set forth in the construction permit and licence, as well as other obligations set forth by the relevant legislation, are duly met.

Upon termination of the construction work, the investor obtains a use permit issued by the entity-level ministry competent for spatial planning, construction and ecology issues. In order to encourage protection of the environment and an overall decrease in energy consumption, RS has prescribed an additional obligation for investors, who must obtain an energy efficiency certificate, which is issued prior to obtaining the use permit.

2.1.3 Energy Law

A business company which intends to perform business activities of generation, trade, supply and distribution of electricity is required to obtain an adequate licence issued by the competent energy regulatory authorities. For each of the above electricity activities, the business company must obtain an individual licence. Furthermore, in case the business company intends to perform cross-border trading of electricity it is required to obtain a specific licence issued by the state-level energy regulatory authority.

The procedure for issuance of a given licence requires the submission of an application in standardised form and enclosure of a set of documentation as defined by the law. In general, the procedure is a paper-based one; however in practice the respective regulatory authority can organise oral consultations with the applicant in order to provide assistance concerning the application. Although the relevant legislation does not define the duration of the respective procedure, in practice such a procedure usually takes between three (3) and eight (8) weeks from the day of submission of the completed application.

It should be noted that one of the steps in the construction permitting process requires coordination between the system operator and the state company for transmission. Namely, it is envisaged that the business company, which intends to construct a generating facility, must first obtain a prior electro-energy permit for the distribution grid, as well as a pre-approval of the connection to the transmission grid, both prior to the issuance of the urban-planning approval.

2.2 Process for obtaining the right (concession) to exploit natural resources

Concession is defined as the right to perform business activities by using public goods, natural wealth and other goods of public interest or the right to perform business activities of common interest. The procedure for obtaining a concession is governed by the state, entity and cantonal concession laws, depending upon the place of the construction, installed capacity and importance of the generator.

In principle, in RS a concession is required for the construction and use of energy facilities of installed capacity over 250 KW, with the exception of facilities using biomass and biogas and solar facilities irrespective of installed capacities. Moreover, the RS law stipulates that the construction or reconstruction of facilities, objects or machinery can be realised under the Build-Operate-Transfer Model. In FBiH, on the other hand a concession is required for the construction of an electricity generating plant (with the exception of thermo power plants) as well as the exploitation and exploration of natural resources. There is no reference in the FBiH Law on Concession to the Build-Operate-Transfer model.

At the state level and in case of a concession pertaining to the interest of both entities, the concession process is performed by the BiH Commission for Concessions. In both BiH entities (as well as in FBiH cantons), the concession granting procedure is generally within the competence of the entities' governments (or in cantons, cantonal governments) and can be initiated by the competent authority (i.e. the ministry competent for the subject matter of the concession) or an interested person (i.e. unsolicited offer). Additionally, in RS the concession granting procedure can be initiated on the basis of an offer in the negotiation procedure. It should be noted that entity laws do regulate certain aspects of the concession granting procedure differently.

The concession is issued by the authority competent for granting concessions in the governmental entity in whose jurisdiction the plant is to be located. In any case, the concession-granting process involves the preparation of a preliminary feasibility study, which is prepared by the potential concessionaire in case of an unsolicited proposal or by the entity itself in case of a public tender.

Upon the termination of the procedure, the concessionaire and the grantor conclude a concession agreement, further establishing their mutual rights and obligations related to the concession activities. The law provides for a list of elements that the concession agreement should contain depending upon the type of granted concession. These elements include, *inter alia*, the concession period, terms of payment of the concession fee, assignment of the concession agreement, any change of shareholder's structure of the concessionaire, modification of the concession agreement, termination thereof, etc.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

As previously outlined, licences required for the generation of RES-Electricity are regulated by the relevant entity and state legislation, and include the following:

- generation licence – issued by regulatory energy authorities on an entity level, provided that other permits and licences (such as construction licences and concessions) have been obtained;
- trade licence – issued by regulatory energy authorities on an entity-level;
- electro-energy permit – issued by regulatory energy authorities on an entity level;
- energy consent – issued by the Federal Ministry of Energy, Mining and Industry;
- construction licence – issued by the relevant entity-level energy regulatory authorities; and
- distribution and supply licences – issued by regulatory energy authorities on an entity-level and required only if a producer wishes to pursue the activity of distribution and supply.

The competent authorities for issuing these licences are:

- Regulatory Commission for Energy in RS ("**RERS**");
- Federal Commission for Energy in FBiH ("**FERC**"); and
- State Commission for Electricity of BiH ("**DERK**").

3.2 Designated/preferred legal form of investment vehicle

Investments in the RES-Electricity sector are made through a concession award. The competent state authority grants concessions for the exploitation of energy resources to a legal entity which is established under the BiH laws specifically for pursuing the business activities for which the concession has been granted. The concessionaire companies are granted concessions for a limited period of time and are obliged to pay the concession fees (i.e. the one term and annual concession fee in the amount calculated according to the applicable methodologies).

3.3 Anticipated time frame for the issuance of licences/authorisations

In general, the time period for obtaining all necessary licences is up to two (2) years, depending on the capacity and size of the power plant. For plants of smaller output, it usually takes less than two (2) years to obtain all the necessary licences and authorisations.

4. Promotion System for the Production of RES-Electricity

Both the FBiH Law on RES and Cogeneration and the RS Law on RES and Cogeneration set up a general framework for a promotion system for RES generated electricity. In this sense, the promotion system is administered by the RES Operator.

The FBiH Government passed a Decision on Establishment of RES Operator, according to which the RES Operator is established as a non-profit legal entity which is registered before the register of legal entities of the Municipal Court in Mostar. The respective decision defines the scope of competence thereof, as well as its organisation scheme; in addition, the decision sets forth timeframes for passing the Articles of Association of the RES Operator, as well as its internal rulebooks. The FBiH RES Operator, *inter alia*, conducts the following activities: (i) concludes contracts on purchase of electricity at guaranteed purchase prices and buys the total electricity produced from privileged producers; (ii) maintains the Register of guarantees and the Register of projects; and (iii) conducts the procedure for actually granting the status of a privileged producer to a potentially privileged producer.

In RS, the changes to the RS Law on RES and Cogeneration in 2013 set forth an obligation of the RS Government to pass a decision on the establishment of the RES Operator within one (1) year from the date when the law entered into force. However, such decision has still not been passed. For the time being the relevant activities of the RES Operator are performed by the public electricity company Elektroprivreda RS. The promotion system includes: (i) benefits for the grid connection and access; (ii) mandatory repurchase of electricity; (iii) feed-in tariff; and (iv) premiums.

4.1 Applicability of promotion scheme

In FBiH, the applicability of the promotion scheme (i.e. the type of the incentive for which the producer is eligible) depends on the classification of the producer of RES-Electricity. In this sense, a producer of RES-Electricity has advantages concerning connection to the grid. Furthermore, those producers of RES-Electricity that have obtained the status of qualified producer are entitled to advantages in terms of supply of electricity, i.e. advantages in dispatch as well as advantage in terms of allocation rights of the facilities of installed power less than 150 KW, without reporting their daily schedule to the RES Operator. Finally, privileged producers are entitled to mandatory repurchase of all produced electricity under the feed-in tariff for a determined period of time. A qualified producer that has not obtained the status of privileged producer or whose status of privileged producer has expired is entitled to repurchase of produced electricity at the reference price provided that the amount of produced electricity is encompassed by the relevant action plan for the use of RES.

In RS, a promotion scheme includes: (i) benefits when connecting to the grid, in terms of time and in certain cases the costs for analysis of connection to the grid; (ii) preferential access to the network (dispatching) to be mandatorily provided by the system operator on whose grid the generator is connected (limitation is made only for those producers of electricity which sell the electricity on the market and exercise the right to premiums); (iii) right to a mandatory repurchase of electricity; (iv) feed-in tariffs; and (v) premiums for consumption of electricity for personal use or sale on the market.

FERC also adopted the Rulebook on Compulsory Portion and Takeover of Electricity Produced from RES, which stipulates that all suppliers and qualified buyers are obliged to take over a portion of electricity produced from RES. Previously, the annual basis of the obligatory amount to be taken over from the RES production was determined by the RES Operator, however based on the new changes of the aforementioned rulebook, now FERC will determine on an annual basis the amount of the electricity which suppliers and qualified buyers are obliged to take over. According to the FBiH Law on RES and Cogeneration, all end consumers are obliged to pay compensation for stimulation, which compensation is further elaborated in the Regulation on Stimulation of Production from RES and Cogeneration and Determining the Compensation for Incitement. The part of the compensation for stimulation is used, *inter alia*, for payment of the incentive part of the guaranteed price for electricity produced by the eligible RES generator.

4.2 General description of promotion scheme

As outlined above, in both FBiH and RS, the respective laws have provided for the establishment of a RES Operator as a legal entity whose main task is to make an institutional structure for the operationalisation of the incentive system of production and repurchase of RES-Electricity. The RES Operator has been established in FBiH as a non-profit legal entity, while the competent government passed a decision managing status questions and organisation thereof. The work of the RES Operator is monitored by the competent entity level ministry and the electricity commission, each within the scope of its authorisation and competences.

The FBiH and RS Law on RES and Cogeneration define the scope of work and main duties/authorisation of the RES Operator. In this sense, for example in FBiH, the RES Operator concludes the mandatory repurchase agreements on the basis of a feed-in tariff or reference price, defines the standard form of agreements and pre-agreements, etc.

In FBiH, the mandatory repurchase agreement is concluded for a period of twelve (12) years from the date the facility commences operation, while in RS the RES-Electricity producer is entitled to a feed-in tariff or a premium for a period of fifteen (15) years. During the term of the concluded agreement, the price determined therein is not subject to change.

4.3 Procedure for determining feed-in tariffs

In both entities, the feed-in tariff is different for every primary source and type of facility.

The FERC introduced a special rulebook in 2014 defining the methodology of calculation of feed-in tariff as well as the criteria for changes thereof. The respective rulebook is passed in consultation with the expert community and other relevant stakeholders, and takes into consideration criteria such as form of primary energy, technology which is being used, installed power of the facility, starting date of operation of the facility, as well as the contracted term of repurchase. In FBiH the feed-in tariff consists of a tariff coefficient and a reference price. Accordingly, the reference price as of 1 March 2016 is 0.099458 BAM/KWh (approximately 0.0508 EUR/KWh) and is determined based on the previous twelve (12) month period. The tariff coefficient is determined depending upon the type and size of the facility. The tariff coefficient used for the calculation of the feed-in tariff is adopted every eighteen (18) months.

Similarly to the above, the feed-in tariff in RS is determined on the basis of a methodology prepared by the RERS. The feed-in tariff consists of a reference price for mandatory repurchase and a premium. The amount of feed-in tariff is determined by the RERS with the consent of the RS Government. The RERS verifies the amount of feed-in tariffs at least once a year and makes adjustments for the upcoming period if and where necessary.

Examples of the currently applicable feed-in-tariffs for facilities connected to the distribution or transmission grid in FBiH are outlined in the table below.

TYPE OF THE FACILITY	REFERENT PRICE (BAM/KWH)	TARIFF COEFFICIENT	GUARANTEED PRICE (BAM/KWH)
Hydro power plants of installed power			
• 23 KW	0.099458	2.9194	0.29036
• 150 KW	0.099458	1.8291	0.18192
• 1,000 KW	0.099458	1.3826	0.13751
• 10,000 KW	0.099458	1.2440	0.12373

Wind power plants of installed power			
• 23 KW	0.099458	3.7326	0.37124
• 150 KW	0.099458	2.2261	0.22140
• 1,000 KW	0.099458	1.9020	0.18917
• 10,000 KW	0.099458	1.6121	0.16033
• 15,000 KW	0.099458	1.4847	0.14766
Solar power plants of installed power			
• 23 KW	0.099458	5.4486	0.54190
• 150 KW	0.099458	3.6001	0.35806
• 1,000 KW	0.099458	3.1034	0.30866
Biomass power plants of installed power			
• 23 KW	0.099458	3.1462	0.31292
• 150 KW	0.099458	2.5123	0.24987
• 1,000 KW	0.099458	2.4198	0.24067
• 10,000 KW	0.099458	2.2829	0.22706
Biogas power plants of installed power			
• 23 KW	0.099458	7.1547	0.71160
• 150 KW	0.099458	6.7000	0.66637
• 1,000 KW	0.099458	2.8043	0.27891

In RS, on the other hand the currently applicable tariffs and premiums are, *inter alia*:

TYPE OF FACILITY	FEED-IN TARIFF (BAM/KWH)	PREMIUM (BAM/KWH)
Hydro power plant of installed power		
up to (and inclusive) 1 MW	0.1541	0.0712
over 1 MW up to (and inclusive) 5 MW	0.1327	0.0498
over 5 MW up to (and inclusive) 10 MW	0.1245	0.0416
Wind power plant of installed power		
up to and inclusive 10 MW/without limitation for the premium	0.1652	0.0823
Solar power plants on objects[3]		
on objects, up to 50 KW	0.3198	0.2369
on objects, over 50 KW up to (and inclusive) 250 KW	0.2766	0.1937
on objects, over 250 KW up to (and inclusive) 1 MW	0.2207	0.1378
on land, up to (and inclusive) 250 KW	0.2566	0.1737
on land, over 250 KW up to (and inclusive) 1 MW	0.2042	0.1213
Biomass power plant of installed power		
up to (and inclusive) 1 MW	0.2413	0.1584
over 1 MW up to (and inclusive) 10 MW	0.2261	0.1432

3 Please note that according to unofficial information from RERS, the feed-in tariff and premium for solar power plants are likely to be lower as of July 2016.

4.4 Revision and/or indexation of feed-in tariffs

As outlined in Section 4.3 above, the methodology for the calculation of feed-in tariffs is determined by special FERC/RERS rulebooks. In FBiH, the revision of the tariff coefficient which is used for the calculation of the feed-in tariff is performed every eighteen (18) months, while in RS the RERS verifies the currently applicable feed-in tariffs and premium at least once a year and makes the necessary adjustments thereof for the upcoming period.

4.5 Other financial incentives for RES-Electricity

There are no particular financial incentives for RES-Electricity producers in FBiH. However, there are general tax exemptions applicable to entrepreneurs in FBiH. Furthermore, RS Corporate Income Tax Law does not provide tax exemptions as is the case with FBiH Corporate Income Tax Law.

4.6 Support scheme for cogeneration

Currently, in the FBiH and RS, the Law on RES and Cogeneration also foresees a feed-in tariff promotion system for cogeneration systems. In general, support schemes for cogeneration depend on the capacities of the cogeneration facilities. At the moment, very few electricity producers use the cogeneration system, e.g. landfill gas is normally directed to an electricity production facility or heat producers.

4.7 Certificate of origin for RES-Electricity

In FBiH the guarantee of origin is issued by the RES Operator, while in RS this guarantee is issued by the RERS upon the request of a RES-Electricity producer who is entitled to mandatory repurchase. Furthermore, it is issued only once for certain amounts of electricity produced within a certain period. In both FBiH and RS, this period is for a maximum of one (1) year and in any case not less than one (1) month. The RES Operator and RERS also established registries of guarantees of origin.

Under the relevant entity law, the RERS has already adopted the Rulebook on Issuance of Guarantees of Origin. In FBiH, the RES Operator has also adopted a Rulebook on the Procedure of Filing Requests for Issuance of Guarantees of Origin, pursuant to which a guarantee of origin is issued (in electronic or hardcopy form) to every producer and for every MWh of produced electricity. The RES Operator is under the obligation to issue a decision within thirty (30) days after a complete request had been lodged by the producer. For the purposes of the inspection, the RES Operator may also monitor the process of production. RERS, on the other hand, issues guarantees only in an electronic form. An eligible producer is every RES-Electricity producer who has obtained a valid certificate for the production facility, but who is not entitled to a mandatory repurchase.

The guarantees can be used from the date of their issuance, and after being used or after having expired, they are annulled. Guarantees for RES-Electricity issued on BiH territory or in any EU Member State or in a signatory country to the Agreement on Energy Community, are recognised in FBiH/RS on the principle of reciprocity.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

The electricity grids in BiH are divided into the high voltage transmission grid ("**Transmission Grid**") and mid- and low-voltage distribution grids. The Transmission Grid is operated by the two state regulatory bodies:

- **ISO**. The ISO is responsible for the management of the transmission system with the aim of ensuring reliability, management of assets and appliances in the mainstream control centre, management of a balanced market, pro-

vision of ancillary services and development and application of reliable standards, development and application of guidelines which regulate the usage of the transmission system, and development and enforcement of market regulations; and

- Company for Transmission of Electricity in BiH ("**Transco**"). Transco is responsible for the proper functioning and development of the market for electric power and stable and rational transmission of electric power in BiH, construction, maintenance and expansion and management of the transmission system facilities.

According to the FBiH Provisions of General Conditions for Distribution of Electricity regarding access to the distribution grid, Elektroprivreda BiH Sarajevo or Elektroprivreda HZHB Mostar (each of which operates over a defined territory within FBiH) shall allow grid access to all power generators. The access to the distribution grid in RS is granted by the Elektroprivreda RS.

According to the BiH Rulebook on Access, access to the Transmission Grid shall be allowed by Transco, for which the detailed conditions of access shall be determined in cooperation with ISO. In principle, all generators of electricity must, prior to commencing with the construction of the generator facilities, obtain the consent for connection to the transmission grid in order to be able to obtain any construction related permits.

Also, the RS Law on RES and Cogeneration stipulates, *inter alia*, certain benefits in connection and advantages for access to the grid.

5.2 Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid system

The costs of connection to the distribution grids and transmission grid are borne by the electricity producers.

ISO and Transco are obliged to plan development of the transmission grid. Works on the transmission grid are conducted by Transco which also bears the cost of such works. Nevertheless, in practice, Transco does not issue development plans on a regular basis as provided for in the law. As in the case of the transmission grid, distribution grid improvements are conducted by the distribution companies which bear the costs of such improvements.

In accordance with the BiH Rulebook on Access, RES-Electricity producers (energy production facilities which are producing electricity by using wind power, sun, geo-thermal sources, tides and waves, hydro energy, biomass, landfill gas, etc.) pay only fifty percent (50%) of the regular access fee.

5.3 Special allowance/tolerance for intermittent generation in relation to balancing charges for unscheduled deviations

The new Market Rules, applicable as of 1 January 2016, differ from the previous market rules when regulating the balancing responsibility and the balancing costs. Previously, those parties responsible for balancing were only public providers of electricity. Now, given the entry into the market of other electricity providers, these too may be responsible for balancing. The new Market Rules provide for a system of balance groups which all have their balance responsible party, and this function is no longer reserved only for public providers of electricity. Nonetheless, the new Market Rules do not address any special allowance/tolerance for intermittent generation with respect to the balancing charges in case of unscheduled deviations. Therefore, the general rules regulating this issue are still applicable.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all the jurisdictions is the prohibition of incompatible state aid, which is contained both in the Treaty on the Functioning of the European Union and in the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission's Guidelines on State Aid for Environmental Protection and Energy adopted on 7 April 2014, be considered as compatible with the common market.

In BiH there are no legal limitations specifically applicable to RES-Electricity Power Purchase Agreements ("**PPAs**"). However, the following information must be disclosed ("**Contract Notification**"): (i) contracting parties (name of the company, EIC code); (ii) injection/withdrawal points; (iii) duration of the contract; and (iv) contracted quantities and applicable hourly programmes for any bilateral electricity supply contract it has entered into. These requirements will apply to all bilateral contracts, including contracts for the export/import of electricity. The notification is submitted to the ISO.

General rules on scheduling and maintenance set out in the respective regulations should be considered when drafting a PPA. Although the relevant legislation does not regulate the issue of electricity trading in the course of the test period of new production facilities, in practice, small hydro power plants connected to the distribution grid sell electricity during the test working period as well.

Contract notifications may be submitted as early as one (1) year prior to the PPA going into effect.

7. Carbon Credits

BiH signed the Kyoto Protocol in 2007. The Kyoto Protocol entered into force on 15 July 2007. On 19 October 2010, by a Decision Establishing the Authorised Body for Implementation of the Clean Mechanism Development Projects of the Kyoto Protocol of the UN Framework Convention on Climatic Change in BiH, the BiH Council of Ministers established the Designated National Authority ("**DNA**"). Furthermore, on 26 September 2011 the Executive Board of the DNA BiH passed the Rulebook on the DNA BiH for Realisation of Activities within the CDM Project Scope, thereby enabling the operation of the DNA. Nonetheless, the activities in this sector are limited, as only a few projects have shown to be eligible for CDM.

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Main permits required for RES-Electricity generating facilities

Environmental permit	Competent Authority: Ministry of Environment and Waters or the relevant Regional Inspectorate of Environment and Waters. The need for an Ecological Assessment, Environmental Impact Assessment and/or Appropriate Assessment of plans, programmes or investment proposals is either mandatorily required or its necessity is assessed by the competent environmental authority following a screening procedure. For hydro power plants, a permit for water abstraction is required.
Building permit	The process involves elaboration and approval of a detailed zoning plan, change of land designation, elaboration and approval of the investment design and issuance of a construction permit on the basis of an approved investment design by the competent authorities.
Authorisation under Energy law/ right (concession) to exploit natural resources	Required only in a limited number of cases of recognised need for new electricity generating capacities provided that the security of electricity supply cannot be guaranteed by an effective licensing regime.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	A licence, issued by the Energy and Water Regulatory Commission, is required for generation of electricity from power plants with installed capacity exceeding 5 MW.
PROMOTION SCHEME	
Outline	Feed-in tariff (preferential prices) combined with the purchase obligation for a certain period of time (except for energy produced by hydro power plants with installed capacity exceeding 10 MW).
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	Yes
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the electricity grid	The electricity transmission or the respective distribution company bears the expenses for: ▪ the extension and reconstruction of the transmission network and/or the distribution grid for the connection of the producer's energy facility; ▪ the costs for the connection facilities and equipment from the ownership boundary of the RES-Electricity plant to the point of connection to the transmission network and/or distribution grid.
CONNECTION FEE	The connection fee, payable by the producer to the transmission/distribution company covers the direct expenses incurred by the transmission/distribution company in the connection.

Special allowance/tolerance for intermittent generation in relation to balancing charges	No
CARBON CREDITS	
Status	Ratified Kyoto Protocol, as an Annex 1 Party to the UNFCCC. Necessary legal framework transposed into the Environment Protection Act.

1. Overview of Legal and Regulatory Framework

1.1 General overview

Bulgaria has conducted in the past years a policy of incentivising the production of electricity and heat from RES. After a considerable increase of the installed RES capacities between 2010 and 2012, in 2012 the Bulgarian Energy regulator and the Government focused on measures aimed at limiting the development of RES capacity and where possible, to reduce the incentives for some of the existing plants. In this respect, two important developments occurred in March 2015. First, the Parliament introduced a new mandatory contribution to a public fund for all electricity producers, including RES-electricity producers, amounting to five percent (5%) of their income derived from electricity generation. Second, by the same enactment, the legislator considerably limited the application of the RES incentive schemes. As of March 2015, the most important incentives (long-term PPA, obligation to purchase the energy and Feed-in Tariffs) are applicable only for the smallest RES-Electricity plants and some biomass projects.

1.2 Main laws and regulations

- The Energy Act[1] ("**Energy Act**") and its related sub-laws and regulations set out the general legal structure of the energy sector in Bulgaria.
- The Act for Energy from Renewable Sources ("**AERS**"[2]) implements Directive 2001/77/EC, Directive 2003/30/EC and Directive 2009/28EC and sets out the specifics of energy production from renewable sources and biofuels.
- The Energy Efficiency Act[3] implements the provisions of Directive 2002/91/EC as of 16 December 2002 on the energy characteristics of buildings and of Directive 2006/32EC. The Act sets out the state policy for increasing the energy efficiency at end consumptions and provision of energy services.
- The Spatial Development Act[4] regulates spatial development, development-project designing and construction in the Republic of Bulgaria and determines the restrictions on ownership for spatial-development purposes.
- The Water Act[5] implements the provisions of Directive 2000/60/EC establishing a framework for Community action in the field of water policy and defines the ownership and management of water and the ownership of water supply systems and facilities in the territory of the Republic of Bulgaria as a national inseparable natural resource.
- The Forestry Act[6] makes provision for the ownership and care – management, restorative, utilization and preserva-

1 Promulgated in State Gazette issue No. 107/09.12.2003, as amended from time to time, last amended State Gazette issue No. 56/24.07.2015.

2 Promulgated in State Gazette issue No. 35/03.05.2011, as amended from time to time, last amended State Gazette issue No. 56/24.07.2015.

3 Promulgated in State Gazette issue No. 35/15.05.2015.

4 Promulgated in State Gazette issue No. 1/02.01.2001, as amended from time to time, last amended State Gazette issue No. 79/13.10.2015.

5 Promulgated in State Gazette issue No. 67/27.07.1999, as amended from time to time, last amended State Gazette issue No. 61/11.08.2015.

6 Promulgated in State Gazette issue No. 19/08.03.2011, as amended from time to time, last amended State Gazette issue No. 79/13.10.2015 in force from 01.08.2016.

tion - of the forests in the Republic of Bulgaria. The act also regulates the establishment of property rights (right to construct or easements) necessary for the construction of site or linear facilities located or passing through forests.

- The Environmental Protection Act[7] introduces provisions of Directive 96/82/EC on control of major accident hazards involving dangerous substances, Directive 2003/105/EC amending Directive 96/82/EC on the control of major accident hazards involving dangerous substances, Directive 2008/101/EC amending Directive 2003/87/EC to include aviation activities in the scheme for trading greenhouse gas emissions within the Community and Article 1, paragraphs 10 and 13 of Directive 2009/29/EC amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community. The Act regulates the protection of human health, conservation of biodiversity and environmental protection and monitoring.
- The Biological Diversity Act[8] implements the provisions of Directive 92/43/EEC on conservation of natural habitat types and of wild fauna and flora, and Directive 79/409/EEC on the conservation of wild birds and regulates the relations between the state, municipalities and private entities and individuals for the conservation and sustainable use of biodiversity in Bulgaria.
- The Protected Areas Act[9] sets out the extent of protected areas and the regime applicable thereto, including construction regulations, permitting and other regulatory requirements.
- The Cultural Heritage Act[10] regulates the protection of cultural heritage on the territory of the Republic of Bulgaria.
- The Agricultural Land Conservation Act[11] governs the protection of disability, rehabilitation and improvement of fertility of agricultural land and determines the terms and conditions for change in use.
- Ordinance No. 14 of 15 June 2005 ("**Ordinance 14**"[12]) introduces special rules for investment feasibility studies, for assessing the existing and forecasted potential of RES-Electricity plants and special requirements regarding the design of water and photovoltaic power plants.
- Ordinance No. 16 – 27 of 22 January 2008 ("**Ordinance 16**"[13]) sets procedures for forecasting and assessing potential resources.
- Ordinance No. 3 of 21 March 2013 for licensing of activities in the energy sector ("**Licensing Ordinance**"[14]) details the regime for licensing in the energy field.
- Ordinance No. 6 of 24 February 2014 ("**Ordinance 6**"[15]) sets the procedures for connecting a RES Electricity plant to the electricity transmission and distribution grids.
- Ordinance No. 1 of 18 March 2013 for setting prices of electricity ("**Pricing Ordinance**"[16]) sets the methods for defining electricity prices including FiT Tariffs.

7 Promulgated in State Gazette issue No. 91/25.09.2002, as amended from time to time, last amended State Gazette issue No. 62/14.08.2015.

8 Promulgated in State Gazette issue No. 77/09.08.2002, as amended from time to time, last amended State Gazette issue No. 61/11.08.2015.

9 Promulgated in State Gazette issue No. 133/11.11.1998, as amended from time to time, last amended State Gazette issue No. 61/11.08.2015.

10 Promulgated in State Gazette issue, No. 19/13.03.2009, as amended from time to time, last amended State Gazette issue No. 98/28.11.2014.

11 Promulgated in State Gazette issue No. 35/24.04.1996, as amended from time to time, last amended State Gazette issue No. 61/11.08.2015.

12 Promulgated in State Gazette issue No. 53/28.06.2005, as amended from time to time, last amended issue No. 73/05.09.2006.

13 Promulgated in State Gazette issue No. 11/05.02.2008.

14 Promulgated in State Gazette issue No. 33/05.04.2013.

15 Promulgated in State Gazette issue No. 31/24.02.2014.

16 Promulgated in State Gazette issue No. 33/05.04.2013, as amended time to time, last amended State Gazette issue No. 4/16.01.2015.

- Ordinance No. 16 – 1117 of 14 October 2011 on the conditions and the procedure for issuing, transfer, revocation and recognition of the guarantees of origin for energy from renewable sources ("**RES Guarantees Ordinance**"[17]), establishing the procedures for issuing guarantees of origin from the two types of sources.
- Ordinance for the conditions and the procedure for performance of assessments for appropriateness of plans, programmes and projects with the scope and goals of the protection of protected zones ("**Appropriate Assessment Ordinance**"[18]).
- Ordinance on the order and procedure of raising, spending, accounting and control of the funds of the "*Safety of the electro energy system*". This Ordinance sets the basic rules for collection and spending of the amounts of the fund[19].
- Ordinance No. 10 of 9 June 2004 ("**Ordinance 10**"[20]) on the procedures for the introduction of restrictive regime, suspension or restriction of generation or supply of electricity, heat and gas.
- Rules for trade of electricity[21] ("**Market Rules**") setting the rules for trade of electricity under freely-negotiated prices and the participation and integration of the RES-Electricity producers on the free electricity market.
- Rules for terms and conditions for access to the transmission network and distribution grids[22].
- Rules for management of the electricity energy system[23] ("**Transmission Network Rules**"). The rules provide rights and obligations of the transmission company and users connected to the transmission network.
- Rules for management of the distribution grids[24] ("**Distribution Grid Rules**"). The rules provide rights and obligations of the distribution companies and users connected to the distribution grids.
- Rules for measurement of electricity[25] ("**Metering Rules**"). The market rules for measurement of the electricity quantities.

The Energy Act adopted in 2003 was amended several times in order to comply with the European Union legislation, i.e. Directive 2009/72/EC from 13 July 2009 concerning common rules for the internal market in electricity, Directive 2004/8/EC encouraging the production of electrical energy through combined sources and Directive 2005/89/EC concerning measures to safeguard the security of electricity supply and infrastructure investment.

The adoption of the AERS harmonised Bulgarian legislation with the principles contained in Directive 2009/28/EC of 23 April 2009 on the promotion of the use of energy from renewable sources.

17 Promulgated in State Gazette issue No. 84/28.10.2011, adopted by the Council of Ministers, as amended time to time, last amended State Gazette issue No. 42/9.06.2015.

18 Ordinance for the conditions and the procedure for performance of assessments for appropriateness of plans, programmes and other projects with the scope and goals of the protection of protected zones, promulgated State Gazette issue No. 73/11.09.2007, as amended time to time, last amendment State Gazette issue No. 94/30.11.2012.

19 Promulgated in State Gazette issue No. 97/11.12.2015, adopted by the Council of Ministers on 07.12.2015.

20 Promulgated in State Gazette issue No. 63/20.07.2004, as amended from time to time, last amended State Gazette issue No. 42/9.06.2015.

21 Promulgated in State Gazette issue No. 66/26.07.2013, adopted by SEWRC Protocol Decision No. 110/18.07.2013, amended State Gazette issue No. 90/20.11.2015.

22 Promulgated in State Gazette issue No. 98/12.11.2013.

23 Promulgated in State Gazette issue No. 6/21.01.2014, adopted by Decision No P-162 of SEWRC of 06.11.2013.

24 Promulgated in State Gazette issue No. 66/14.08.2007, adopted by Decision No. P-6 of SEWRC of 18.06.2007.

25 Promulgated in State Gazette issue No. 98/12.11.2013.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

2.1.1 Environmental Law

There are two stages for environmental assessment under the Environmental Protection Act ("**EPA**"), applicable for the development of projects, including RES-Electricity plants:

- an Ecological Assessment of plans and programmes ("**EA**")[26]; and/or
- an Environmental Impact Assessment of investment proposals for projects ("**EIA**")[27].

An EA is a mandatory procedure for any plans and programmes[28] related to agriculture, forestry, fishery, transport, energy, waste, water management and industrial projects, when these plans outline the framework of the future development of investment projects listed in Annex I to the EPA or which may have a "considerable adverse effect" on protected areas under Natura 2000.

For plans/programmes not listed in Annex I, but listed in Annex II to the EPA, the environmental authorities, i.e. the Ministry of Environment and Waters or the Regional Environmental and Waters Inspectorate (REWI), carry out a screening procedure[29] to determine whether such plans/programmes are likely to have significant impact on the environment and on human health upon their implementation[30]. In the screening procedure, the environmental authority takes a decision whether or not an EA is required for the particular plan or programme based on its expected impact on the environment and human health. If a significant impact is likely to arise, the environmental authority will decide that an EA for the reviewed plan or programme is required.

An EIA also applies to those types of projects which are listed in Annex I and Annex II to the EPA.

The need to conduct a mandatory EIA applies to all projects listed in Annex I to the EPA[31].

For projects listed in Annex II the environmental authorities assess whether an EIA is needed on a case-by-case basis by undertaking a screening procedure[32].

Due to the difference in the subject of review the scope of EA and EIA procedures do not overlap. The EPA explicitly envisages that both procedures are independent and are carried out independently. However, where the spatial legislation requires preparation and execution of a separate detailed zoning plan for a particular project, the EA on the

26 Under §1, para. 22 of the EPA, "Plans and programmes" are defined as plans, programmes, strategies and other similar documents, as well as the alterations thereof, which a) are required by statutory, regulatory or administrative provisions; or b) are subject to preparation and/or adoption by a public authority at national, regional or local level or are prepared by a competent authority for adoption according to a procedure approved by the Council of Ministers or the National Assembly.

27 Under §1, para. 17 of the EPA, "Investment proposals" are defined as (a) the preliminary (pre-development) studies or the design terms of reference in connection with a request to allow investment-design for new construction, activity, technology or erection of installations or schemes; or (b) other interventions in the natural surroundings and landscape, including those involving the extraction of mineral resources.

28 Including for detailed zoning plans for projects.

29 In Bulgarian legislation referred to as "*преценка за необходимост от извършване на оценка*".

30 Under §1, para. 18 of the EPA, "Impact" is defined as any direct effect on the environment that may be caused by the implementation of an investment proposal for construction, activity or technology, including the effect on human health and safety, flora, fauna, soil, air, water, climate, landscape, historical monuments and other physical structures or the interaction among these factors.

31 Article 92 (1) of the EPA.

32 Article 93 (1) of the EPA.

detailed zoning plan and the EIA for the investment proposal for that project could concern the same level of detail and aspects of review. In such cases:

- The EPA envisages that if a project (i) is included in Annex I or Annex II to the EPA; and (ii) requires the preparation of a stand-alone plan or programme (e.g. detailed zoning plan for the plot(s) where the project is to be implemented), the environmental authority may, upon discretion or following a request from the developer of the project, proceed with one of the procedures under Chapter VI of the EPA only (i.e. perform only an EA or EIA)[33].

No EIA is required where a project does not fall within Annex I or Annex II to the EPA.

In cases where a plan/programme or investment proposal falls within a protected zone and/or is within an area which is part of the European environmental network Natura 2000, an appropriate assessment is needed following the provisions of the Biodiversity Act and the Appropriate Assessment Ordinance.

For hydro power plants, a permit for water abstraction from the water body having jurisdiction over the project is also required. This permit is issued pursuant to a procedure described in the Water Act. The project developer is obliged to submit to the competent environmental authority[34] an application accompanied by all relevant documents, information and studies. The competent authority assesses the application and sends it to the mayor of the municipality for publication within twenty (20) days after its receipt. Provided that the project has not been challenged by any of the interested parties in the fourteen (14) days following its publication, the competent authority will issue the water abstraction permit. The permit can be issued for a period not exceeding thirty-five (35) years, but can be extended upon request by the permit holder, filed no later than three (3) months prior to its expiration. The permit can be amended or terminated before its expiration upon the occurrence of certain detailed circumstances by the same authority.

According to Article 118ж of the Water Act, the granting of permits for water abstraction for electricity generation in areas falling within Natura 2000 or for cascade type hydro power plants is not allowed.

2.1.2 Building Law

2.1.2.1 ZONING REGULATIONS

Before a RES-Electricity plant can be built and operated, the investor must obtain a number of regulatory permits related to the relevant planning, zoning and construction procedures.

The construction of a RES-Electricity plant is subject to two separate zoning procedures under the applicable planning and construction legislation: (i) zoning regulation for the land plots where the RES-Electricity plant will be constructed; and (ii) zoning regulation for the power and communication lines necessary for the connection of the RES-Electricity plant to the respective electric grid.

The zoning procedure for the land plots where the RES-Electricity plant will be constructed is completed with the entry into effect of the detailed zoning plan, approved for these plots.

The zoning procedure for the power and communication lines necessary for the connection of the RES-Electricity plant to the respective electricity grid, is completed with the entry into effect of the respective parcelling plan. The parcelling plan needs to be approved for the land plots, in which the connecting infrastructure will be constructed. This plan outlines, in particular, the layout of the connection power line as well as the properties affected by that layout.

33 Article 91 (2) of the EPA.

34 The competent environmental authority may be the Minister of Environment and Water, the mayor of the municipality or the director of the respective Basin Directorate, depending on the location and the technical details of the project.

2.1.2.2 CHANGE OF LAND DESIGNATION

The RES-Electricity plant can be constructed on land plots which are designated for industrial purposes. If the respective land plots are designated for agricultural purposes, the designation of these plots must be changed from agricultural to industrial. The procedure for change of the designation of agricultural land plots can be initiated either by the land owner or by the project developer by submitting to the competent authorities a formal application. Various administrative documents should be submitted with such an application.

2.1.2.3 DESIGN VISA AND INVESTMENT DESIGN

In order to acquire a construction permit for a RES-Electricity plant and the necessary connection facilities, an applicant first needs to obtain an excerpt from the cadastral plans of the respective cadastral agency/municipality. The purpose of such an excerpt is to evidence the location and boundaries of the land plots where the RES-Electricity plant and the necessary connecting infrastructure will be constructed.

Based on the excerpt of the respective cadastral plan, a design visa, outlining the construction parameters of the land plots (e.g. density of construction, maximum height, etc.) under the respective effective detailed zoning plan, is issued by the chief architect of the respective municipality. The investor coordinates the design visa with the relevant utility providers in order to determine how the RES-Electricity plant will be connected to the respective utilities and/or affect their networks.

On the basis of the coordinated design visa, the investor initiates the elaboration of an investment design for the RES-Electricity plant and the connection facilities. The draft investment design for a RES-Electricity plant should be prepared by licensed designers, and consists of a technical and workshop design. Once prepared, the investment design needs to be coordinated with the public utility companies and the Regional Environment and Water Inspectorate.

The investment design for the RES-Electricity plant is approved by the chief architect of the municipality, where the plant will be built. The approved design is a precondition for the issuance of the relevant construction permit. The investment design will be approved on the basis of a report for conformity with the substantial requirements under the Spatial Development Act. Such a report will be executed and signed by a licensed consultant or by an expert council with the respective municipality. The report should be included with the application for approval of the investment design, submitted by the investor.

2.1.2.4 CONSTRUCTION PERMITS

On the basis of the approved investment design, the chief architect issues construction permits for the RES-Electricity plant and the respective connection facilities. The application for issuance of a construction permit needs to be submitted by the investor within one (1) year from the approval of the investment design, otherwise the investor will need to apply for a new approval of the investment design.

The construction of a RES-Electricity plant and the connection facilities may commence only after the respective construction permits have entered into force, i.e. the latter have not been appealed, or accordingly, have been confirmed by the court. A construction permit will be issued in favour of either the: (i) land owner; (ii) owner of a limited real property right to construct over the land; or (iii) corporate entities entitled to construct by virtue of a special law.

The authorities entitled to issue a construction permit are: (i) the chief architect of the respective municipality; (ii) the District Governor; or (iii) the Minister of Regional Development and Public Works, depending on the territorial scope and significance of the project.

2.1.2.5 USE PERMIT

In order for a RES-Electricity plant and the connecting infrastructure to be put into operation, the competent authorities will need to verify whether the constructions works have been executed in conformity with the approved detailed zoning plans and the investment design, as well as with the applicable statutory requirements. If the executed works are in compliance with the approved construction documents and the relevant statutory norms, the National Directorate of Construction Supervision[35] will issue a use permit. Following the issuance of the use permit, the operator of the RES-Electricity plant operator is obliged to accordingly inform the operator of the respective electricity transmission network or the electricity distribution grid, as the case may be. After the agreement for access to the transmission or distribution grid with the respective electricity network operator and the power purchase agreement with the public provider or the end suppliers are signed, the feeding of electricity, generated from the RES-Electricity plant, into the electricity network may commence.

2.2 Process for obtaining the right (concession) to exploit natural resources

Hydro power can be exploited for the generation of electricity subject to obtaining permission for water abstraction. The permission is granted pursuant to a procedure described in the Water Act. The procedure commences with the submission of an application to the competent administrative authority, accompanied by the necessary documents, information and studies. The administrative authority assesses the application and sends it to the Mayor of the relevant municipality for public announcement. If the announcement is not challenged by any concerned parties within the statutory period of fourteen (14) days, the competent authority issues the water abstraction permission within one (1) month from the date of the public announcement. The term of the water abstraction permission shall not exceed thirty-five (35) years.

The construction and operation of RES-Electricity plants utilising hydro power does not automatically require a concession for exploitation of a natural resource. However, such plants may be subject to a concession depending on the types of hydro power plants, the ownership over the hydro power plants and the ownership of the land on which the hydro power plant is to be built.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

A licence is required for electricity generation from RES-Electricity plants with an installed capacity exceeding 5 MW[36]. The detailed procedure for obtaining a licence is regulated by the Licensing Ordinance. The national regulatory authority, responsible for the licensing of the RES-Electricity producers is the Energy and Water Regulatory Commission ("**EWRC**").

The RES-electricity generation licence is issued for a period not exceeding thirty-five (35) years.

Entities holding or applying for a licence for electricity generation and fulfilling the requirements for coordinators of balancing groups, may have their licences extended also to include the rights and obligations of a coordinator of a balancing group.

The procedure commences with a written request filed by an investor, owner or user of the land plot with established superficies rights ("**Investor**"). The Investor may apply for a licence either after or prior to the construction of the RES-Electricity plant. EWRC is obliged to decide on the licence issuance within three (3) months after the filing of

35 Article 177 (2) of the Spatial Development Act.

36 Article 39 (1), item 1 in relation with paragraph (4), item 1 of the Energy Act.

an application by the Investor. If the Investor applies for the licence prior to the construction of the RES-Electricity plant, this term starts to run upon completion of the RES-Electricity plant construction, as of the day when the Investor presents the documents and information requested. If no decision is issued within the aforementioned time period, the application is deemed to have been tacitly refused a licence for RES-Electricity generation.

The RES-Electricity generation licence is granted if the Investor:

- has demonstrated technical and financial capability, material and human resources as well as the organisational structure required for energy generation from a RES-Electricity plant;
- is the owner or has superficies rights over the land plot designated for construction of the RES-Electricity plant;
- ensures the safe operation of the RES-Electricity plant; and
- meets the requirements for environmental protection.

The explicit or tacit refusal of EWRC to grant a RES-Electricity generation licence may be appealed, subject to the general administrative procedures set out in the Administrative Procedural Code[37][38].

3.2 Designated/preferred legal form of investment vehicle

There is no designated legal form of investment vehicle in the renewable energy sector. Normally it would be a limited liability company ("*OOD*") or a joint-stock company ("*AD*"). The entity can be a company registered in Bulgaria or in another EU country.

3.3 Anticipated time frame for the issue of licences/authorisations

The general time frame for realisation of a RES-Electricity project very much depends on the time necessary for obtaining the necessary environmental reports, building permits, connection to the grid and licensing.

3.4 Fees collected by EWRC

EWRC charges the following fees in relation to the licensing procedure:

- review of applications for licences – BGN 1,000 (approximately EUR 512);
- issuing of licences:
  - an initial fee of BGN 15,000 (approximately EUR 7,675); plus
  - an annual fee of BGN 2,000 (approximately EUR 1,022); plus
  - a fee of zero point zero five percent (0.055%) of the annual income of the relevant RES-Electricity producer, according to its annual financial statements; and
- fees for preliminary licences include the same amounts as the ones in the preceding paragraph, plus an additional zero point zero two percent (0.02%) of the amount of the investment as per the conditions of the licence and the investment programme approved by EWRC that should not exceed BGN 50,000 (approximately EUR 25,582).

37 Promulgated in State Gazette issue No. 30/11.04.2006, as amended time to time, last amended issue No. 104/03.12.2013.

38 The SEWRC's refusal is appealable within fourteen (14) days after notification of its issuance (in cases of explicit refusal) and within thirty (30) days from the day of expiry of the term for the issuance of the administrative act (in cases of tacit refusal).

4. Promotion System for the Production of RES-Electricity

The promotion of RES in Bulgaria, as provided by the AERS, takes the form of a feed-in tariff (preferential prices) for certain amounts of electricity, depending on the type of resource and technology and determined by EWRC, and combined with a purchase obligation (except for energy produced by hydro power plants with total installed capacity above 10 MW). The promotion system is applicable to generated energy for which a guarantee of origin has been issued.

4.1 Applicability of promotion scheme

Following the legislative amendments of March 2015[39], the Feed-in Tariff ("**FiT**") as well as the purchase obligation apply to power purchase agreements ("**PPA**") are applicable to new projects for production of electricity from renewable sources: (i) with total installed capacity up to 30 KW inclusive, which are envisaged to be mounted on roof tops and facades of buildings connected to the electricity distribution grid and on real property in urban areas; or (ii) for certain[40] projects with a combined cycle and indirect use of biomass, which are to be built in urban areas, on agricultural sites, or in industrial areas.

Projects which have been commissioned before March 2015 will be able to benefit from the promotion scheme until the termination of the respective PPAs.

Projects benefitting from European or national support schemes benefit from a separate FiT which is set by EWRC.

4.2 General description of promotion scheme

The public provider National Electricity Company EAD ("**NEK**") and the end suppliers (Energo-Pro Sales AD, CEZ Elektro AD and EVN Bulgaria Electricity distribution EAD, "**ES**") are obliged to purchase the RES-Electricity generated by RES-Electricity plants (except from hydro power plants with installed capacity above 10 MW), up to the amount of "net specific generation of electricity" set out for the specific type of power plant.

The limitation of the amounts of electricity to be purchased under FiT was introduced with the Bill for amendment and supplementation to the Energy Act and the AERS adopted in March and July 2015. The "net specific generation of electricity" ("**NSGE**") for the existing power plants has been set out by Decision SP-1/31.07.2015 of EWRC and shall apply until the end of the mandatory off-take for those power plants. However, hundreds of appeals have been filed by RES-electricity producers and the Public Prosecution office before the administrative courts and the Decision might be annulled. In such case, new amendments to the EA and/or the AERS will be needed, and most likely also a new decision by EWRC.

The NSGE is defined as "the average annual electric power generation by 1 KW of installed capacity in accordance with the EWRC decision fixing preferential prices after deduction of the RES-Electricity plant's own needs". Thus, RES-Electricity producers will be able to calculate up to which amount the generated electricity will be off-taken under a FiT. The NSGE is not applicable to certain RES-Electricity plants[41] generating electricity from combined cycle and indirect use of biomass, which are to be built in urban areas, on agricultural sites, or in industrial areas. For those

39 Bill for Supplementation and Amendment of the Energy Act, published in State Gazette issue No. 17/06.03.2015.

40 Projects whose installed capacity is up to:
(a) 1.5 MW, which use biomass in the total weight whereof animal manure accounts for at least sixty percent (60%);
(b) 500 KW, which use plant waste biomass from the energy project's own agricultural production.

41 Power plants, whose installed capacity is up to:
(a) 1.5 MW, which use biomass in the total weight whereof animal manure accounts for at least sixty percent (60%), subject to the requirements of Article 18 (7) AERS, and in respect whereof the installed capacity is to be proven in accordance with the ordinance referred to in Article 116(7) of the EA; or
(b) 500 KW, which use plant waste biomass from the energy project's own agricultural production.

RES-Electricity plants, the NSGE is not applicable and all generated electricity is purchased under the applicable FiT.

Once the NSGE is reached, RES-Electricity producers may sell the remaining amounts of generated electricity either (i) on the liberalised market at freely negotiated prices; or (ii) respectively to NEK or the ES at the price for "surplus" paid on the balancing market.

A guarantee of origin is issued to a producer for each standard amount of energy of 1 MWh, produced by the RES-Electricity plant, with the exception of amounts which the producer: (i) uses for its own needs; (ii) uses for power supply of its own branches and projects; (iii) sells at freely agreed prices and/or on the balancing market.

RES-Electricity is purchased by the public provider and/or the end suppliers respectively, at the preferential fixed price set by EWRC, effective as of the date of commissioning into operation (i.e. the issuance of the use permit) of the RES-Electricity plant, up to the amount of NSGE, determined by EWRC for the respective type of RES-Electricity plants.

The RES-Electricity price is fixed and is not subject to modifications within the term of the PPA, except for projects for generation of electricity from biomass; the prices of which are updated by EWRC on an annual basis, considering the change of the value of the raw material, transport expenses and labour costs.

The PPAs are signed for a term of:

- twenty (20) years – for electricity produced from geothermal, solar/photovoltaic energy and biomass;
- twelve (12) years – for electricity, produced from wind energy; and
- fifteen (15) years – for electricity produced by hydroelectric power plants with installed capacity up to 10 MW[42], as well as for electricity produced from other types of renewable sources.

4.3 Procedure for determining the feed-in tariff ("FiT")

The applicable FiT depends on, *webi*, the type of RES technology, the installed capacity of the RES-Electricity plant and the place and manner of mounting of the facilities.

The FiT, excluding the price of the energy generated by hydro power plants with installed capacity above 10 MW, is set considering also the following price setting elements:

- the investment costs;
- rate of return;
- the structure of the capital and the investment;
- the production availability of the installation considering the type of the technology and the used resources;
- the costs related to the greater degree of the protection of the environment;
- the costs of raw materials for energy production;
- the costs for transportation of fuels;
- the costs for labour and salaries; and
- other operational costs.

For setting the FiT, EWRC uses the values of the elements above based on official sources, international experience and adjustments considering the specifics of the Bulgarian energy market.

42 Hydro power plants with installed capacity exceeding 10 MW are not covered by the promotion scheme.

The applicable FiT is set by EWRC at least once a year. EWRC might set the FiT more than once a year, if, based on analysing the price setting elements, it finds a "significant change" to any such elements of the FiT. A "significant change" of a price setting element would mean any change where a difference larger than ten percent (10%) is found between the value of the pricing element as at the date of the price setting analysis and its value as at the date of the decision setting the applicable FiT. Usually the FiT is determined in June of the respective year and is valid from July until the end of June of the next year.

The table below sets out the current applicable preferential prices for RES-Electricity purchase:

RES SOURCE	PRICE IN BGN PER MWH	PRICE IN EUR PER MWH
I. HYDRO POWER PLANT		
1. For micro Hydro Power Plants with installed capacity of up to 200 KW	n/a	n/a
2. For low pressure free fall HPP, derivation HPP, under dam HPPs and derivation HPPs with an annual levelling reservoir with a net drop up to 30 meters and an installed capacity above 200 KW to 10,000 KW	n/a	n/a
3. For low pressure Run-of-the-river HPP, without derivation channel, with a net drop up to 15 meters and an installed capacity above 200 KW to 10,000 KW	n/a	n/a
4. For middle pressure free fall HPP, derivation HPP, under dam HPPs and derivation HPPs with an annual levelling reservoir with a net drop from 30 to 100 meters and an installed capacity above 200 KW to 10,000 KW	n/a	n/a
5. For high pressure free fall HPP, derivation HPP, under dam HPPs and derivation HPPs with an annual levelling reservoir with a net drop above 100 meters and an installed capacity above 200 KW to 10,000 KW	n/a	n/a
6. For tunnel derivations with annual levelling reservoir and an installed capacity up to 10,000 KW	n/a	n/a
7. For micro Hydro Power Plants with pumps	n/a	n/a
II. FOR WIND POWER PLANTS		
1. with installed capacity up to 30 kW	n/a	n/a
2. with installed capacity up to 200 KW	n/a	n/a
3. with installed capacity up to 1 MW	n/a	n/a
4. with installed capacity above 1 MW	n/a	n/a
5. with rotor technology	n/a	n/a

	RES SOURCE	PRICE IN BGN PER MWH	PRICE IN EUR PER MWH
III.	**FOR PHOTOVOLTAIC POWER PLANTS**[43]		
1.	with modules with installed capacity up to 30 KWp	n/a	n/a
2.	with modules with installed capacity above 30 up to 200 KWp	n/a	n/a
3.	with modules with installed capacity above 200 KWp up to 10,000 KWp	n/a	n/a
4.	with modules with installed capacity above 10 000 KWp	n/a	n/a
5.	roof tops and facade mounting modules with installed capacity up to 5 KWp	228.00	116.57
6.	roof tops and facade mounting modules with installed capacity from 5 KWp to 30 KWp	211.71	108.25
7.	roof tops and facade mounting modules with installed capacity between 30 to 200 KWp	n/a	n/a
8.	roof tops and facade mounting modules with installed capacity from 200 to 1,000 KWp	n/a	n/a
IV.	**FOR GENERATORS WORKING WITH DIRECT BURNING OF BIOMASS, DERIVED FROM WOOD RESIDUES, BIOMASS DERIVED FROM FOREST CLEARING, FOREST TRIMMINGS AND OTHER WOOD WASTE WITH AN INSTALLED CAPACITY OF UP TO 5 MW**[44]	**250.82**	**128.24**
V.	**FOR GENERATORS WORKING WITH DIRECT BURNING OF BIOMASS, DERIVED FROM FOREST CLEARING, FOREST TRIMMINGS AND OTHER WOOD WASTE WITH AN INSTALLED CAPACITY OF UP TO 5 MW WITH COMBINED CYCLE**[45]	**179.54**	**91.79**
VI.	**FOR GENERATORS WORKING WITH DIRECT BURNING OF BIOMASS, DERIVED FROM FOREST CLEARING, FOREST TRIMMINGS AND OTHER WOOD WASTE WITH AN INSTALLED CAPACITY OF ABOVE 5 MW**[46]	**205.25**	**104.94**
VII.	**FOR GENERATORS WORKING WITH DIRECT BURNING OF AGRICULTURAL WASTE MATERIALS WITH INSTALLED CAPACITY UP TO 5 MW**	**n/a**	**n/a**

43 EWRC Decision Ц-24 from 30 June 2015.
44 EWRC Decision Ц-1 from 28 January 2015.
45 EWRC Decision Ц-1 from 28 January 2015.
46 EWRC Decision Ц-1 from 28 January 2015.

VIII.	**FOR GENERATORS WORKING WITH DIRECT BURNING OF ENERGY CULTURES AND INSTALLED CAPACITY UP TO 5 MW**	**n/a**	**n/a**

ADJUSTMENT OF PURCHASE PRICE FOR ENERGY FROM BIOMASS, SET WITH DECISION Ц-18/20.06.2011, LAST ADJUSTED WITH DECISION Ц-13/01.07.2014[47]

IX.	**FOR GENERATORS WORKING WITH BIOMASS, DERIVED FROM WOOD RESIDUES, BIOMASS DERIVED FROM FOREST CLEARING, FOREST TRIMMINGS AND OTHER WOOD WASTE WITH AN INSTALLED CAPACITY OF UP TO 5 MW**	**232.81**	**119.03**
X.	**FOR GENERATORS WORKING WITH BIOMASS, DERIVED FROM WOOD RESIDUES, BIOMASS DERIVED FROM FOREST CLEARING, FOREST TRIMMINGS AND OTHER WOOD WASTE WITH AN INSTALLED CAPACITY OF UP TO 5 MW WITH COMBINED CYCLE**	**257.91**	**131.86**
XI.	**FOR GENERATORS WORKING WITH INDIRECT USE OF BIOMASS FROM ANIMAL OR FLORA SUBSTANCES WITH AN INSTALLED CAPACITY OF ABOVE 150 KW UP TO 1 MW**	**433.02**	**221.40**

ADJUSTMENT OF PURCHASE PRICE FOR ENERGY FROM BIOMASS, SET WITH DECISION NO Ц-19/28.06.2013, LAST ADJUSTED WITH DECISION Ц-13/01.07.2014[48]

XII.	**FOR GENERATORS WORKING WITH BIOMASS, DERIVED FROM WOOD RESIDUES, BIOMASS DERIVED FROM FOREST CLEARING, FOREST TRIMMINGS AND OTHER WOOD WASTE WITH AN INSTALLED CAPACITY OF UP TO 5 MW**	**203.08**	**103.83**
XIII.	**FOR GENERATORS WORKING WITH BIOMASS, DERIVED FROM WOOD RESIDUES, BIOMASS DERIVED FROM FOREST CLEARING, FOREST TRIMMINGS AND OTHER WOOD WASTE WITH AN INSTALLED CAPACITY OF UP TO 5 MW WITH COMBINED CYCLE**	**233.89**	**119.58**
XIV.	**FOR GENERATORS WORKING WITH BIOMASS, DERIVED FROM WOOD RESIDUES, BIOMASS DERIVED FROM FOREST CLEARING, FOREST TRIMMINGS AND OTHER WOOD WASTE WITH AN INSTALLED CAPACITY OF ABOVE 5 MW**	**177.71**	**90.86**

47/48 EWRC Decision Ц-24 from 30 June 2015.

	RES SOURCE	PRICE IN BGN PER MWH	PRICE IN EUR PER MWH
XV.	**FOR GENERATORS WORKING WITH INDIRECT USE OF BIOMASS FROM ANIMAL OR FLORA SUBSTANCES WITH AN INSTALLED CAPACITY OF ABOVE 500 KW UP TO 1.5 MW WITH COMBINED CYCLE**	**454.18**	**232.21**
XVI.	**FOR GENERATORS WORKING WITH INDIRECT USE OF HOUSEHOLD WASTE**		
1.	with installed capacity up to 150 KW	225.27	115.18
2.	with installed capacity above 150 KW up to 500 kW	213.90	109.37
3.	with installed capacity above 500 KW up to 5 MW	206.32	105.49
XVII.	**FOR GENERATORS WORKING WITH INDIRECT USE OF BIOMASS FROM ANIMAL OR FLORA SUBSTANCES**		
1.	with installed capacity up to 500 KW	453.12	231.68
2.	with installed capacity above 500 KW up to 1,5 MW	434.13	221.97
3.	with installed capacity above 1,5 MW up to 5 MW	387.53	198.14
4.	with combined generation of heat and electricity and with installed capacity above 500 KW up to 1,5 MW	447.43	228.77
XVIII.	**FOR GENERATORS WORKING WITH INDIRECT USE OF ENERGY FROM HOUSEHOLD WASTE WATER**		
1.	with installed capacity up to 150 KW	125.94	64.39
2.	with installed capacity above 150 KW up to 1 MW	105.15	53.76
3.	with installed capacity above 1 MW up to 5 MW	89.16	45.59
XIX.	**FOR GENERATORS WORKING WITH THERMAL GASIFICATION OF BIOMASS DERIVED FROM WOOD RESIDUES, BIOMASS DERIVED FROM FOREST CLEARING, FOREST TRIMMINGS AND OTHER WOOD WASTE**		
1.	power plants working with thermal gasification of biomass with an installed capacity of up to 5 MW	350.22	179.06
2.	power plants working with thermal gasification of biomass with an installed capacity of up to 5 MW with combined cycle	387.94	198.35
3.	power plants working with thermal gasification of biomass with an installed capacity of above 5 MW	338.34	172.99
4.	power plants working with thermal gasification of biomass with an installed capacity of above 5 MW with combined cycle	374.66	191.56

XX.	**FOR GENERATORS WORKING WITH THERMAL GASIFICATION OF BIO-MASS FROM AGRICULTURAL WASTE AND WASTE WITH INSTALLED CA-PACITY UP TO 5 MW WITH COMBINED CYCLE**	**389.60**	**199.19**
	ADJUSTMENT OF PURCHASE PRICE FOR ENERGY FROM BIOMASS, SET WITH DECISION NO Ц-18/28.06.2012		
XXI.	**FOR GENERATORS WORKING WITH THERMAL GASIFICATION OF BIO-MASS OR BIO-DECOMPOSING FRAC-TIONS OF INDUSTRIAL AND HOUSE-HOLD WASTE WITH INSTALLED CAPACITY UP TO 5 MW COMBINED CYCLE**	**406.05**	**207.61**
	ADJUSTMENT OF PURCHASE PRICE FOR ENERGY FROM BIOMASS, SET WITH DECISION NO Ц-35/27.10.2011		
XXII.	**FOR GENERATORS WORKING WITH THERMAL GASIFICATION OF BIO-MASS OR BIO-DECOMPOSING FRAC-TIONS OF INDUSTRIAL AND HOUSE-HOLD WASTE WITH INSTALLED CAPACITY UP TO 5 MW COMBINED CYCLE**	**438.76**	**224.33**

RES-Electricity plants supported with funds from a national or European support scheme ("**Supported Projects**") are subject to a FiT determined by EWRC considering the amount and the term of financing.

EWRC assumes a FiT applicable to Supported Projects which should not distort the equal treatment between the non-supported RES-Electricity producers and avoid over-compensation for such Supported Projects. Further, EWRC takes into consideration the average rate of return of non-supported RES-Electricity Projects and adjust the rate of return and the FiT for the Supported Projects in order to achieve a comparable average rate of return between Supported Projects and non-supported projects.

4.4 Revision and/or indexation of the FiT

Once set, the FiT for the majority of the renewable technologies is not subject to any adjustment during the period of the PPA.

For electricity produced from biomass the FiT is subject to annual adjustments, taking into consideration the change of the value of the following price setting elements parameters:

- changes in the costs of raw materials used for electricity generation;
- changes in the costs for fuels for transportation; and
- changes in the labour and salary costs.

The adjustment of the FiT is to be determined by EWRC in its annual FiT decisions.

4.5 Support scheme for cogeneration

A feed-in tariff (preferential prices) and a purchase obligation applies for electricity generated from conventional sources in cogeneration systems (combined heat and power) using both conventional and RES-energy sources, provided that at least five percent (5%) (for already existing power plants) and ten percent (10%) (for newly built power plants) of the primary energy input is saved through the cogeneration.

The preferential prices for electricity generated in highly efficient cogeneration systems, by using conventional energy sources, are determined separately by EWRC and are applied alternatively to the preferential prices for RES-Electricity generated from installations using combined RES and conventional sources.

4.6 Guarantees of origin for RES-Electricity

The AERS provides for a new procedure for issuance of guarantees of origin for energy generated from renewable sources.

Guarantees of origin for electricity are issued by the Agency for Sustainable Energy Development ("**ASED**").

Guarantees of origin are issued for each 1 MWh produced on a monthly basis. If the production has not reached 1 MWh, a guarantee may be issued for a longer period.

For the issuance of a guarantee of origin for RES-Electricity (including RES-Electricity generated from installations using RES and conventional sources), an application must be submitted to the ASED supported by appropriate information/documents, including, *inter alia*,: (i) a description of the installation, the technology used and the production process; (ii) location of the measurement devices; (iii) energy sources used; (iv) quantity for which the guarantee of origin is requested; (v) quantity produced by each unit and total quantity produced by the power plant; (vi) measurement data used for the calculation of the quantity; (vii) invoices for the electricity sold in the applicable period; and (viii) receipt for payment of the administrative fee for issuance of the guarantee of origin.

The application should be submitted with ASED no later than ten (10) months after the expiry of the period for which the guarantee of origin is requested for RES-Electricity producers: (i) with total installed capacity up to 30 KW inclusive, which are envisaged to be mounted on roof tops and facades of buildings connected to the electricity distribution grids and on real property in urban areas; (ii) with total installed capacity up to 200 KW inclusive, which are envisaged to be mounted on roof tops and facades of buildings used for production and storage purposes, connected to the electricity transmission grid or the electricity distribution grids in urban areas; (iii) with installed capacity up to 1.5 MW inclusive for production from biomass, which are to be built in urban areas, on agricultural sites, or industrial areas; and (iv) with installed electric capacity up to 1.5 MW inclusive, for production of energy by hydropower plants and not later than one (1) month for all other RES-Electricity producers.

The time limit for issuance of the guarantee of origin is thirty (30) days upon submission of application.

The guarantees of origin are valid for a twelve (12) month period from the production of the respective unit of energy. The ASED recognises the guarantees of origin issued by competent authorities in other EU Member States, unless the respective guarantee of origin is not compliant with the requirements for issuance of a guarantee of origin, stipulated in the AERS.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

According to the Energy Act, the transmission network operator "Electricity System Operator" EAD ("**ESO**") is obliged to develop, consult with all parties concerned and provide on an annual basis to EWRC (by 30 April) a ten (10) year network development plan, which: (i) provides to market participants a list of the main transmission infrastructure which is scheduled for construction, extension, and modernization in the following ten (10) years; (ii) includes all investments, for which a decision has already been made and determines the new investments, which should be made in the following three (3) years; and (iii) sets a schedule for all investment projects.

The licensed operators of the electricity transmission grid and distribution grids are obliged to connect the RES-Electricity power plants in line with the ten (10) year grid development plan.

The AERS requires that each year, prior to 28 February, all distribution companies provide NEK and ESO with a forecast of the electricity power capacities which can be provided for connection to the distribution grid to RES-Electricity generation projects for the following year by region of connection, voltage levels and types of RES.

Based on the distribution companies' forecasts and considering the works envisaged in the ten (10) year grid development plan, prior to 30 April every year, ESO provides EWRC and the Ministry of Energy ("**ME**") with the overall forecast of the electricity power capacities which can be connected for the following year by region and voltage levels of RES-Electricity.

The distribution grid operators' forecast also takes into consideration the aims set forth in the National Renewable Energy Action Plan ("**NREAP**") and data regarding the preliminary connection contracts, forecast and reported consumption, grid transmission/distribution capacities and possibilities for balancing the power in the electricity system.

Within one (1) month of receipt of the forecasts by the distribution grid operators, the Minister of Energy sends to EWRC its opinion on the conformity of the proposals with the NREAP.

Based on the provided forecast, EWRC annually approves (by 30 June of each year) the estimated RES power capacities that can be connected to the transmission and distribution grid by region and voltage levels for the following twelve (12) month period, effective as from 1 July. The approval decision is published on the EWRC Web site.

Considering the published capacities after 1 July of the respective year, the Investors may apply to the respective network operator for connection of the RES-Electricity plant.

The procedure for connection of a renewable energy power plant to the electricity system ("**Connection Procedure**") is set out in the AERS and the related secondary legislation. Chronologically, the Connection Procedure is linked to the procedure for obtaining a construction permit and an operating permit for the RES-Electricity plant.

The Connection Procedure is initiated by the Investor through a written application, submitted to the respective grid operator, i.e.:

- ESO, if the total installed capacity is above 5 MW; or
- The respective electricity distribution companies operating in the region where the RES-Electricity power plant is built, if the total installed capacity of the plant is 5 MW or lower.

5.2 Liability and responsibility for connection and/or capacity upgrades, improvements or expansion of the grid

The Connection Procedure has four main steps:

5.2.1 REQUEST FOR AN OFFICIAL TECHNICAL STATEMENT OF OPINION ON THE TERMS AND CONDITIONS FOR CONNECTION

Investors intending to build new RES-Electricity plants or to extend existing plants must apply for connection to the grid operator in the respective region, considering the total installed capacity of the RES-Electricity plant. A participation guarantee must be provided along with the application in the amount of 5,000 BGN/MW (approximately 2,556 EUR/MW).

The application for connection to the grid can be filed by the Investor with the respective grid operator after the approval and entry into force of the detailed development plan related to the RES-Electricity plant and after approval of EWRC of the electricity capacities that may be available for connection, within a one (1) year period.

The grid operator should review the application and issue its reasoned statement of opinion on the acceptability of the application within fourteen (14) days of the application receipt. An application will be deemed unacceptable if not all relevant data has been provided by the applicant or if the land plot, where the RES-Electricity plant to be constructed is in region where all approved electricity capacities for the respective region have been already allocated.

If the application is considered acceptable in the statement of opinion, the operator of the respective electricity grid conducts a survey and issues a statement of opinion on the conditions and manner of connection within thirty (30) days (for the distribution grid operators) or sixty (60) days (for transmission grid operator) from the date of the issuance of the statement of opinion on application accessibility.

The operators of the transmission and distribution grids send to EWRC and publish on their Web sites all statements of opinion given to the RES-Electricity plant investors.

If the application is unacceptable, the grid operator returns the application submitted by the investor, which would be considered as a reasoned refusal for connection. For all refusals for connection, the respective operator notifies EWRC.

The grid operator releases the participation guarantee if an application has been refused within seven (7) days from the issuance of the statement of opinion and it is returned to the investor whose application has been declared as unacceptable. If the application has been considered acceptable, the guarantee for participation shall remain in favour of the operator of the respective grid as part of the advance payment due by the investor at the time of conclusion of a preliminary grid connection contract with the respective grid operator.

5.2.2 PRELIMINARY CONNECTION CONTRACT

For concluding of a preliminary grid connection contract with the grid operator, investors are required to make an advance payment amounting to:

- 50,000 BGN/MW (approximately 25,565 EUR/MW) of planned installed capacity, when the planned capacity exceeds 5 MW; and
- 25,000 BGN/MW (approximately 12,565 EUR/MW) of planned installed capacity, when the planned capacity is up to 5 MW.

The advance payment is part of the price for connection. The connection price should cover the operators' costs for connection facilities including the grid reconstruction/modernization and managements. If the investor fails to

construct the RES-Electricity plant within the term agreed in the connection contract due to the Producer's fault, the network operator may retain the advance payment. The advance payment is deposited into the account of the owner of the transmission or the distribution electricity grid.

The preliminary grid connection agreement should be for a term not longer than one (1) year, and before the expiry of this term the producer should file an application in writing for conclusion of a grid connection agreement.

5.2.3 CONNECTION CONTRACT

Upon issuance of a construction permit of the RES-Electricity plant, a Connection Contract should be concluded between the respective grid operator and the producer. The Connection Contract defines the conditions under which the RES-Electricity plant will be connected to the electricity grid.

The term of the Connection Contract is limited to three (3) years. The Connection Contract is terminated if the RES-Electricity plant is not put into operation within three (3) years of its signing.

The expenses for the connection from the ownership boundary of the RES-Electricity facilities to the point of connection are borne by the transmission company or the respective distribution company.

The connection fee payable by the RES-Electricity producer to the transmission/distribution operator covers only those direct expenses incurred by the transmission/distribution company in the connection. The expenses are thus set-off against the connection fees. The prices and fees are subject to the Connection Contract. Ordinance No. 6 allows the RES producer to construct connection facilities beyond the border of ownership, whereas the related costs are set off against the connection fee.

AERS provides for particular beneficial treatment for small RES-Electricity plants to be mounted on roof tops and facades of buildings.

For RES-Electricity plants with total installed capacity up to 30 KW inclusive, envisaged to be mounted on roof tops and facades of buildings connected to the distribution grid located within urban areas, the following preferential conditions apply:

- no requirement to obtain an assessment of availability and estimated resource potential of the renewable energy source;
- no need to conclude a preliminary connection contact and the connection contract is concluded once the use permit is acquired; and
- no requirement to pay the advance payment for the connection price amounting to 25,000 BGN/MW.

For RES-Electricity plants with total installed capacity up to 200 KW inclusive, which are envisaged to be mounted on roof tops and facades of buildings used for production and storage purposes connected to the distribution grid and located in industrial areas, the following preferential conditions apply:

- no requirement to obtain an assessment of availability and estimated resource potential of the renewable energy source; and
- no requirement to pay the advance payment for the connection price amounting to 25,000 BGN/MW.

For RES-Electricity plants with total installed capacity up to 1.5 MW inclusive, for production of biomass which are envisaged to be constructed in urbanised areas, agricultural objects or production zones, the following preferential conditions apply:

- no requirement to obtain an assessment of availability and estimated resource potential of the renewable energy source; and
- no requirement to pay the advance payment for the connection price amounting to 25,000 BGN/MW.

5.2.4 ACCESS TO THE GRID CONTRACT

Pursuant to AERS, the Access to the Grid Contract concluded with the respective grid operator upon acquiring a RES-Electricity plant use permit is a pre-condition for the conclusion of a PPA. The conclusion of such contract is also a condition for the execution of the PPA.

For installations not exceeding 30 KW, the access to the grid terms and conditions are regulated by the General Terms and Conditions of the respective grid operator, approved by EWRC and available on the Web site of the operator.

The RES-Electricity producers with installations, exceeding 30 KW have to sign an Access to the Grid contract with ESO or the respective electricity distribution operator in compliance with the General Terms and Conditions approved by EWRC and available on the Web site of ESO or the respective electricity distribution company.

In May 2013, EWRC approved the GTCs of ESO and the electricity distribution companies by its decisions[43]. These decisions have been appealed by some of the RES-Electricity producers on the grounds that they are incompatible with superior legal provisions. These cases are still pending in court, but at first instance, the administrative courts have annulled the decisions for the GTCs of ESO (Decisions OU-1/ 19.04.2013) and Energo-Pro Grid AD (Decision OU-9/20.05.2013).

The prices for Access to the Grid are set by EWRC.

In 2012, EWRC set temporary access to the grid prices[44], applicable to those RES-Electricity producers, which had not concluded Access to the Grid Contracts with the respective grid operator until 17 July 2012. Those prices were supposed to be paid by the RES-Electricity producers. The EWRC Decision on the temporary access to the grid prices has been challenged as illegal by many RES-Electricity producers and in the second half of 2013 it was annulled by the Supreme Administrative Court. Hence, the EWRC Decision is no longer in effect.

Following the annulment of Decision No Ц-33/14.09.2012 by the court, in March 2014, EWRC set final access to the grid prices with Decision Ц-6/13.03.2014. Several RES-Electricity producers as well as ESs (CEZ Elektrorazpredelenie EAD and Energo-Pro Grid AD) have filed appeals against this decision and it has been annulled at first instance by administrative courts. The first instance decisions have not entered into force, since they have also been appealed by EWRC.

In the meantime, EWRC has adopted Decision No. Ц-27/31.07.2015, which sets the access to the grid prices for wind and PV producers, and which is currently applicable, at 7.14 BGN/MWh (approximately 3.65 EUR/MWh).

EWRC Decision No Ц-27/31.07.2015 has been appealed by some RES-Electricity producers on the grounds of its incompatibility with superior legal provisions. These cases are also still pending in court.

5.3 Special allowance/tolerance for intermittent generation when determining balancing charges in case of unscheduled deviations

There are no explicit allowances for unscheduled deviations. The quality of electricity supplied, the security, effectiveness and continuity of supply are part of the obligations imposed on licence holders. The RES-Electricity producers are also bound by a programme regulating the supply parameters approved by EWRC.

49 Decision ОУ-6/19.04.2013 of SEWRC, approving the GTCs of ESO, and Decision ОУ-7/20.05.2013, Decision ОУ-8/20.05.2013, Decision ОУ-9/20.05.2013 and Decision ОУ-10/20.05.2013 of SEWRC approving the GTCs of the EDPs.

50 Decision No Ц-33/14.09.2012 of SEWRC.

5.4 New balancing procedure

Explicit regulations on the balancing obligation applicable to RES-Electricity producers were adopted with the Electricity Trading Rules[45]. The RES-Electricity producers are to be balanced as part of a balancing group.

When a RES-Electricity producer has not reached the NSGE, and thus the generated electricity is off-taken under the respective FiT, it may be a member of either:

- a combined balancing group between RES-Electricity producers, selected by the RES-Electricity producer; or
- a special balancing group coordinated by the public provider (NEK) if the RES-Electricity producer has concluded a PPA with NEK, or by the ES licensed for the specific areas, if the RES-Electricity producer has concluded a PPA with the respective end supplier.

Once the NSGE is reached, and thus the RES-Electricity producer wishes to sell the generated electricity on the liberalised market, it may be a member of either:

- a combined balancing group between the RES-Electricity producers, selected by the RES-Electricity producer or a standard balancing group; or
- if they are direct members (i.e. they are providing their own schedules and forecast), they may remain in a special balancing group coordinated by the public provider (NEK) if the RES-Electricity producer has concluded a PPA with NEK, or by the end supplier licensed for the specific areas, if the RES-Electricity producer has concluded a PPA with the respective end supplier.

The RES-Electricity producer should conclude a balancing contract with the balancing group coordinators, which define the respective responsibilities and obligations between the parties.

The members of the balancing group provide the coordinator with data about their production forecast annually, monthly, weekly and daily. The coordinator provides it to the ESO, which is the balancing market administrator. Membership in the RES balancing group is directly related to the FiT application to the off-take of energy.

Due to the absence of competition among the participants on the balancing market which offer balancing energy, speculative tendencies were observed on the market, namely: negative prices for surplus power and unrealistically high prices for power shortages. In order that these tendencies do not lead to market deviations and unrealistic high costs for the balancing energy producers, EWRC is in the process of setting capped prices for the balancing energy market for the regulation of “upward” (shortage price), which will be BGN 202 (EUR 103.28) per MWh and for “downward” (surplus price), which will be BGN 30 (EUR 15.33) per MWh[46].

6. Constraints to PPAs and Support to RES-Electricity

Support for the production of RES-Electricity subject to satisfying the applicable conditions set out in the Commission’s new Guidelines on State Aid for Environmental Protection and Energy, adopted on 9 April 2014, is in principle considered as compatible with the EU common market rules.

In Bulgaria there are no standard PPA constraints applicable to RES-Electricity. However, the statutory provisions contained in the AERS and some decisions of EWRC, which were taken in mid-2014 could, to a certain extent, be perceived as limitations.

51 Promulgated in State Gazette issue No. 66/26.07.2013, amended in State Gazette No 39/09.05.2014.

52 SEWRC Decision No Ц-26/19.12.2014.

Entering into PPAs with NEK or the end suppliers is not compulsory. Provided they possess guarantees of origin, all quantities of energy generated by RES-Electricity plants up to the amount of the NGSE, have to be bought by NEK or the respective end supplier for a specified region at preferential prices defined by EWRC. However, the quantities of energy traded under freely-negotiated prices, or which are used by the RES-Electricity producer in the balancing market, and the quantities which the RES-Electricity producer produces for its own use, are not included among those quantities bought by the public provider and/ or the end supplier at preferential prices.

There is no statutory deadline by which the RES-Electricity producer is obliged to enter into a PPA with the public provider and/ or the respective end supplier.

For all RES-Electricity producers (except for hydro power stations with capacity below 10 MW), this term commences from the date the RES-Electricity plant has been put into operation.

Hydro power plants with a capacity above the 10 MW threshold are treated as conventional energy producers thus no preferential pricing methods are applied to the electricity generated from such sources.

In March 2015, a new mandatory contribution to a public fund was introduced for all electricity producers, including RES-Electricity producers, amounting to five percent (5%) of their income from electricity generation. This measure means in practice a reduction by five percent (5%) of the revenues of RES-Electricity producers. It has been argued that this measure constitutes prohibited state aid.

The collected amounts will be held in a special fund, and they should be transferred to NEK in order to compensate its burden of mandatory purchase of electricity under long-terms PPAs. For the purposes of the collection of these amounts, electricity GenCos and traders are obliged to provide a monthly report of their monthly revenues online. The fund may require additional documentation for the purposes of estimating the size of the contribution from operators, electricity traders and producers, including invoices, payment orders, etc. as well as additional information from other administrative authorities. Thus, this measure has another impact, different from the financial impact – i.e. the RES-Electricity producers are now obliged to share potentially sensitive commercial information, the protection of which is not yet guaranteed.

7. Carbon Credits

Bulgaria has ratified the Kyoto Protocol, by adopting a Ratification Act for the Kyoto Protocol promulgated in the State Gazette on 25 July 2002. Bulgaria is an Annex I Party to the UNFCCC Country as an Economy in Transition.

The Republic of Bulgaria has signed Memorandums of Understanding ("**MoUs**") and bilateral agreements in the field of Joint Implementation with the governments of Austria, the Netherlands, Denmark, France, Switzerland, Sweden, Japan and the EBRD. However, as at the time of the drafting of this guide, the competent authorities were not approving new projects under the Joint Implementation Programme.

WOLF THEISS

CROATIA

CROATIA

Main permits required for RES-Electricity generating facilities

Environmental permit	An Environmental Impact Assessment ("**EIA**") is mandatory for facilities capable of generating more than 100 MW of electricity (in the case of wind power plants for facilities capable of generating more than 20 MW). For facilities generating between 10 MW and 100 MW (in the case of hydro power plants between 5 MW and 100 MW and wind power plants between 10 MW and 20 MW) a full assessment is performed only if the Ministry of Environmental Protection, Physical Planning and Construction decides that it is necessary. The developer must apply for a location permit within two (2) years from the decision on the environmental acceptability of the project and the decision on integrated environmental protection requirements. In order to construct a hydro power plant on a public waterway, the developer must obtain additional permits and concessions.
Building permit	For facilities generating 20 MW and more, the developer must obtain a location permit (for which a concept project must be provided), and then apply for the building permit (for which the main project must be submitted). Additional procedures may be applicable depending on the total area of the project to be constructed. For facilities generating less than 20 MW, the developer must obtain a single decision allowing the construction of a facility.
Authorisations under Energy law/right (concession) to exploit natural resources	An energy permit (*energetsko odobrenje*) is required for the construction of all facilities, except for solar power plants integrated into rooftops and the walls of buildings.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	Any prospective RES-Electricity producer must obtain a corresponding licence from the national energy regulator.
PROMOTION SCHEME	
Outline	A system based on a mix of the market premium model and incentives based on guaranteed off-take prices. The market premium paid to the producer is determined depending on the difference between market prices of electricity and the determined price of electricity for a particular type of production facility.

Other financial incentives	No particular financial incentives.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	No
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The generator bears the costs of grid connection and/or capacity upgrades, improvements or expansion of the grid.
Special allowance/tolerance for intermittent generation in relation to balancing charges	Electricity generators are liable for the payment of balancing charges to the Transmission System Operator, which is responsible for balancing the electricity system.
CARBON CREDITS	
Status	Croatia ratified the Kyoto Protocol, as an Annex 1 Party to the UNFCCC. The necessary legal framework has already been adopted into national law.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

- The Energy Act (Official Gazette of Croatia Nos. 68/01, 177/04, 76/07, 152/08 127/10, 125/11,120/12, 14/14, 95/15 and 102/15) regulates licensing and general regulatory issues relating to the energy sector.
- The Ministerial Ordinance on Licences for Performing Energy-Related Activities (Official Gazette of Croatia Nos. 88/15 and 114/15) sets out requirements for obtaining licences for the performance of activities on the energy market in Croatia.
- The Electricity Market Act (Official Gazette of Croatia Nos. 22/2013, 95/15 and 102/15) sets general rules governing electricity market activities, such as the generation, transmission, distribution and supply of electricity, and organisation of the electricity market.
- The Renewable Energy Sources and Highly Efficient Cogeneration Act (Official Gazette of Croatia No. 100/15) regulates projects involving the construction of renewable energy sources and cogeneration facilities.
- The Governmental Regulation on Fees for the Promotion of Production of Electricity from Renewable Energy Sources and Cogeneration (Official Gazette of Croatia Nos. 128/13 and 100/15) sets incentive fees from 2014.
- The Ministerial Ordinance on Granting the Status of an Eligible Electricity Producer (Official Gazette of Croatia Nos. 132/13, 81/14, 93/14, 24/15, 99/15 and 110/15) regulates the requirements for qualifying as an eligible electricity producer generating both heat and power and using waste or renewable energy sources to generate electricity in a profitable and environmentally friendly way.
- The Governmental Tariff System for Electricity Generation from Renewable Energy Sources and Cogeneration (Official Gazette of Croatia Nos. 133/2013, 151/2013, 20/14, 107/14 and 100/15) regulates the right of eligible producers to an incentivised electricity price paid by the Croatian market operator.
- The Energy Community Treaty, to which Croatia is a Contracting Party.

In 2001, Croatia adopted a set of new energy-related laws and regulations, harmonising its energy legislation with EU law. Under this legislation, all energy market entities were entitled to perform the activities of generation, trans-

mission, distribution and supply of electricity, as well as administering the electric power system or organising the electricity market, provided they obtained a licence from the energy regulatory council. Nonetheless, only the generation and supply of electricity for eligible customers was fully liberalised (i.e. the quantities and price could be set by the market), while the generation and supply of electricity to tariff customers and other energy-related activities continued to be performed as a public service (eligibility was reserved for customers with an annual consumption higher than 40 GWh).

In 2004, the Croatian Parliament passed a new set of energy-related laws in order to implement the provisions of the new Directive 2003/54/EC adopted on 26 June 2003 concerning the common rules for the internal market in electricity. The older legislation of 2001 incorporated provisions of the repealed Directive 96/92/EC and therefore needed to be replaced. The criterion of eligibility was extended to customers with an annual consumption higher than 20 GWh and to all customers directly connected to the transmission network.

The years 2007 and 2008 also saw legislative amendments to energy-related legislation, but these were not as important as the laws introduced in 2001 and 2004. The criterion of eligibility was extended, from 1 July 2006, to customers with an annual consumption exceeding 9 GWh. Since 1 July 2007, all entities buying electricity for the production of goods or the provision of services (i.e. all non-household customers) have been free to choose their supplier. This eligibility was extended to all customers, including household customers, on 1 July 2008.

During 2012, the Croatian Parliament enacted further amendments to legislation with the intention of simplifying the permitting process and making RES projects more attractive to investors. The two most important changes were that the preliminary energy permit was dropped from the list of required permits and that HEP-DSO, the distribution system operator, became a “one stop shop” for the developers of integrated solar power plants.

On 1 July 2013 Croatia joined the EU as its 28th member state. Although the Croatian legal system had already been harmonised with EU laws prior to accession, following Croatia’s accession investors in Croatia seem more confident that their investments will be treated in a fair, transparent and equitable manner.

During the last quarter of 2013, the Croatian Government decided to decrease the level of support for solar and wind power projects, while the incentives for the production of electricity from biogas, biomass and small hydro power plants remained more or less intact. As a consequence, new plants that would enter into off-take agreements starting from 2014 would receive incentives under a new tariff described in more detail in Section 4.3.2 below.

Starting from 1 January 2016, the Croatian Government introduced a new promotion scheme for RES-Electricity producers based on the market premium model, under which changes to the current market energy prices should have more influence on the incentivised prices paid to RES-Electricity producers. In addition, there are also guaranteed off-take prices available to RES-Electricity producers, but only for those projects with a capacity of up to 30 KW. Existing plants will, however, continue to receive incentives based upon the tariff that was in place when such plants executed off–take agreements.

1.2 Expected changes

Although the new promotion scheme was put into place starting from 1 January 2016, many ancillary regulations that should provide for the actual implementation of the system are still missing due to the ongoing reorganisation of the state administration following recent Croatian parliamentary elections in December 2015. These regulations are expected to be enacted during the first half of 2016.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

Any renewable energy project must undergo several administrative stages involving the following legal steps (taking place in chronological order) under the energy law, the building law and the environmental law:

- environmental impact assessment performed by the Ministry of Environmental Protection, Physical Planning and Construction ("**MEPPPC**");
- location permit issued by the local authorities;
- energy permit issued by the Ministry of Economy, Labour and Entrepreneurship ("**MELE**");
- building permit issued by MEPPPC;
- preliminary decision on eligible producer status issued by the Croatian Energy Regulatory Authority ("**HERA**");
- market premium agreement or guaranteed price off-take agreement with the Croatian Energy Market Operator ("**HROTE**");
- network use contract with the transmission system operator ("**HEP-TSO**") or the relevant distribution system operator ("**HEP-DSO**");
- use permit issued by the MEPPPC or authorised authority;
- energy licence for the generation of electricity issued by HERA; and
- decision on eligible producer status issued by HERA.

The permitting of the construction of facilities generating less than 20 MW of electricity has been simplified and, as a consequence, only one decision allowing the construction of the facility must be obtained, rather than a location and a building permit.

Legislative changes introduced in 2012 have created a new, more simplified permitting procedure for solar power plants integrated into rooftops and the walls of buildings. HEP-DSO, the distribution system operator, has now become the "one stop shop" for the developers of such systems. The developers are only required to apply for the grid connection with HEP-ODS and all other relevant permits and agreements are issued and signed as a part of this set of proceedings.

In the case of hydro power plants, there are additional permits to be obtained, as discussed at the end of this section.

2.1.1 Energy Law

MELE grants an energy permit (*energetsko odobrenje*), which represents an authorisation to build and run facilities that will use renewable energy sources or run in a cogeneration mode.

An energy permit is issued after an environmental impact assessment has been carried out and a location permit, if required, has been obtained. In any event, a developer must hold a final and binding energy permit before the construction permit stage.

2.1.2 Environmental Law

Prior to the issues of a location permit, an Environmental Impact Assessment ("**EIA**") must be carried out as part of the preparation of the intended project.

The EIA evaluates the impact of a project on the environment by establishing possible direct and indirect effects of the project on soil, water, sea, air, forest, climate, human beings, flora and fauna, landscape, material assets and cultural heritage, taking into account their mutual interrelations.

The EIA is mandatory for facilities capable of generating more than 100 MW (in the case of wind power plants for facilities capable of generating more than 20 MW). The EIA, made by the MEPPPC, seeks to ensure, from the earliest phases of project planning, that the negative effects of the project are reduced as much as possible in order to ensure the greatest possible preservation of environmental quality. In the case of facilities generating between 10 MW and 100 MW (in the case of hydro power plants between 5 MW and 100 MW and wind power plants between 10 MW and 20 MW) a full EIA is performed only if MEPPPC decides that it is necessary[1].

The procedure for carrying out an evaluation of the need for an EIA, as well as the procedure for carrying out such an EIA, is initiated by written request/demand from the developer and the decision is made by the MEPPPC or another competent administrative body.

The EIA is carried out on the basis of a professionally prepared environmental impact study, which includes all necessary information, documentation, explanations and descriptions in written and graphic form, a proposal for evaluating the acceptability of the project and environmental protection measures proposed in relation to the project and, where appropriate, an environmental status monitoring programme.

The developer has a duty to ensure the preparation of the environmental impact study and must bear all costs in the EIA procedure.

Prior to the preparation of the environmental impact study, the developer may submit a written request to MEPPPC or the competent administrative body for instructions on the content of the study in relation to the intended project.

The EIA procedure must be carried out within four (4) months from the date of receiving a proper request. This deadline may be extended for a maximum of two (2) months. The procedure for the evaluation of the need for such an EIA must be carried out within three (3) months from the receipt of a proper request. Instructions on the content of the environmental impact study must be issued within three (3) months from the receipt of a request for their issuance.

When the EIA procedure is carried out as a single procedure with the process for granting the decision on integrated environmental protection requirements, this procedure must be carried out within six (6) months from the receipt of the request.

The decision on the environmental acceptability of the project and the decision on integrated environmental protection requirements cease to be valid if the party does not submit an application for issuing a location permit or another official act in accordance with a special regulation within two (2) years from the date the decision became final.

The validity of this decision may be renewed once for two (2) additional years, provided that the requirements according to which the decision was issued have not changed.

For each change to the intended project required by the decision on environmental acceptability or by the related technical and technological conceptual design, the developer must, prior to submitting the application for obtaining the location permit or another official act, obtain a special decision evaluating the need for an EIA due to the changes which have occurred.

1 Another standard for environmental protection, applicable to electricity market participants using generation facilities that may emit pollutants into the soil, air, water or sea, is the obligation of the company to obtain integrated environmental protection requirements prior to starting construction and operation, as well as prior to a significant change in operation or reconstruction of the facility, Articles 82 and 84 of the Environmental Protection Act.

Special case: hydro power plants

In order to construct a hydro power plant on a public waterway, the investor must obtain additional permits and concessions. The procedure for obtaining water permits and concessions is regulated by the Water Act and the authorities in charge are: (i) Croatian Waters (*Hrvatske vode*.) – a public institution for water management; (ii) the Ministry of Regional Development, Forestry and Water Management (in the case of hydro power plants of less than 5 MW installed capacity); (iii) the Government (in the case of hydro power plants with an installed capacity of 5-20 MW power); or (iv) the Croatian Parliament (in the case of hydro power plants with an installed capacity of 20 MW power and above).

At the stage of obtaining a location permit for the project, the investor must obtain from Croatian Waters the so-called "water conditions" (*vodopravni uvjeti*), confirming that the intended project that could influence the water regime is in accordance with the requirements of the Water Act.

Only after obtaining water conditions can the investor submit an application for a water concession. The technical work with respect to processing the individual requests is done by an expert commission in accordance with the Concession Act.

2.1.3 Building Law

2.1.3.1 LOCATION PERMIT

To obtain a location permit (*lokacijska dozvola*), the applicant must provide to the competent authority[2] a conception project (*idejni projekt*), which must be in conformity with all special requirements prescribed by various technical and safety laws[3], and all related regulations and ordinances.

2.1.3.2 BUILDING PERMIT

After the location permit has been obtained, the investor must produce the main project plan (*glavni projekt*), which must conform with the issued location permit. Once the main project has been approved, there are three (3) different possibilities as to when the construction of a particular project may begin, depending on the total area of the project to be constructed:

- for projects no larger than 400 m², construction may begin only after receipt of the final decision on the construction conditions (*rješenje o uvjetima građenja*) from the competent county or borough authority;
- if the location permit is issued by MEPPPC[4], construction may begin only after the construction permit (*građevinska dozvola*) becomes final; and
- for all other constructions, construction may begin only after obtaining confirmation of the main project plan (*potvrda glavnog projekta*), which is granted by the competent county or borough authority[5].

A ministerial location and construction permit is required, *inter alia*, for (i) construction covering the territory between two (2) or more counties; (ii) all power plants of 20 MW of installed power or higher, together with accompanying buildings; as well as for (iii) transmission lines of 220 KV or higher, together with the transformation units and switching facility[6].

2 County or borough (i.e. capital of a county or a city with a population over 35,000) authority or competent Ministry of Environmental Protection, Physical Planning and Construction.

3 Inflammable Liquids and Gases Act, Fire Protection Act and Environment Protection Act in particular.

4 Governmental Regulation on Interventions in Space and Buildings which Require a Ministerial Construction Permit.

5 Article 209 of the Land Zoning and Construction Act.

6 Article 2(2) of the Governmental Regulation on Interventions in Space and Buildings which Require a Ministerial Construction Permit.

For the construction of facilities generating less than 20 MW of electricity, only one decision allowing the construction of the facility must be obtained, rather than a location and a building permit. In order to obtain such a permit, the investor must produce the main project plan, a written report about the control of the main project plan, ancillary geo-technical investigation reports and other technical studies accompanying the main project plan. Furthermore, the investor must provide evidence of its title to construct a facility over a particular plot of land, e.g. a lease or an easement agreement, if the investor does not own the land. Such a permit expires if the investor fails to start with the construction of a facility within two (2) years from the date when the permit became final and binding.

2.1.4 Use permit

After the completion of construction, the applicant must obtain a use permit from the authority that issued the relevant building permit. In principle, only after a use permit is issued can the installation legally start operating and/or be used.

2.2 Process for obtaining the right (concession) to exploit natural resources

Croatian legislation foresees a tender procedure in order to grant the right to exploit natural resources only as an exception. In this respect, the public tender can also be triggered by way of an unsolicited proposal from an interested private entity.

With regard to the granting of the right to construct facilities for generating power, the Electricity Market Act generally prescribes an approval procedure triggered by an individual application from a private entity. In this regard, the energy approval is granted by the Ministry of Economy, Labour and Entrepreneurship to the individual applicant. Therefore, the regular approval procedure does not involve a public tender.

As an exception, the Electricity Market Act foresees a mandatory tender procedure when the existing facilities for generating power (constructed in accordance with the regular approval procedure) are insufficient to ensure the security of energy supply. This tender procedure is conducted by HERA (with regard to facilities for generating power with a capacity of maximum 50 MW) or by the Government following the proposal of HERA (with regard to facilities for generating power with a capacity of more than 50 MW).

The tender procedure must include the following information:

- the location where the plant is to be constructed;
- the type of primary energy;
- the manner and conditions of generating and taking over the electricity;
- conditions to be met after cessation of a plant's operation;
- conditions related to environmental protection, health and safety of citizens;
- the required level of energy efficiency;
- incentive measures or subsidies for certain generation facilities, though the incentives and subsidies will not apply to hydro power stations with a capacity exceeding 10 MW;
- existence of a licence for the performance of electricity generation facilities and compliance with the criteria defined in the approval procedure for the construction of generation facilities; and
- conditions for the use of common and public goods.

The tender procedure, conditions for bidding and criteria for choosing the best bidder must be transparent and non-discriminatory. The public tender procedure must be published in the Official Gazette of the Republic of Croatia with minimum and maximum time limits for submitting bids of six (6) and twelve (12) months respectively. The organisation, monitoring, and control of the tender procedure are conducted by HERA.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

Before starting their business activities after setting up a company in Croatia, any prospective RES-Electricity producer must obtain a corresponding licence from HERA. HERA has the power to issue a licence for the performance of activities on the energy market in Croatia, including electricity-related activities, natural gas-related activities, heat energy-related activities, bio-fuel, petroleum and petroleum refined product-related activities, trade agency and representation on the energy market.

Applicants for a licence from HERA must satisfy certain criteria, including the following:

- the applicant must be registered for the performance of energy related activities in Croatia[7];
- the applicant must possess the necessary technical qualifications, i.e. must show that: (i) it possesses buildings, facilities, machines and equipment required for the performance of the energy activities; as well as (ii) the use permit or other documents granting the right to use the building. Possession means either that the applicant is the owner, lessee or concession holder in respect of those buildings, facilities and equipment;
- the applicant must show that it employs personnel who possess the required professional knowledge for the performance of the energy related activity, and must state the number of employees, their profession and qualification. Adequate proof of employment is a valid employment agreement;
- the applicant must produce evidence that it possesses adequate financial means (cash funds in the applicant's bank account) in the amount prescribed, or that it can obtain those required financial means. The required financial means range from HRK 20,000 (approximately EUR 2,740) up to HRK 300,000 (approximately EUR 41,100) depending on the type of energy activity;
- the applicant must not have lost its licence in the last ten (10) years for the performance of the energy activity for which it is applying; and
- members of the management board or other corporate officers must not have been convicted of an economic-related crime within the last five (5) years, or in the case of an applicant who is an individual, the applicant must not have been convicted of an economic-related crime[8] within the last three (3) years.

TABLE 1 – Terms of licences issued by HERA per activities

ACTIVITY	TERM OF LICENCE
1. Generation of electricity	1-30 years
2. Transmission of electricity	1-30 years
3. Distribution of electricity	1-20 years
4. Supply of electricity	1-15 years
5. Electricity market organisation	1-20 years
6. Trade, agency and representation on energy market	1-15 years

7 This may be a company or a registered individual trader, natural person. There are no restrictions on the ownership of the company's capital by a non-Croatian company.

8 The legal category of "economy-related crime" mostly includes crimes against the payment system and administration of business under Title XXI of the Croatian Penal Code: (i) Article 281 – Illicit preferential treatment of creditors; (ii) Article 282 – Misuse of insolvency proceedings; (iii) Article 287 – Breach of bookkeeping duty; (iv) Article 291 – Misfeasance in business activity; (v) Article 292 – Misuse of power in the course of a business activity; (vi) Article 293 – Fraud in a business activity; (vii) Article 294 – Conclusion of a detrimental contract; or (viii) Articles 294.a and 294.b – Giving and accepting bribery in the course of a business activity.

Until 23 November 2007, HERA was authorised to issue a licence for the shortest term prescribed if the applicant had been registered for the performance of the relevant activity for less than fifteen (15) years. The Ministerial Ordinance on Licences for Performing Energy-Related Activities that entered into force on 23 November 2007 removed that constraint, but it is most likely that a newcomer to the Croatian market could obtain a licence only for the shortest term. The law does not specify the criteria for granting certain terms of licence, so it is purely at HERA's discretion. Nevertheless, HERA must state the reasons for granting or denying a licence and base its reasons upon facts evident from the documentation submitted by the applicant. The same conditions apply to the renewal of a licence.

During the licence term, HERA can also temporarily or permanently withdraw a licence. In certain exceptional circumstances (such as irregular supply, threat of damage to life or health of citizens or to businesses), HERA may also delegate the performance of electricity-related activities to other entities from a licensee from whom the licence has been withdrawn and order the licensee to hand over the facilities, network or system to the other licensee, unless the licence has been withdrawn due to security reasons, system malfunctions or similar. Despite the existence of reasons for withdrawing the electricity generation licence, HERA may also allow the performance of such activities, if this is necessary to secure regular and safe electricity supply and to prevent or eliminate life or health threatening conditions, or circumstances threatening to cause serious distortions in the national economy.

The applicant files an application for the issuance of a licence on a separate form for each energy-related activity. The application is subject to a fee paid before submitting the application to HERA. In addition to the fee, energy market participants pay an annual fee in favour of HERA in the amount of zero point zero six percent (0.06%) of their total annual revenue from sales of goods and/or services in the preceding year within the scope of energy-related activities for which they hold a licence issued by HERA.

If HERA denies the licence request, the applicant can appeal to the Ministry.

3.2 Designated/preferred legal form of investment vehicle

There is no legally prescribed form of investment vehicle.

3.3 Anticipated time frame for the issue of licences/authorizations

In general, the procedure takes a minimum of two (2) months. However, since the energy sector regulation is a relatively new area of law in Croatia, there is still no well-established practice of the competent authorities. Therefore, the licensing procedures require frequent direct communication with HERA and the competent Ministry and it is usually not possible to provide any precise estimate on the time frame necessary for the issue of licences / authorisations.

The issuing authority is HERA.

4. Promotion System for the Production of RES-Electricity

The Republic of Croatia has introduced a new promotion system based upon an off-taker with a market premium or a guaranteed price model. The new promotion system will apply to those producers which enter into off-take agreements with the HROTE starting from 1 January 2016. The market premium is determined depending upon the current electricity price in the market and the determined price for a specific type of power plant. The guaranteed price is determined by HROTE, also for a specific type of power plant.

In addition to this system, the existing RES-Electricity producers that already have an off-take agreement with the feed-in tariff in place will continue receiving the feed-in tariff until the end of their contractual term. The feed-in tariff prices are determined depending on the type of power plant and RES/combined heat and power or cogeneration sources used for the electricity generation. The current feed-in tariff ranges between 0.57 HRK/KWh (EUR 0.076/

KWh) for hydro power plants with a capacity of up to 10 MW and 3.16 HRK/KWh (EUR 0.421/KWh) for integrated solar power plants of up to 10 KW power under the "Old Tariff" (for more information please see Section 4.3 below).

4.1 General description of promotion scheme

The HROTE enters into market premium agreements or guaranteed price off-take agreements with RES-Electricity and Combined Heat and Power ("**CHP**") producers based on a public bidding process conducted by HROTE. The bidding processes are conducted by the HROTE at least once a year, provided that there is available capacity under the quota determined for a specific type of RES technology. Current quota include as follows:

TYPE OF RES TECHNOLOGY		QUOTA (MW)
Hydro ≤ 10 MW		35
Geothermal		30
Wind		744
Biofuels	Biomass from forestry, agriculture and waste	120
	Biogas, including waste gas and gas from water treatment plants	70

The agreements with the suppliers will be entered into until the total planned RES-Electricity generation and CHP reaches the national indicative targets for 2020.

4.2 Procedure for determining the incentives

The market premium for each RES-Electricity facility represents the difference between the reference value of electricity for the facility and the current market price of electricity, calculated on a monthly basis. The reference value and the current market price of electricity will be determined pursuant to the statutory formula. The guaranteed off-take price, which is granted to RES-Electricity facilities with a capacity of up to 30 KW, is also determined pursuant to the statutory formula.

The new promotion system is not yet fully operational and the relevant Ministries are still expected to enact ancillary regulation for the practical implementation of the new system. As a consequence, further detailed information about the incentives is expected to be available during the first half of 2016.

4.3 The feed-in tariff

The existing RES-Electricity facilities are, however, subject to the prior off-take system applying feed-in tariffs, usually contracted for the term of fourteen (14) years. The feed-in tariff system will be available to the existing RES-Electricity facilities until the expiry of the originally contracted term.

The feed-in tariff unit prices are determined according to the type of power plants and sources used for electricity generation, which are then multiplied by the correction factors pursuant to the statutory formula. Due to the amendments to the feed-in tariffs calculation introduced in 2014, there are currently two (2) concurrent feed-in tariffs: (i) the tariff applicable to the plants that had off-take contracts in place prior to the most recent legislative changes, i.e. on or before 31 December 2013; and (ii) the tariff applicable to those plants with off-take contracts granted starting from 1 January 2014. The decisive date concerning which tariff system applies, is the date on which the decision on the eligible producer status became final and binding.

4.3.1 The "Old" Tariff (on or before 31 December 2013)

- Power plants connected to the distribution grid which use RES for electricity generation with an installed capacity up to 1 MW:

TYPE OF RES POWER PLANT UP TO 1 MW	PRICE (HRK/KWH)	PRICE (EUR/KWH)
a. solar power plants		
a.1. solar power plants with an installed capacity up to 10 KW	1.10	0.1467
a.2. solar power plants with an installed capacity above 10 KW up to 30 KW	1.10	0.1467
a.3. solar power plants with an installed capacity of more than 30 KW	1.10	0.1467
b. hydro power plants		
b.1. hydro power plants producing up to and including 500 MWh in the current year	1.20	0.1600
b.2. hydro power plants producing from 500 MWh up to and including 1000 MWh in the current year	0.80	0.1067
b.3. hydro power plants producing over 1000 MWh in the current year	0.60	0.0800
c. wind power plants	0.72	0.0960
d. biomass power plants		
d.1. crude biomass power plants with an installed capacity up to and including 300 KW (excluding communal waste)	1.30	0.1733
d.2. crude biomass power plants with an installed capacity over 300 KW (excluding communal waste)	1.20	0.1600
e. geo-thermal power plants	1.20	0.1600
f. biogas power plants		
f. 1. biogas power plants from agricultural plantations (corn silage etc.) and organic remnants and waste from agricultural and food-processing industry (corn silage, solid manure, animal waste etc.) with an installed capacity up to and including 300 KW	1.42	0.1893
f. 2. biogas power plants from agricultural plantations (corn silage etc.) and organic remnants and waste from agricultural and food-processing industry (corn silage, solid manure, animal waste etc.) with an installed capacity over 300 KW	1.20	0.1600
g. liquid biogas power plants	APP	APP
h. landfill gas power plants and waste water treatment gas power plants	APP	APP
i. other renewable sources power plants	APP	APP

APP – Average production price for electric energy – price of production of electricity for tariff buyers in the household category with a single tariff calculation of electricity.

- Power plants connected to the transmission or distribution network which use RES for electricity generation with an installed capacity over 1 MW:

TYPE OF RES POWER PLANT OVER 1 MW	PRICE (HRK/KWH)	PRICE (EUR/KWH)
a. hydro power plants with an installed capacity up to 10 MW		
a.1. energy generated in the current year up to 5,000 MWh	1.00	0.1333
a.2. energy generated in the current year from 5,000 MWh up to 15,000 MWh	0.70	0.0933
a.3. energy over 15,000 MWh produced in the current year	0.57	0.0760
b. wind power plants	0.71	0.0947
c. biomass power plants		
c.1. crude biomass power plants with an installed capacity up to and including 2 MW (excluding communal waste)	1.20	0.1600
c.2. crude biomass power plants with an installed capacity over 2 MW up to and including 5 MW (excluding communal waste)	1.15	0.1533
c.3. crude biomass power plants with an installed capacity over 5 MW up to and including 10 MW (excluding communal waste)	1.05	0.1400
c.4. crude biomass power plants with an installed capacity over 10 MW (excluding communal waste)	0.90	0.1200
d. geo-thermal power plants	1.20	0.1600
e. biogas power plants from agricultural plantations (corn silage etc.) and organic remnants and waste from agricultural and food-processing industry (corn silage, solid manure, animal waste etc.)		0.0000
e.1. with an installed capacity up to and including 2 MW	1.20	0.1600
e.2. with and installed capacity over 2 MW up to and including 5 MW	1.12	0.1493
f. liquid biogas power plants	APP	APP
g. landfill gas power plants and waste water treatment gas power plants	APP	APP
h. other RES power plants	APP	APP
i. solar power plants	APP	APP
j. animal fat power plants with and installed capacity up to and including 5 MW	1.65	0.2200

- Cogeneration power plants

TYPE OF COGENERATION POWER PLANT	PRICE (HRK/KWH)	PRICE (EUR/KWH)
cogeneration power plants with an installed capacity up to 30 KW, i.e. micro cogeneration and all cogeneration power plants that use hydrogen fuel cells	0.61	0.0813
cogeneration power plants with an installed capacity over 30 KW up to 1 MW, i.e. small cogeneration	APP	APP
cogeneration power plants with an installed capacity over 1 MW up to 35 MW i.e. medium cogeneration connected to the distribution grid	APP	APP
cogeneration power plants installed with an installed capacity over 35 MW, so-called "high cogeneration" and all cogeneration power plants connected to the transmission network	APP	APP

The tariff amounts for solar power plants described above are increased in the case of solar power plants integrated into rooftops and the walls of buildings and for solar power plants combining heating and the production of electricity, as follows:

SOLAR POWER PLANTS WITH INSTALLED CAPACITY UP TO 1 MW			CORRECTION OF TARIFF FOR INTEGRATED SOLAR POWER PLANTS WITH INSTALLED CAPACITY UP TO 300 KW			
Group	Type of plant	**Fixed tariff C (EUR/KWh)**	Correction factor for integrated solar power plants	**Correction of fixed tarif**	Correction factor solar power plants with combined heating facility	**Correction of fixed tarif**
			k1	**Ck=(Cxk1)**	k2	**Ck=(Cxk1xk2)**
a.1.	Solar power plants with installed capacity up to 10 KW	**1.10**	2.39	**2.63**	1.2	**3.16**
a.2.	Solar power plants with installed capacity from 10 kw up to 30 KW	**1.10**	2.03	**2.23**	1.1	**2.45**
a.3.	Solar power plants with installed capacity over 30 KW	**1.10**	1.50	**1.65**	1.03	**1.70**

All tariff amounts mentioned above are multiplied by a correction factor reflecting the project's contribution to the local community, development of the economy, employment, development of public services and improvement of living conditions. The maximum increase of the tariff based upon these factors is fifteen percent (15%).

4.3.2 The "New" Tariff (from 1 January 2014 until 31 December 2015)

- Power plants connected to the transmission or distribution network which use RES for electricity generation with an installed capacity of up to 5 MW:

TYPE OF RES POWER PLANT UP TO 5 MW		PRICE (HRK/KWH)	PRICE (EUR/KWH)
a.	solar power plants		
a.1.	solar power plants with an installed capacity up to 10 KW	1.10	0.1467
a.2.	solar power plants with an installed capacity above 10 KW up to 30 KW	1.10	0.1467
a.3.	solar power plants with an installed capacity of more than 30 KW	1.10	0.1467
b.	hydro power plants		
b.1.	hydro power plants producing up to and including 300 MWh in the current year	1.07	0.1426
b.2.	hydro power plants producing from 300 MWh up to and including 2000 MWh in the current year	0.93	0.1240
b.3.	hydro power plants producing over 2,000 MWh in the current year	0.88	0.1173
c.	wind power plants	RP[9]	RP
d.	biomass power plants		
d.1.	crude biomass power plants with an installed capacity up to and including 300 KW (including communal waste)	1.30	0.1733
d.2.	crude biomass power plants with an installed capacity over 300 KW up to and including 2,000 MWh (including communal waste)	1.25	0.1666
d.3.	crude biomass power plants with an installed capacity over including 2,000 MWh (including communal waste)	1.20	0.1600
e.	geo-thermal power plants	1.20	0.1600
f.	biogas power plants		
f. 1.	biogas power plants from agricultural plantations (corn silage etc.) and organic remnants and waste from agricultural and food-processing industry (corn silage, solid manure, animal waste etc.) with an installed capacity up to and including 300 KW	1.34	0.1786
f. 2.	biogas power plants from agricultural plantations (corn silage etc.) and organic remnants and waste from agricultural and food-processing industry (corn silage, solid manure, animal waste etc.) with an installed capacity over 300 KW up to and including 2,000 MWh	1.26	0.1680
f. 3.	biogas power plants from agricultural plantations (corn silage etc.) and organic remnants and waste from agricultural and food-processing industry (corn silage, solid manure, animal waste etc.) with an installed capacity over 2,000 MWh	1.18	0.1573

9 RP – Reference price for working energy paid by households as a part of universal service for the supply of energy.

- Power plants connected to the transmission or distribution network which use RES for electricity generation with an installed capacity over 5 MW:

TYPE OF RES POWER PLANT OVER 5 MW	PRICE (HRK/KWH)	PRICE (EUR/KWH)
a. hydro power plants	RP	RP
b. wind power plants	RP	RP
c. biomass power plants		
d. geo-thermal power plants	RP	RP
e. biogas power plants from agricultural plantations (corn silage etc.) and organic remnants and waste from the agricultural and food-processing industries (corn silage, solid manure, animal waste etc.)	RP	RP
f. liquid biogas power plants	RP	RP

- cogeneration power plants

TYPE OF COGENERATION POWER PLANT	PRICE (HRK/KWH)	PRICE (EUR/KWH)
cogeneration power plants with an installed capacity up to 30 KW, i.e. micro cogeneration and all cogeneration power plants that use hydrogen fuel cells	RP	RP
cogeneration power plants with an installed capacity over 30 KW up to 1 MW, i.e. small cogeneration	RP	RP
cogeneration power plants with an installed capacity over 1 MW up to 35 MW i.e. medium cogeneration connected to the distribution grid	RP	RP
cogeneration power plants installed with an installed capacity over 35 MW, high cogeneration and all cogeneration power plants connected to the transmission network	RP	RP

4.4 Revision and/or indexation of the feed-in tariffs

All incentives, whether based upon the new market premium and guaranteed price model or on the tariff system, will be indexed in order to reflect inflation. In the case of feed-in tariffs, the tariff prices cannot be reduced below the APP or the RP, respectively.

4.5 Other financial incentives for RES-Electricity

There are no particular financial incentives for renewable energy producers other than the guaranteed feed-in tariff. One could mention as potential state aid grantors: (i) the Ministry of the Economy, Labour and Entrepreneurship; (ii) the Ministry of the Regional Development, Forestry and Water Management; (iii) the Environmental Protection and Energy Efficiency Fund; and (v) the Croatian Bank for Reconstruction and Development ("**HBOR**"). Regional subsidies are also granted by some of the Croatian counties. Croatia has entirely harmonised its state aid rules with the rules of the EU law (e.g. Community Guidelines on state aid for environmental protection, 2001/C 37/03, and Commission Notice on the application of Articles 87 and 88 of the EC Treaty to state aid in the form of guarantees, 2008/C 155/02).

As regards grid access, the transmission and distribution system operators must secure the off-taking from the eligible producers of their total generated electricity.

4.6 Support scheme for cogeneration

There is currently no support scheme for cogeneration.

4.7 Guarantees of origin for RES-Electricity

The latest amendments to legislation from 2012 introduced a general obligation to guarantee the origin of the produced energy. However, the Croatian Government must still draw up the detailed legislative framework in respect of such guarantees of origin.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

Transmission and distribution system operators are obliged to provide non-discriminatory access to system users according to the principle of regulated third party access, as provided by the general conditions of electricity supply, the Croatian Grid Code, EU guidelines, the Union for the Coordination of Transmission of Electricity ("**UCTE**") Operation Handbook, other UCTE and European Transmission System Operators ("**ETSO**") documents, and in accordance with the capacities of the transmission system. Data on the possibilities for the use of the transmission and distribution system must be publicly available, updated once a year and published on the Web site of each operator.

Any producer that wishes to connect its generation facility to the transmission or distribution systems must enter into a connection agreement with HEP-TSO or HEP-DSO, respectively, but eligible producers have priority. HEP-TSO and HEP-DSO must secure the off-taking from the eligible producers of their total generated electricity.

HEP-TSO/HEP-DSO may deny access to the network only for reasons of limited technical or operating capacity of the network. The decision denying access to the network must state reasons and be supported by written evidence.[10] An electricity producer or eligible customer that has been denied access to the network or is not satisfied with the access requirements may file an appeal to HERA. The decision of HERA is final. The only available recourse against HERA's decision is an administrative complaint before the Administrative Court of Croatia.

When the electricity producer registered for retail electricity supply and the eligible customer are set to sign a delivery or electricity supply agreement and are not able to obtain access to the network, they may construct a direct line, with the approval of HERA.

5.2 Liability and responsibility for connection and/or capacity upgrades, improvements or expansion of the grid

The costs of grid connection and/or capacity upgrades, improvements or expansion of the grid are borne by the electricity producer or eligible customer. The responsibility for conducting such work lies with HEP-TSO or HEP-DSO.

A customer with its own power plant with a maximum power of 30 KW, which is intended for an operation parallel to the system and which is built preponderantly for its own use, is not considered a producer for the purpose of imposing the connection fee. A customer with its own power plant with a power of over 30 KW, which is intended for an oper-

10 Security of Supply Statement of the Republic of Croatia, June 2007, p. 12 available at: **http://www.energy-community.org/pls/portal/docs/85836.PDF**

ation parallel to the grid and which has a meter, pays a single fee calculated either according to the methodology for customer grid connection or methodology for producer grid connection, depending on which fee amount is higher.

The connection fee covers the costs for the construction of a connection point and creation of adequate technical conditions within the system.

5.3 Special allowance/tolerance for intermittent generation when determining balancing charges in case of unscheduled deviations

Balancing the electric power system is a joint task of HEP-TSO, HEP-DSO and HROTE, but the main duties lie with HEP-TSO and HROTE.

HEP-TSO is the entity responsible for correcting any imbalances in the electric power system. It is under a duty to make estimates of the necessary balancing energy every trading day on an hourly basis. It removes the imbalance by supplying the balancing energy from a balancing service provider. HEP-TSO supplies the balancing energy by concluding contracts with balancing service providers.

Under the general regime, producers, suppliers and traders conclude a balancing energy contract with HEP-TSO whereby they obtain the status of a "balance responsible party." They are responsible for any imbalance between the contractual schedule and the actual delivery of electricity, as defined below. The Croatian Grid Code permits a deviation from the schedule within the range of ± ten percent (10%) for the duration of one (1) hour, in relation to the value of the active power value of the approved schedule.

Eligible generators do not pay the balancing energy charges. This is done by HROTE on their behalf from HROTE's revenues collected from all electricity end-customers that pay an incentive fee included in their electricity bills.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all the jurisdictions is the prohibition of incompatible state aid, which is contained both in the EC Treaty and in the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission's new Guidelines on State Aid for Environmental Protection and Energy, adopted on 9 April 2014, be considered as compatible with the common market.

An investor or a producer may acquire the status of an eligible producer, which entitles the producer to enter into off-take agreements with HROTE, if it is connected to the transmission or distribution grid and if it generates electricity in RES and CHP facilities conforming to the natural and spatial restrictions, as well as to the nature and environment protection measures.

Eligible producers must annually inform HROTE, by 31 October, about their monthly and annual generation plans, meteorological conditions, and expectations of monthly deviations. HROTE, thereafter, annually delivers this information to the Ministry by 15 November.

Eligible producers cannot export the electricity generated from RES sources due to subsidies received through incentive electricity prices[11].

11 Article 14 of the Energy Act.

7. Carbon Credits

Croatia ratified the Kyoto Protocol to the UN Framework Convention on Climate Change on 9 May 2007, as an Annex 1 country, and it entered into force on 28 August 2007.

As a consequence of the ratification of the Kyoto Protocol, Croatia has adopted national rules for the joint implementation ("JI") project by adopting a Governmental Regulation on the implementation of flexible mechanisms of the Kyoto Protocol which regulates JI projects that will be carried out both (i) within the territory of the Republic of Croatia; and (ii) outside of the territory of Croatia. Besides JI project activities, the Regulation also regulates Clean Development Mechanism project activities and Emission Trading.

The Regulation entered into force on 18 December 2008, with the exception of the provisions that regulate the JI project activities that will be carried out only within the territory of the Republic of Croatia. These provisions entered into force on 1 January 2013.

WOLF THEISS

CZECH REPUBLIC

CZECH REPUBLIC

Main permits required for RES-Electricity generating facilities

Environmental permit	List of projects subject to Environmental Impact Assessment ("**EIA**") if required by the competent authority following a "screening procedure": ▪ wind power plants (mandatory "screening procedure" for projects involving wind power plants with total installed capacity exceeding 500 KW or a tower higher than 35 meters); ▪ hydro power plants (mandatory "screening procedure" for projects involving hydro power plants with total installed capacity exceeding 10 MW); and ▪ RES Projects that, according to the competent authority for environmental protection, can have a "significant effect" on the territory of sites of European importance or bird protection areas.
Building permit	The necessary steps include: (i) obtaining binding opinions supporting the RES Project from bodies protecting public interests that may be affected by the construction or operation of the RES-Electricity generating facility (such as the nature protection authority); and (ii) applying for issuance of a zoning/building permit.
Authorisation under Energy law/right (concession) to exploit natural resources	The Energy Act provides for two types of licences/authorisations necessary for the construction and operation of power plants in the Czech Republic: ▪ **Authorisation** – needs to be obtained before commencing construction of an electricity generating facility if the total installed capacity exceeds or equals 1 MW. Competent body to issue the authorisation is the Ministry of Industry and Trade; and ▪ **Licence** – for the generation of electricity, granted by the ERO. Under Czech law, RES are not considered a natural resource. Apart from the requirements described in Section 2.1 and 3, the Czech law sets down an additional requirement for the operation of hydro power plants – a permit to use surface and underground water from the relevant hydro authority, in particular a permit to use the energy potential.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	Licence from the ERO is required. The Licence may be issued for a maximum period of twenty-five (25) years.

PROMOTION SCHEME	
Outline	The Promotion Act recognises two promotion schemes for the production of RES-Electricity that cannot be combined: a feed-in tariff and a green bonus. However, the Promotion Act also fundamentally changes the functioning of the promotion schemes that were in effect under the Old Promotion Act. It also changes the scope of entities that may take part in the scheme. Under the Promotion Act (described in "Recent changes" below) there is no promotion for RES-Electricity produced in generating facilities put into operation after 31 December 2013, with the following exceptions: ▪ hydro power plants with total installed capacity below 10 MW; and ▪ holders of an authorisation or building permit (for power plants with installed capacity below 100 KW) for the construction of wind, hydro, geothermal and biomass power plants, issued before 2 October 2013, if such power plants were put into operation by 31 December 2015, at the latest. Under the transitory provisions of the Promotion Act, the existing RES-Electricity generating facilities (put into operation before 1 January 2013) may continue to operate under the current promotion scheme. They also have the possibility to opt for the new system regulated by the current Promotion Act. The regulation of promotion schemes thus differs for RES-Electricity generating facilities put into operation: ▪ under the Old Promotion Act – from 1 August 2005 to 31 December 2012; ▪ under the Promotion Act – from 1 January 2013 to 31 December 2013; ▪ under the Amended Promotion Act – from 1 January 2014 to 31 December 2015 if the authorisation or building permit (for power plants with installed capacity below 100 KW) for the construction of wind, hydro, geothermal and biomass power plants was issued before 2 October 2013; and ▪ under the Amended Promotion Act – from 1 January 2014 onwards – for RES-Electricity generating facilities other than those listed above. In addition to the above, the Amendment to the Promotion Act required that producers of RES-Electricity existing in the form of a joint stock company (*a.s.*), either had book entry shares (*zaknihované akcie*) or transformed their paper shares into a book entry form by 30 June 2014, at the latest, in order to remain eligible for promotion. As of 1 July 2014, RES-Electricity produced by joint stock companies with other than book entry shares is no longer promoted. The same applies to promotion of electricity produced in cogeneration plants and electricity produced from secondary energy sources. Feed-in tariffs: operators of the electricity distribution or transmission grid and the Mandatory Buyer under the Promotion Act are obliged to purchase all RES-Electricity produced for a feed-in tariff that is determined by the ERO and guaranteed for fifteen (15) to thirty (30) years depending on the type of RES.

	Green bonuses: the operators of the RES-Electricity generating facilities must either sell the electricity on the market or consume the electricity themselves. For electricity that is sold/consumed, the operators of the facilities receive from the transmission or distribution system operators/market operator a green bonus. The ERO determines the green bonuses annually. However, under the Promotion Act only RES-Electricity generating facilities (eligible for promotion) of a "small installed capacity" may choose the feed-in tariffs. The promotion of RES-Electricity under the Promotion Act is therefore more "market-oriented" and favours the promotion of a wide range of RES-Electricity generating facilities under the green bonus scheme.
Other financial incentives	None. Effective as of 1 January 2011, the Income Tax Exemption has been revoked; the exemption was last applicable for the tax period ending in December 2010.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	The operators of the transmission/distribution grid are obliged to prefer RES-Electricity generating facilities in connecting to the transmission/distribution grid, if they comply with the prescribed conditions and such connection is technically possible.
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The RES-Electricity producer is obliged to share the costs of the grid operators for connection to the grid and for ensuring the required reserved capacity. The producer's share in these costs is set down by a Regulation of the ERO.
Special allowance/tolerance for intermittent generation in relation to balancing charges	Under the Promotion Act, in case of RES-Electricity producers with promotion in the form of feed-in tariffs, the Mandatory Buyers are required to accept liability for any unscheduled deviations. In case of green bonuses for electricity, if the RES-Electricity producer is not a settlement entity or has not transferred the liability for unscheduled deviations to another settlement entity, the RES-Electricity buyer is liable for any unscheduled deviations.
Recent changes	An extensive bill was passed by the Czech Parliament that, among others, with effect from 1 January 2016 (unless otherwise stated below) brings the following key changes to the Energy Act: ▪ changes to the permitting procedures for electricity generating facilities (i.e. to the governmental authorisation for construction of the generating facility; e.g. authorisation is required if the total installed capacity exceeds 1 MW – compared to the original 100 KW); ▪ if transformation of a legal entity holding a licence for the generation of electricity occurs, the legal successor may continue the licensed activity under the predecessor's licence, provided that within the period of one (1) month from the effectiveness of the transformation the legal successor notifies the ERO of the continuance of the licensed activity and files an application for a new licence for the generation of electricity; ▪ new obligations relating to measuring and evidencing of produced electricity by RES-Electricity generating facilities and no promotion for RES-Electricity generating facilities that do not comply with the obligations:

	▪ RES-Electricity generating facilities with total installed capacity above 100 MW shall meet the obligations by 1 January 2017 and ensure that installed measuring equipment is secured from any unauthorised manipulation by 30 June 2016 at the latest; ▪ RES-Electricity generating facilities with total installed capacity under 100 MW shall meet the obligations by 1 January 2018 and ensure that installed measuring equipment is secured from any unauthorised manipulation by 30 June 2017 at the latest; ▪ obligations on producers of energy from renewable sources to: ▪ secure installation of gauges for fuel consumption, electricity production and heat production; ▪ secure the gauges against unauthorised manipulation, at their own expense; ▪ adjust the form of subsidy in case of combination of feed-in tariff and green bonuses for single connection.
CARBON CREDITS	
Status	The Czech Republic has ratified the Kyoto Protocol as an Annex 1 party. The framework for obtaining carbon credits has been implemented into Czech law.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

- Act No. 458/2000 Coll. on business conditions and public administration in the energy sector ("**Energy Act**") regulates the energy market and sets the conditions for doing business in the energy sector and the conditions under which the Czech Energy Regulatory Office ("**ERO**") grants licences for the production, transmission and distribution of electricity.
- Act No. 180/2005 Coll. on promotion of the use of renewable energy sources ("**RES**") repealed by Act No. 165/2012 Coll. ("**Old Promotion Act**").
- Act No. 165/2012 Coll. on promoted energy sources as amended (i.e. RES, secondary energy sources and combined production of heat and energy) ("**Promotion Act**") that implements EU Directive 2009/28/EC. Most of the key provisions of the Promotion Act came into effect on 1 January 2013 with a number of provisions effective from 30 May 2012.
- Amendment to Promotion Act numbered 131/2015 Coll. with effect from 1 January 2016 ("**Amendment to the Promotion Act**").
- Regulations No. 346/2012 Coll., No. 347/2012 Coll., No. 426/2005 Coll., No. 51/2006 Coll., No. 296/2015 Coll. and No. 140/2009 Coll. of the ERO implement certain provisions of the Promotion Act and of the Energy Act, outlining conditions for granting licences for doing business in the energy sector, for grid access and regulating prices in the energy sector.
- Regulation No. 477/2012 Coll. of the Ministry of the Environment sets out the types and parameters of the promoted renewable sources for production of electricity, heat and biomethane.
- Price Decision No. 1/2014 of the ERO sets down details regarding the promotion of promoted energy sources.
- Regulation No. 541/2005 Coll. of the ERO sets down the rules of the electricity market.
- Act No. 100/2001 Coll. ("**EIA Act**") regulates issues related to environmental impact assessment.

- Act No. 586/1992 Coll. on income taxes ("**Income Tax Act**") lays down the rules for income taxation of individuals and legal entities.
- EU law.

The Promotion Act implements EU Directive 2009/28/EC on the promotion of electricity produced from RES in the internal electricity market into Czech law. Under the new EU Directive 2009/28/EC, which replaces EU Directive 2001/77/EC, the Czech Republic is committed to achieve a binding target of a thirteen percent (13%) share of RES-Electricity in gross final consumption by 2020 (the share in the transport industry to be ten percent (10%)). The National Action Plan issued by the Ministry of Industry and Trade and approved by the Czech government on 8 November 2012, proposes and expects the Czech Republic to achieve a fourteen percent (14%) share of RES-Electricity in gross final consumption in 2020 with a ten point eight percent (10.8%) share in the transport industry.

The Energy Act implements the Third Electricity Directive, i.e. EU Directive 2009/72/EC, concerning common rules for the internal market in electricity.

1.2 Recent changes

The Promotion Act came into effect partly on the day the new law was published in the Collection of Laws (30 May 2012) and partly on 1 January 2013. The Promotion Act replaces the Old Promotion Act. Its scope is broader than that of the Old Promotion Act. The Promotion Act covers the promotion of electricity and heat production from RES and secondary sources of energy as well as the cogeneration of heat and energy.

An extensive bill was passed by the Czech Parliament, effective from 1 January 2016, which brings the following key changes (among others) to the Energy Act, (unless otherwise stated below):

- changes to the permitting procedures for electricity generating facilities (i.e. to the governmental authorisation for construction of the generating facility; e.g. the authorisation is required if the total installed capacity exceeds 1 MW – as compared to the original 100 KW);
- if transformation of a legal entity holding a licence for the generation of electricity occurs, the legal successor may continue the licensed activity under the predecessor's licence, provided that within the period of one (1) month from the effectiveness of the transformation the legal successor notifies the ERO of the continuance of the licensed activity and files an application for a new licence for the generation of electricity;
- new obligations relating to measuring and evidencing of produced electricity by RES-Electricity generating facilities and no promotion for RES-Electricity generating facilities that do not comply with the obligations:
  - RES-Electricity generating facilities with total installed capacity above 100 MW shall meet the obligations by 1 January 2017 and ensure that installed measuring equipment is secured from any unauthorised manipulation by 30 June 2016 at the latest;
  - RES-Electricity generating facilities with total installed capacity under 100 MW shall meet the obligations by 1 January 2018 and ensure that installed measuring equipment is secured from any unauthorised manipulation by 30 June 2017 at the latest;
- obligations of producers of energy from renewable sources to:
  - secure installation of gauges for fuel consumption, electricity production and heat production;
  - secure the gauges against unauthorised manipulation, at their own expense;
  - adjust the form of subsidy in case of combination of feed-in tariff and green bonuses for single connection.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

2.1.1 Energy Law

The Energy Act provides for two types of licences/authorisations necessary for the construction and operation of power plants in the Czech Republic:

- Governmental authorisation for the construction of an electricity generating facility if the total installed capacity exceeds or equals 1 MW – granted by the Ministry of Industry and Trade ("**Authorisation**"); and
- Licence for the generation of electricity – granted by the ERO ("**Licence**").

In August 2011, the Authorisation was reintroduced. This effectively means that the construction of any new electricity generating facility with total installed capacity of 1 MW (increased from 100 KW effective as of 1 January 2016) or more is now subject to the consent of the Ministry of Industry and Trade. The following criteria, in particular, are to be taken into account by the Ministry of Industry and Trade in the process of authorising a new electricity generating facility:

- compliance with the government's energy policy;
- compliance with the network development plan;
- compliance with the National Action Plan for power produced from RES;
- financial prerequisites relating to applicants who apply for the Authorisation;
- location of the electricity generating facility; and
- estimated level of electricity demand.

As evident from these criteria, the Ministry of Industry and Trade is given fairly broad discretion in deciding whether to issue the Authorisation. Furthermore, an applicant does not have a legal claim to demand issuance of the Authorisation. In other words, even an applicant that satisfies all requirements cannot be sure that the Authorisation will be granted.

Details regarding the Licence are described in Section 3 below.

2.1.2 Environmental Law

The EIA Act does not require all projects for RES-Electricity generating facilities ("**RES Projects**") to be assessed – those RES Projects listed below are subject to an Environmental Impact Assessment ("**EIA**") if required by the competent authority following a "screening procedure:"

- wind power plants (mandatory "screening procedure" for projects involving wind power plants with total installed capacity exceeding 500 KW or a tower higher than 35 meters);
- hydro power plants (mandatory "screening procedure" for projects involving hydro power plants with total installed capacity exceeding 10 MW); and
- RES Projects that according to the competent authority for environmental protection can together with others or by themselves have a "significant effect" on the territory of "sites of importance[1]" or bird protection areas.

1 The term is defined in Section 3 (1) (q) of Act No. 114/1992 Coll. on the protection of nature and landscape. In brief, it is a site that requires special protection due to its significant contribution to the maintenance or restoration of a natural habitat type or of a species and/or to the maintenance of biological diversity within a region.

The “screening procedure” designates a procedure through which the relevant authority decides whether an EIA is needed. Specifically, this procedure determines the effects of projects on the basis of thresholds/criteria or a case-by-case examination. The EIA proceedings usually last between five (5) and eight (8) months, following submission of the required documentation. However, the EIA proceedings require the submission of complex documentation, the preparation of which may be lengthy.

2.1.3 Building Law

Prior to the issuance of zoning/building permits, the project developer must obtain binding opinions supporting the RES Project from bodies protecting public interests that may be affected by the construction or operation of the RES-Electricity generating facility (such as the nature protection authority). The competent authority issuing the zoning/building permit is usually the building authority determined by the location of the facility.

2.2 Process for obtaining the right (concession) to exploit natural resources

Under Czech law, RES are not considered a natural resource. Apart from the requirements described in Sections 2.1 and 3, Czech law sets down an additional requirement for the operation of hydro power plants – a permit to use surface and underground water from the relevant hydro authority. The types of use that require a permit are set down in Section 8 (1) of Act No. 254/2001 Coll. on waters. An example would be a permit to use the energy potential which is issued for a minimum duration of thirty (30) years and is not needed to generate electricity using underground water in case water is not drawn.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

The generation of electricity in general, including RES-Electricity, requires a Licence. The Licence is issued by the ERO. The Energy Act and its implementing regulations set down the conditions for granting the Licence. The ERO issues the Licence if the applicant fulfils criteria provided for by the Energy Act, in particular:

- The applicant/members of the statutory body of the applicant fulfil the following three conditions: (i) minimum age of eighteen (18) years; (ii) full legal capacity; and (iii) no criminal record (*bezúhonnost*).
- The applicant is professionally qualified/the legal entity appoints a professionally qualified responsible representative. The required qualification depends on the installed capacity of the generating facility. The appointment of the responsible representative is subject to the approval of the ERO.
- The applicant proves the ownership or the right of use of the applicable generating facility.
- The applicant (in case of a generating facility with intended installed output exceeding 200 KW) proves that he/she/it has adequate financial resources necessary for ensuring the performance of the licensed activity. Adequate financial resources are defined as: “the ability of the applicant to provide sufficient funding to secure the licensed activity and the ability to cover current and future obligations for a period of at least five (5) years.”
- The applicant proves that he/she/it has the technical prerequisites necessary for ensuring the performance of the licensed activity and certifying the safety of the generating facility.

The Licence may be issued for a maximum period of twenty-five (25) years.

3.2 Designated/preferred legal form of investment vehicle

There is no designated/preferred form of the investment vehicle. Any form of corporation set down in the Czech Act on Business Corporations may be used. The most common forms are a limited liability company (*s.r.o.*) and a joint stock company (*a.s.*)[2].

A foreign company may apply for the Licence through its Czech branch.

3.3 Anticipated time frame for the issue of licences/authorizations

Under Czech administrative law, the licensing process described in Section 3.1 should not exceed thirty (30) to sixty (60) days.

4. Promotion System for the Production of RES-Electricity

Similar to the Old Promotion Act, the Promotion Act recognises two promotion schemes for the production of RES-Electricity that cannot be combined: feed-in tariffs and green bonuses. However, the Promotion Act fundamentally changed the functioning of the promotion schemes and the entities that may take part in the scheme.

Under the transitory provisions of the Promotion Act, the existing RES-Electricity generating facilities (put into operation before 1 January 2013) may continue to operate under the current promotion scheme. They also have the possibility to opt for the new system regulated by the Promotion Act.

Under the Amendment to the Promotion Act (described in Section 1.2 above), there is no promotion for electricity produced in RES power generating facilities put into operation after 31 December 2013, with the following exceptions:

- hydro power plants with total installed capacity below 10 MW; and
- holders of an authorisation or building permit (for power plants with installed capacity below 100 KW) for the construction of wind, hydro, geothermal and biomass power plants, issued before 2 October 2013, if such power plants were put into operation by 31 December 2015, at the latest.

The regulation of promotion schemes thus differs for RES-Electricity generating facilities put into operation:

- under the Old Promotion Act – from 1 August 2005 to 31 December 2012;
- under the Promotion Act – from 1 January 2013 to 31 December 2013;
- under the Amendment to the Promotion Act – from 1 January 2014 to 31 December 2015 if the authorisation or building permit (for power plants with installed capacity below 100 KW) for the construction of wind, hydro, geothermal and biomass power plants was issued before 2 October 2013; and
- under the Amendment to the Promotion Act – from 1 January 2014 onwards – for RES-Electricity generating facilities other than those listed above.

In addition, if the producer of RES-Electricity existed in the form of a joint stock company (*a.s.*), it needed to either have book entry shares (*zaknihované akcie*) or transform its paper shares to a book entry form by 30 June 2014, at the latest, in order to remain eligible for promotion. As of 1 July 2014, RES-Electricity produced by joint stock companies with other than book entry shares is no longer promoted.

2 If the producer of RES-Electricity existed in the form of a joint stock company (*a.s.*), it needed to either have book entry shares (*zaknihované akcie*) or transform its paper shares to the book entry form by 30 June 2014, at the latest, to remain eligible for promotion. As of 1 July 2014, RES-Electricity produced by joint stock companies with other than book entry shares is no longer promoted.

4.1 Applicability of promotion scheme

Under the Promotion Act from RES-Electricity generating facilities (eligible for promotion), only those with a relatively small installed capacity, put into operation from 1 January 2013 onwards, may choose feed-in tariffs. The maximum installed capacity of such generating facilities is:

- 10 MW for hydro power plants; and
- 100 KW for generating facilities from other RES.

In the case of other RES-Electricity generating facilities (eligible for promotion) put into operation from 1 January 2013 onwards, it is only possible to make use of the promotion through green bonuses for electricity ("**Green Bonus**"). The promotion of RES-Electricity under the Promotion Act is therefore more "market-oriented" and favours the promotion of a wide range of RES-Electricity generating facilities under the green bonus scheme. The RES-Electricity generating facilities that retain the possibility to choose between the promotion schemes may change the promotion scheme once a year with effect as of 1 January.

4.2 General description of promotion scheme

Under the promotion scheme for feed-in tariffs as regulated by the Promotion Act, it is the "mandatory buyer" (*povinně vykupující*) ("**Mandatory Buyer**") who is obliged to purchase all of the RES-Electricity produced (with some exceptions) with a feed-in tariff determined by the ERO. The final supplier of electricity for the relevant region is currently the Mandatory Buyer. Currently, there are three Mandatory Buyers in the Czech Republic: E.ON Energie, a.s., ČEZ Prodej, s.r.o. and Pražská energetika, a.s. The Promotion Act envisages that the future Mandatory Buyer will be determined either by law or the Ministry of Industry and Trade.

4.2.1 Procedure for determining the feed-in tariff

Under the Promotion Act the value of the feed-in tariff is determined by the Price Decision of the ERO for the relevant year.

The following ERO Regulations provide guidelines which, when complied with, enable the operators of RES-Electricity generating facilities to achieve a return on their investment within fifteen (15) years and reasonable gains during the lifespan of the RES-Electricity generating facility:

- Regulation No. 475/2005 Coll. for generating facilities put into operation under the Old Promotion Act;
- Regulation No. 347/2012 Coll. for generating facilities put into operation under the Promotion Act;
- Regulation No. 296/2015 Coll. effective as of 1 January 2016 and amending Regulation No. 347/2012 Coll.

Under the promotion scheme for feed-in tariffs as regulated by the Promotion Act, the obligation to purchase all of the RES-Electricity produced for the feed-in tariff is guaranteed for the lifespan of the RES-Electricity generating facility. The lifespan of RES-Electricity generating facilities is determined by ERO Regulation No. 347/2012 Coll. (for generating facilities put into operation under the Promotion Act) and by ERO Regulation No. 475/2005 Coll. (for generating facilities put into operation under the Old Promotion Act) and ranges from fifteen (15) to thirty (30) years[3].

4.2.2 Promotion Act

Pursuant to the Promotion Act, the ERO determines the feed-in tariffs for RES-Electricity generating facilities (eligible for promotion) put into operation from 1 January 2013 onwards annually for the following calendar year, separately for individual types of RES, so as to, among others, ensure that:

3 The lifespan of RES-Electricity generating facilities is: (i) for hydro power thirty (30) years; (ii) for electricity from biomass twenty (20) years; (iii) for electricity from biogas twenty (20) years; (iv) for electricity from landfill, and sewage treatment plant gas and coal seam gas fifteen (15) years; (v) for wind power twenty (20) years; (vi) for geothermal electricity twenty (20) years; and (vii) for electricity from photovoltaic installations twenty (20) years.

(a) a period of fifteen (15) to thirty (30) years of investment return (differs according to the type of installation) of the generating facility is achieved if in accordance with technical and economic parameters, including, in particular, the costs of an installed unit of capacity, the efficient use of the primary energy contents in the RES, in case of generating facilities using biomass, biogas and bioliquid costs of fuel and the period of operation of the plant set down in the ERO's implementing Regulation No. 347/2012 Coll. (as amended by Regulation 296/2015 Coll.);

(b) a minimum amount of revenue per unit of RES-Electricity is maintained from the year that the generating facility is put into operation for the duration of time that it is subject to promotion, with a yearly increase of two percent (2%); and

(c) cases of a negative hourly price and cases, where the offer and demand on the daily trade organised by the market operator do not correspond, fall within (a) above.

Moreover, the ERO must base the level of the feed-in tariff on the costs of acquisition, connection and operation of the individual types of generating facilities including their development in time.

4.3 Revision and/or indexation of the feed-in tariffs

4.3.1 Promotion Act

The Promotion Act provides that the feed-in tariffs set out annually by the ERO for the following year must amount to at least ninety-five percent (95%) of the current feed-in tariff values. However, this threshold does not apply to those RES where the return of the investment is achieved within less than twelve (12) years.

4.4 Green Bonus system

Under the Promotion Act, there are two types of Green Bonuses:

- annual green bonuses for electricity ("**Annual Green Bonus**"); and
- hourly green bonuses for electricity ("**Hourly Green Bonus**").

Under the Promotion Act, the value of Annual Green Bonuses is determined annually by the Price Decision of the ERO for the relevant year. The value of Hourly Green Bonuses is determined from the market price of electricity on the daily market, thus it may differ from hour to hour.

Under the promotion scheme for Green Bonuses, the operators of the generating facilities have to either sell the RES-Electricity at market prices to end-customers/traders or consume the RES-Electricity themselves. Under the Promotion Act, for any RES-Electricity that is sold/consumed (with some exceptions), the operators of the generating facilities receive from the market operator a Green Bonus. The market operator is OTE, a.s., a joint stock company with the Czech Republic as its sole shareholder.

4.4.1 Promotion Act

In relation to the RES-Electricity generating facilities that are eligible for promotion, the system of Annual Green Bonuses applies to:

- RES-Electricity from generating facilities with installed capacity of up to 100 KW or the biologically decomposable part of municipality waste or using both RES and non-renewable energy sources; and
- cogeneration of energy and heat and secondary sources of energy.

In relation to the RES-Electricity generating facilities that are eligible for promotion, the system of Hourly Green Bonuses applies to:

- RES-Electricity from generating facilities with installed capacity above 100 KW, with the exception of generating facilities using biologically decomposable part of municipality waste or using both RES and non-renewable energy sources.

Under the Promotion Act, the ERO determines the value of Annual Green Bonuses annually for the following year so as to ensure that the value of the Annual Green Bonus covers, for the relevant type of RES, at least the difference between the relevant feed-in tariff and the expected average annual hourly rate.

The value of Hourly Green Bonuses is derived from the market price of electricity on the daily market. Under the Promotion Act, the ERO sets the method of determining the value of Hourly Green Bonuses annually for the following year so as to ensure that the value of the Hourly Green Bonus covers, for the relevant type of RES, at least the difference between the feed-in tariff and the attained hourly rate.

The Promotion Act provides that the maximum value of feed-in tariffs and Green Bonuses for the first (1st) year of operation of the relevant generating facility may be CZK 4,500/MWh (approximately EUR 180/MWh).

4.5 Option between feed-in tariff and green bonus system

Under the Promotion Act it is not possible to combine the two promotion schemes. Limits to the possibility to choose between the two promotion schemes under the New Promotion Act are described in the introduction to Section 4 and in Section 4.1.

4.6 Other financial incentives for RES-Electricity

Until December 2010, the income generated from the operation of wind, solar, geothermal, small hydro (up to 1 MW), biomass and biogas generating facilities was free of tax during the year they commenced operation and for the following five (5) years ("**Income Tax Exemption**"). The trial operation was included in this time period if any income was generated. This Income Tax Exemption has been revoked with effect from 1 January 2011. The Income Tax Exemption was last applicable for the tax period ending in December 2010.

4.7 Promotion of solar power plants

In October and November 2010, the Czech Parliament adopted several amendments to the Old Promotion Act and to the Income Tax Act ("**Amendments**") in order to restrict the new construction of solar power plants and to reduce the promotion of already operating solar power plants. The Amendments are described in Sections 4.7.1 and 4.7.2 below. The promotion scheme and regulation has thus significantly changed with effect from 2011. The Amendments are controversial and have been criticised by investors and experts. The constitutionality of the Amendments was challenged by a group of Senators in March 2011. In May 2012, the Constitutional Court ruled that the Amendments are in conformity with the Czech Constitution.

The Amendment to the Promotion Act prolonged the duration of the solar tax. Effective as of 1 January 2014, the solar tax applies to electricity produced from 1 January 2014 for the duration of the right to promotion in solar power plants put into operation between 1 January 2010 and 31 December 2010. The key changes affecting solar power plants are described in more detail in Sections 4.7.1 and 4.7.2 below.

4.7.1 RES-Electricity generating facilities excluded from promotion

In November 2010, Amendment (Act No. 330/2010 Coll.) to the Old Promotion Act was adopted. Effective as of 1 January 2011, all RES-Electricity generating facilities that were not connected to the grid were excluded from the promotion – meaning that the so-called "island systems" were no longer promoted. The generating facilities were given a twelve (12) month period to connect to the grid in order to maintain the promotion.

Further, effective as of 1 March 2011, the scope of promotion of new solar power plants was drastically limited. Promotion remained available only for sources integrated into buildings with power not exceeding 30 KWp. Already operating generating facilities were not affected.

Under the Promotion Act, "island systems" not connected to the grid by no later than 31 December 2012 are not promoted.

Under the Promotion Act, there is no promotion for electricity produced in solar power plants put into operation after 31 December 2013.

4.7.2 Tax on solar energy

Under the Old Promotion Act, solar energy produced from generating facilities that were put into operation between 1 January 2009 and 31 December 2010 was subject to the new tax. The tax was introduced for a definite period of time beginning on 1 January 2011 and ending on 31 December 2013. The rate of the tax amounted to twenty-six percent (26%) of the feed-in tariff and twenty-eight percent (28%) of the green bonus, both without VAT. The obligor was the energy producer. The tax was deducted by the respective transmission or distribution grid operator from the due feed-in tariff or green bonus and paid to the authorities. This means that the energy producers would receive reduced promotion for the produced energy. RES-Electricity generated from facilities using solar energy with installed capacity of up to 30 KW which are placed on the roof or wall of a building connected with the ground by a solid base were excluded from the tax on solar energy.

The Promotion Act took over the wording of the provisions on tax on solar energy from the Old Promotion Act for the remaining period until 31 December 2013 with two minor modifications:

- the tax was deducted from the due feed-in tariff by the Mandatory Buyer or the green bonus by the "market operator" and paid to the authorities; and
- facilities generating RES-Electricity from solar energy and with installed capacity of up to 30 KW were excluded from the tax on solar energy.

The Amendment to the Promotion Act prolonged the application of the solar tax. The solar tax now applies to electricity produced from 1 January 2014 for the duration of the right to promotion in solar power plants put into operation between 1 January 2010 and 31 December 2010. The new tax rates are ten percent (10%) for feed-in tariffs and eleven percent (11%) for green bonuses.

4.8 Support scheme for cogeneration

4.8.1 Promotion Act

From 1 January 2013, cogeneration of energy and heat is regulated by the Promotion Act. The Promotion Act also enacts the right of preferential connection to the grid system, provided that there is compliance with the access (technical) conditions. In its price decisions, the ERO determines the value of "annual green bonuses for electricity generated in cogeneration plants ("**Cogeneration Green Bonus**"). The Cogeneration Green Bonus is paid by the market operator to which the cogeneration plant is connected. A certificate of origin of electricity from cogeneration issued by the Ministry of Industry and Trade is required in order to be eligible for the payment of the Cogeneration

Green Bonus. The Cogeneration Green Bonus can be combined with the Green Bonuses or the promotion scheme for secondary sources of energy.

In addition, if the producer of electricity in a cogeneration plant existed in the form of a joint stock company (*a.s.*), it needed to either have book entry shares (*zaknihované akcie*) or transform its paper shares to a book entry form by 30 June 2014, at the latest, in order to remain eligible for promotion. As of 1 July 2014, electricity from cogeneration plants produced by joint stock companies with other than book entry shares is no longer promoted.

4.9 Guarantees of origin for RES-Electricity

Under the Promotion Act, if the producer of electricity requests, the operator of the electricity market will issue a "guarantee of origin of RES-Electricity" (not to be confused with the "certificate of origin of electricity from cogeneration"). The Promotion Act recognises guarantees of origin of RES-Electricity issued in other Member States as guarantees of origin of RES-Electricity issued under the Promotion Act.

5. Grid Connection

5.1 Access of RES-Electricity generating facilities to the electricity grid

The Promotion Act keeps the principle of the Old Promotion Act that the operators of the transmission/distribution grid, within the area covered by their licence, are obliged to prefer RES-Electricity generating facilities in connecting to the transmission/distribution grid if the RES-Electricity producer applies for the connection, complies with the prescribed conditions and such connection is technically possible, i.e. there is available capacity on the grid and the connection does not have a negative impact on the grid. In spring 2010, the operator of the transmission grid (ČEPS, a.s.) asked the operators of the distribution grids to temporarily discontinue granting such approvals to electricity generating facilities producing electricity from intermittent sources, in particular solar and wind power plants, on the grounds of potential risk to the grid security. On 21 December 2011, the transmission grid operator (ČEPS, a.s.) issued a news release that "*it is possible to connect new electricity generating facilities using intermittent sources (solar and wind power plants) with the total capacity of up to 65 MW to the electricity grid of the Czech Republic*." The transmission grid operator has not issued any updates to this news release. As of 31 December 2013, RES-Electricity generating facilities amounted to approximately fourteen point five percent (14.5%) of the total installed capacity of electricity generating facilities connected to the transmission/distribution grid in the Czech Republic.

5.2 Liability and responsibility for connection and/or capacity upgrades, improvements or expansion of the grid

The RES-Electricity producer is obliged to share the costs of the grid for connection to the grid and for ensuring the required reserved capacity. The ERO's Regulation No. 51/2006 Coll., on conditions for access to the grid, sets down the amounts the producer has to pay as its share in the "costs associated with grid connection and ensuring the required reserved capacity."

5.3 Special allowance/tolerance for intermittent generation when determining balancing charges in case of unscheduled deviations

Under the Promotion Act, in case of RES-Electricity producers with promotion in the form of feed-in tariffs, the Mandatory Buyers are required to accept liability for any unscheduled deviations. In case of Green Bonuses, if the RES-Electricity producer is not a settlement entity (*subjekt zúčtování*) or has not transferred the liability for unscheduled deviations to another settlement entity, the RES-Electricity buyer is liable for any unscheduled deviations. The Energy Act defines the "settlement entity" as a natural person or a legal entity for which the market operator provides,

on the basis of an agreement on the settlement of unscheduled deviations, the assessment and settlement of unscheduled deviations. The dispatch control centres of the transmission/distribution grid operators may temporarily restrict the production of electricity by electricity generating facilities to the extent necessary, provided that both the following conditions are met: (i) the safe and reliable operation of the grid or any of its parts is in jeopardy; and, at the same time, (ii) all available market mechanisms provided for by the market operator and the transmission system operator have been employed.

Apart from states of emergency or threatened emergency, if the competent dispatch control centre temporarily restricts the production of electricity by RES-Electricity generating facilities, the relevant generating facilities will be compensated by the grid operator. The compensation will be equal to the "total income which the RES-Electricity producer would have generated, had the production not been restricted, after deducting the costs of the production of electricity which has not been produced." Any potential disputes regarding the amount of the compensation will be resolved by the ERO.

6. Constraints to PPAs and Support to RES-Electricity

In the Czech Republic general legal requirements for Power Purchase Agreements (PPAs) are set out in the Energy Act and in the Rules for the electricity market (ERO's Regulation No. 541/2005 Coll.). Further, there are also limitations under EU and Czech anti-trust law and other laws of general application. Legal requirements of the PPAs are: (i) determining the party liable for unscheduled deviations; (ii) enumeration of supply points; (iii) forms of payment for electricity supply; (iv) length of the period of notice, of three (3) months at the maximum; (v) right of the customer to withdraw from the PPA in case of non-fulfilment of contractual obligations by the supplier or in case of non-approval with the suggested changes in contractual terms; (vi) ways of informing the customer of the suggested changes of contractual terms and notice regarding the right of the customer to withdraw from the PPA in case of non-approval with the suggested changes in contractual terms; and (vii) duration of the PPA. If the PPA does not satisfy all the listed legal requirements, it is considered valid only if, and as long as, the customer does not raise the question of its validity.

In a state of emergency or to prevent a state of emergency, all the electricity market participants are required to accept limitations in electricity consumption and supply. In these situations there is no right to claim damages or the loss of profit.

Regarding support to RES-Electricity, in general, the EC Treaty and the Energy Community Treaty prohibit state aid. However, support for the production of RES-Electricity in accordance with the conditions set out in the Commission's new Guidelines on State Aid for Environmental Protection and Energy 2014 – 2020 adopted on 7 April 2014 is considered as compatible with the common market.

7. Carbon Credits

The Czech Republic ratified the Kyoto Protocol as an Annex 1 party. The necessary framework for obtaining carbon credits has been implemented into Czech law.

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Main permits required for RES-Electricity generating facilities

Environmental permit	Preliminary assessment phase and possibly Environmental Impact Assessment ("**EIA**") analysis. Works must commence within five (5) years after permit becomes final and binding.
Building permit	Optional preliminary building permit valid for one (1) year. Building permit: Environmental permit, if required, must be enclosed with application for building permit. Works must start within two (2) years from permit becoming final and binding. Permit can be extended only once for a period of two (2) years. Operation permit must be applied for within ninety (90) days after completion of construction work.
Authorisations under Energy law/right (concession) to exploit natural resources	Only relevant regarding construction of wind farms, for which participation in a prior tender procedure is required.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	Different procedures depending on whether small power plant (between 0.5 MW and 50 MW of installed capacity) or power plant with more than 50 MW installed capacity.
PROMOTION SCHEME	
Outline	Mandatory Off-Take and Feed-in Tariff (cogeneration technology is exempted, though indirectly subsidised). Quantity of electricity and duration of mandatory off-take determined by regulator ("**HEO**") for each RES-Electricity technology, except for wind power. Mandatory off-take system is being revised, it is expected that a new system will be discussed and adopted by the end of 2016. Wind power: tender process with bids assessed on the basis of proposed mandatory off-take price, duration of mandatory off-take, and annual amount of RES-Electricity benefiting from mandatory off-take. The tender process (hence the establishment of new wind power facilities) is currently not available (or possible) in Hungary.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	Yes
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	Generally, the generator bears the costs of grid connection and grid reinforcement. However, if an installation generates more than ninety percent (90%) of its electricity from RES, the grid connection fee cannot exceed fifty percent (50%) of the actual value of the investment required for connection.

Special allowance/tolerance for intermittent generation in relation to balancing charges	Yes
CARBON CREDITS	
Status	Ratified Kyoto Protocol, as an Annex 1 Party. Necessary legal framework already adopted into national law.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations governing RES-Electricity in Hungary

- Act LXXXVI of 2007 on electric energy ("**Electricity Act**") sets out the major principles regarding the utilisation of energy from renewable sources.
- Government Decree No. 389/2007 (XII. 23) ("**Off-take Ordinance**") sets the mandatory off-take rates and off-take prices for electricity generated from renewable resources or waste and for cogenerated electricity.
- Government Decree No. 382/2007 (XII. 23) sets the licensing procedures for construction of electricity facilities.
- Government Decree No. 285/2007 (X. 29) specifies measures to be taken in the event of a serious failure in the electricity system or an emergency in electricity supply.
- Government Decree No. 273/2007 (X. 19) provides enforcement mechanisms for provisions of the Hungarian Electricity Act.
- Government Decree No. 309/2013 (VIII. 16) regulates the guaranteeing of origin of electricity generated from renewable sources or highly effective cogeneration production.
- Decree of the Ministry of National Development No. 64/2013 (X. 30) regulates the framework of setting the electricity network charges.
- Decree of the Hungarian Energy and Public Utility Regulatory Authority No. 4/2013. (X.16) regulates the electricity network charges and their application.
- Decree of the Hungarian Energy and Public Utility Regulatory Authority No. 7/2014 (IX. 12) ("**Network Connection Decree**") governs financial and technical aspects of connection to the public utility electricity network.
- Decree of the Ministry of Transport and Economy No. 110/2007 (XII. 23) regulates the method for calculating the amount of electricity and consumable heat from high efficiency combined heat and power generation.
- Decree of the Ministry of National Development No. 63/2013 (X. 29) regulates the off-take obligation of an electricity transmission system operator and the calculation of distribution fees ("**Allocation Decree**").
- Decree of the Ministry of Transport, Telecommunication and Energy No. 33/2009. (VI. 30) on the terms and conditions of the invitation to tender serving the establishment of wind power station capacity, the minimum substantial requirements of the tender and rules of the tender procedure ("**Decree 33/2009**").

1.2 Decree of the Hungarian Energy and Public Utility Regulatory Authority No. 4/2013 (X. 16) MEKH on system usage fees. Expected changes

1.2.1 National Energy Strategy

Under Hungary's National Energy Strategy up until 2030, Hungary will aim at ensuring the long-term security of energy supplies and increasing the share of renewable sources in its electricity generation mix, particularly biomass, but

also notes that fossil fuels, mainly natural gas, will be necessary for future generations. Developing further nuclear energy capabilities was also outlined as an option to cover demand.

The National Energy Strategy stipulates that the construction of new power plants will be required to replace those that will become obsolete in the future. The most realistic scenario envisaged is a mix of "nuclear-coal-renewable" energy. This scenario forecasts the installation of 2,000 MW nuclear and 440 MW coal fired power generation capacities between 2010 and 2050, and an increase of the share of renewable energy in the energy mix up to fifteen percent (15%) until 2030 and up to twenty percent (20%) by 2050. Despite the declared goal to increase the share of RES-Electricity, Hungary is still far from these declared percentages due to the unfortunate delay in enacting a new RES-Electricity promotion system and the current unavailability of wind energy tender procedures.

The strategy also calls for rebuilding the government's role in Hungary's energy affairs, asserting that strengthening the state role is the only way to meet the goals of the strategy, among them to guarantee the energy supply of households at affordable prices, according to the Ministry of National Development. In the meantime, the Government commenced its nuclear development project based on a Hungarian-Russian interstate agreement, which would provide 2x1,200 MW base-load electricity requiring accompanying balancing (system reserve) capacities in Hungary. Hence, given the volatile nature of RES-Electricity production, this new circumstance may bring into question the need for further development of RES-Electricity capacities, or at least underscore the requirement to develop more efficient energy storage facilities. Furthermore, the recent communication from the EU Commission entitled "Guidelines on State aid for environmental protection and energy 2014-2020" (2014/C 200/01) with its moderate goals for RES-Electricity may also affect the Government's dedication to increasing subsidies for new RES-Electricity capacities, although the Ministry of National Development is currently still assessing Hungary's possibilities in this respect.

1.2.2 The new mandatory off-take conception

Some years ago, the Hungarian Government elaborated a new "regulation conception" for a brand new system called "MeTáR" (*Megújuló Támogatási Rendszer* – renewable subsidy system) to replace the still-existing mandatory off-take system for heat and electricity generated from renewable and alternative energy sources. According to plans, the new MeTáR system was to come into force in 2013. However, the whole enactment process is still delayed. As of the date of publication of this guide, there remains a question as to whether MeTáR will be implemented, or a totally new conception will be developed to govern RES-Electricity subsidies in the future. The Hungarian Secretary of State responsible for climate policy stated in a press interview that the enactment process is expected to restart in the spring of 2016.

Currently, the only known public document is a concept of the new regulatory system. The conception lists the main problems of the existing Hungarian mandatory off-take system and how these will be cured under the proposed new MeTáR system. According to the concept, the currently existing mandatory off-take regime primarily subsidises electricity generation, which itself does not foster heat production. Under the MeTáR system, this concept will be replaced and useful heat production will be primarily subsidised. The new concept identifies as another deficiency of the existing regime the fact that it does not take into account sustainability (e.g. resulting in the destruction of the forests). The new system intends to remedy this by introducing strict sustainability criteria. Moreover, to avoid the detrimental effects currently experienced as a result of oversized biomass-based power plants, there will be a maximum threshold under MeTáR: 10 MWe for electricity; 20 MWe for heat.

As opposed to the rather uniform prices applied under the existing regime, the concept also envisages more diverse off-take prices under the MeTáR, which would be supplemented by additional bonuses granted on the basis of certain criteria focusing on the national economy. Furthermore, instead of the present indefinite off-take term, the MeTáR will introduce a unified fifteen (15) years subsidy scheme.

The concept also promises to set minimum efficiency requirements in order to exclude low efficiency production from the subsidy scheme.

Apart from the regulation concept, no draft decree(s) or other pieces of legislation have yet been made available to the public and (as noted above) the future of the MeTáR is still uncertain. However, according to the responsible government official, significant changes are expected in this regard in 2016.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

2.1.1 Environmental Law

Investments and developments which involve extensive land use, environmental risks or use of natural resources are subject to issuance of an environmental permit under the EIA procedure. The EIA consists of a preliminary assessment phase, and possibly, an additional and more detailed EIA procedure depending on the type and significance of impact of the envisaged activities on the environment. The EIA procedure is regulated by Government Decree No. 314/2005 (XII. 25) on Integrated Pollution Prevention and Control authorisations and Environmental Impact Assessment.

Upon request, the competent territorial Environmental, Nature Protection and Water Authority ("**Environmental Authority**") must conduct a preliminary assessment procedure in every case. Based on the preliminary environmental study, the Environmental Authority decides what specific procedure of investigation is applicable to the planned investments and developments.

If the preliminary investigation reveals that no significant effect can be expected on the environment, no EIA procedure is necessary, and the environmental permit is not required.

The government decree obliges the investor to initiate an EIA procedure if the development is either: (i) a hydro power plant situated within a natural preservation area of national importance; or (ii) a wind farm with an in-built capacity above 10 MW situated within a natural preservation area of national importance.

Based on the findings of the preliminary assessment phase, the Environmental Authority may decide that an EIA procedure is also necessary in the following cases: (i) a hydro power plant with an installed capacity above 5 MW or located in a zone where water resources are protected; (ii) a geothermal power plant with an installed capacity above 20 MW or located in a zone where mineral, curative or drinking-water resources are protected or in a natural protection area; or (iii) a wind farm or wind turbine with a power output above 600 KW or, if erected within a natural protection area, with a power output above 200 KW.

Once a final and binding decision of the Environmental Authority in the preliminary assessment procedure has been obtained, the investor has two (2) years to submit an environmental impact study and apply for an environmental permit. This deadline may be extended by one (1) year by application to the Environmental Authority. The environmental impact study must address, *inter alia*, the issues identified through the preliminary assessment phase. To launch the EIA procedure, an environmental impact study has to be submitted to the Environmental Authority. In the environmental impact study, it is necessary to summarise the results of the preliminary assessment phase and a detailed description must be provided on the nature, magnitude and geographical extent of the impact factors.

After consultation with other authorities competent for evaluation of the submitted documentation, the Environmental Authority will issue the environmental permit or reject the application. The duration of the permitting procedure varies depending on the nature of the activity or installation, its capacity, and the character of the area where the plant will be located. The formal administrative deadline for the preliminary assessment phase is thirty (30) days (forty-five

(45) days in case a public hearing must be held) after receipt of the application. The environmental permit should be issued by the authority within three (3) months after receipt of the application and the environmental impact study.

The administrative deadline may be suspended if additional information or an expert's opinion is requested. Appeal procedures or other legal actions taken against the grant of a licence may further delay completion of the licensing procedure. The administrative deadlines set out in the applicable laws do not take into account the period of time necessary for the preparation of licensing documentation (e.g. preparation of the environmental impact study which forms the basis of the preliminary assessment decision).

The environmental permit is generally valid for at least five (5) years, but it can also be issued for an indefinite period. If the facility is planned to be used exclusively or primarily to develop or test new methods, the period of validity may not be longer than two (2) years.

The Environmental Authority must withdraw the environmental permit if the relevant operation or the construction / preparatory works have not commenced within five (5) years from the date when the permit became final and binding. The permit will also be withdrawn if the permit holder declares that it does not wish to make use of the environmental permit, and may be withdrawn if conditions have changed "substantially" since the permit was issued.

2.1.2 Building Law

2.1.2.1 PRELIMINARY BUILDING PERMIT

Applying for a preliminary building permit is optional. The purpose of this permit is to clarify whether the construction work complies with applicable laws and basic regulations. The preliminary building permit is valid and binding on the building authority for one (1) year, and if an application for a construction permit is filed within this period without any changes in the prevailing circumstances, then the building authority must issue the construction permit.

2.1.2.2 CONSTRUCTION PERMIT

Construction work may only be carried out on the basis of a final and binding construction permit. The construction permit incorporates the permits from different expert authorities involved in the procedure for issuing a construction permit (e.g. the competent territorial environmental inspectorate, the national public health and medical officer service, the fire protection authority, the cultural heritage authority), but it does not discharge the licence holder from the obligation to apply for other licences prescribed by law.

Article 2 (18) of the Building Act (Act LXXVIII of 1997) defines an energy generation facility as a "special structure" (*sajátos építményfajta*), which requires a permit from a special authority. The local Authority for Standardisation and Technological Safety (a branch of the Hungarian Trading Licensing Office ("**HTLO**")) is responsible for approval of power plants using renewable energy sources. The HTLO is also the competent authority to issue construction permits for the establishment of electricity cables associated with a power plant, for example to connect the power plant to the electricity distribution or transmission network.

The building authority must issue its decision officially within forty-five (45) working days following the receipt of an application for a construction permit. The administrative deadline may be suspended pending receipt of any additional information or an expert's opinion that has been requested. Appeal procedures or other legal actions taken against the grant of a licence may further delay completion of the licensing procedure. The administrative deadlines set out in the applicable laws do not take into account the period of time necessary for the preparation of licensing documentation (e.g. preparation of the environmental impact study on the basis of the preliminary assessment decision).

The construction work must start within two (2) years from the date on which the construction permit becomes final and binding. An application for extension of the construction permit can be submitted to the competent authority prior to the expiry of the permit. The construction permit can be extended only once, for a period of two (2) years.

Please note that the application for a construction permit must be submitted to the HTLO together with an environmental permit if the envisaged facility is subject to such a permit. If the installation is not subject to the EIA procedure, the HTLO shall consult and obtain the approval of the competent environmental authority as an expert authority in the framework of the procedure for issuing the construction permit.

2.1.2.3 OPERATION PERMIT

In order to lawfully occupy and operate the building, the application for an operation permit must be filed with the building authority within ninety (90) days after the completion of the construction work. Non-compliance with these rules may trigger the imposition of fines, the amount of which is calculated on the basis of the value of the relevant building.

2.2 Process for obtaining the right (concession) to exploit natural resources

Generally, according to the Electricity Act, a private entity wishing to exploit natural resources does not require any right to be granted by Hungarian public authorities as a result of a prior tender procedure. As an exception, the construction of wind turbines and wind farms requires the participation in a prior tender procedure under the Electricity Act. Accordingly, the HEO must conduct an analysis each year regarding the balance, regulation and safe operation of the electricity with the participation of the transmission system operator ("**MAVIR**"). The HEO shall publish a tender notice if, on the basis of the analysis, it is possible to establish new wind energy power plant production capacity. In this respect, the tender notice shall be published in the Official Journal of the European Union and on the official Web site of the HEO at least six (6) months prior to the deadline for the bid submission. The tender notice shall contain detailed instructions for the interested bidders and full particulars of the award criteria. The HEO issued a call for tender on rights to establish wind power station capacity on 28 September 2009, but soon after the Hungarian national election the HEO cancelled the ongoing tender process as requested by the Government. A new tender procedure has not yet been announced, as of the date of publication of this guide. Until the enactment of the MeTáR, which is expected to happen by the end of 2016, it is unlikely that a new tender process will be organised, due to its overlapping scope with the promotion scheme.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

Electricity generation licences are issued by the HEO. Different rules and licensing procedures apply to small power plants (generators having a capacity between 0.5 MW and 50 MW) and to power plants with a capacity of 50 MW or more. For the purposes of making this determination, all commonly-owned power plant units on the same site (as defined in the tax laws) are combined and a "wind farm" is deemed to be one power plant.

The HEO must issue its authorisation if the application is in compliance with the requirements set forth by law.

3.1.1 Licensing procedure for small power plants

Small power plants are subject to a simplified licensing procedure. The HEO issues a unified licence in a single procedure for a definite, but extendable period of time. The operating term of validity is determined at the discretion of the HEO, according to the data provided in the application. The construction deadline may be extended by a maximum of three (3) additional years from the original deadline. If construction does not proceed within this period, the HEO will withdraw the licence.

The licence holder must give two (2) months prior notice to the HEO and MAVIR of the scheduled commissioning of a small power plant.

3.1.2 Licensing procedure for power plants with a capacity of 50 MW or more

A power plant with an inbuilt capacity of 50 MW or more must first obtain from the HEO a licence for the establishment and then a separate licence for the operation of the power plant.

The licence for the establishment is granted for a definite period of time. Upon request, the HEO may extend the term of the licence once, for a term identical to that for which the original licence was granted, but not exceeding two (2) additional years.

Once the construction work is completed, a licence for operation of the power plant must be requested. The generator is only entitled to generate, use and sell electricity based on an operation licence. An operation licence is granted for a definite period of time, which can be extended. The term of validity is determined at the discretion of the HEO according to the data provided in the application.

3.2 Designated/preferred legal form of investment vehicle for RES Electricity investments

Under Hungarian law, a complex small power plant licence may only be obtained by an economic organisation having its seat in Hungary. Furthermore, the holder of the generation licence of a power plant with a capacity of 50 MW or more may only be a limited liability company or a company limited by shares with a registered seat in Hungary.

3.3 Anticipated time frame for issue of licences/authorisations

The HEO is vested with the competence to issue, amend or withdraw the licences required for performing activities which are rendered subject to licences under the Electricity Act. Generally, the HEO shall adopt its decision within sixty (60) days after receiving the application. In the case of wind farms, the tender rules might provide a different time period.

4. Promotion System for the Production of RES-Electricity

The In Hungary, there is currently a feed-in tariff system for promoting RES-Electricity, although as noted in Section 1.2.2 above, this system is anticipated to change in the near future as the Parliament is about to discuss a new promotion system in 2016.

4.1 Applicability of promotion scheme

The quantity of electricity subject to mandatory off-take obligation and the duration of the mandatory off-take are determined by the HEO separately for each energy source and each generation procedure, except for new wind power station capacity that is distributed in the framework of tender proceeding. In this case, the RES-Electricity producer must submit an offer regarding the demanded mandatory off-take price, the duration of the mandatory off-take and the annual amount of energy falling under the mandatory off-take. However, in all cases it is common that the mandatory off-take is maintained for a maximum duration of the payback period of the project.

4.2 General description of promotion scheme

Although the RES-Electricity promotion scheme in Hungary will likely be subject to extensive changes in the near future, currently a RES-Electricity producer who wishes to sell electricity generated from RES or waste or cogenerated electricity (with serious, recent restrictions) or some part of it in the mandatory off-take system must still submit an application to the HEO for determining the duration and the amount of electricity falling under the mandatory off-take system.

The earliest time at which the RES-Electricity producer may submit the application is concurrently with the application for the relevant HEO licence.

In addition to the general annexes to the application set out in the applicable laws, the RES-Electricity producer must attach to its application all the relevant documents evidencing any other support (e.g. investment support, tax exemption or tax allowance or any other direct price subsidy of preferential connection fee) the RES-Electricity producer has already received, is currently using or intends to use in the future.

The HEO shall determine the duration of the mandatory off-take on the basis of the return of investment period. The HEO shall calculate the return time by energy source and generation procedure, taking into account the (domestic and international) data of investment implemented and operated in accordance with the rational choice of seat, the principle of lowest cost, the best available technology and the prices defined in the Off-take Ordinance. Furthermore, if the RES-Electricity producer also receives other support of the sort referred to above, the HEO shall modify the return time on the basis of the current value of the ratio of such support to the total costs of investment.

MAVIR, as the primary off-taker of the electricity falling under mandatory off-take, has the obligation to off-take all such electricity. The eligibility for mandatory off-take shall terminate with expiry of the duration defined for mandatory off-take or when the installation has sold all the quantity of electricity benefiting from the mandatory off-take.

According to a recent change to the Off-take Ordinance, a RES-Electricity producer is prohibited from selling electricity in the mandatory off-take system if it does not possess a valid guarantee of origin classification for the RES-Electricity, in accordance with Government Decree No. 309/2013 (VIII. 16).

4.2.1 Support scheme for wind energy utilisation

Decree 33/2009 introduced a modified support scheme for wind power station capacity to be distributed in the framework of a prior tender procedure. The tender proceeding is divided into two parts. First, in a so-called “qualification phase,” it is assessed whether the bidder is not excluded from the tender proceedings. Secondly, in a so-called “evaluation phase,” the offers submitted are assessed regarding the demanded mandatory off-take price, the duration of the mandatory off-take and the annual amount of energy falling under the mandatory off-take through the application of a comprehensive mathematical formula. Therefore, under this support scheme, the RES-Electricity producer must define its requested mandatory off-take price, and the prices provided in the Electricity Act and Off-take Ordinance are not applicable hereto. Furthermore, a bid for establishing a power plant without participating in the mandatory off-take system is automatically considered as the winning bid in the tendering proceeding, provided that it satisfied the qualification criteria. In this case there will be no further evaluation. Currently, the support scheme for wind energy utilisation is not available, and Decree 33/2009 is also likely to be modified soon after the MeTáR (or any similar new subsidy scheme) is elaborated.

4.2.2 Additional requirements for energy generated by using biomass

In addition to the conditions mentioned above, the RES-Electricity producer must also make a statement showing that the biomass used as fuel for the RES-Electricity generation is not suitable for human food supply. The food safety authority may randomly check whether the quality of the biomass complies with the statement.

If the electricity is generated using biomass, the RES-Electricity producer shall also certify that the biomass derives from sustainable forest management. This shall be ascertained by a certificate issued by the forest authority if the biomass is derived from the territory of the European Community, or by the Forest Management Certificates of the Forest Stewardship Council if the biomass is derived from a non-EU country. In the mandatory off-take system, electricity may not be produced from lumber-grade or higher grade logs.

The RES-Electricity producer producing electricity from biomass or biogas may begin to sell electricity under the mandatory off-take on the basis of the decision of the HEO after the RES-Electricity producer has plausibly demonstrated to the HEO and MAVIR that the efficiency rate of the power plant unit exceeds the following values:

CONDENSATION PRODUCTION	PRESCRIBED EFFICIENCY RATE[1]
Biomass power plant unit	30%
Biomass power plant unit with mixed fuel	32%
Biogas power plant with a power output above 500 kW	35%
Biogas power plant with a power output below 500 kW	32%
Biogas power plant unit with mixed fuel	40%

The main principles of the mandatory off-take obligation are regulated by the Electricity Act.

Pursuant to the Electricity Act, there is a differentiated purchasing obligation regime that takes into account energy sources, generating procedures, nominal generating capacity, the efficiency and cost-effectiveness of the energy conversion process and the time of construction of power plants.

The Electricity Act also provides that the provisions governing the purchasing obligation in relation to RES-Electricity generated from wind energy shall be determined separately.

To give effect to the purchasing obligation, the Electricity Act obligates MAVIR to operate and balance a so-called "green electricity balance circle" for the settlement of accounts of electricity under the mandatory off-take. All producers of electricity subject to the mandatory off-take are required to enter into an agreement regarding this special balance circle according to MAVIR's standard service agreement. The Electricity Act and the relevant Government Decrees provide that all electricity traders selling electricity directly to end-customers (excluding traders selling electricity only to customers eligible for universal service) are obliged to pay a certain levy consistent with the quantity of electricity they sell to end-customers not eligible for universal service. Similarly, users who import their electricity must pay the same levy consistent with the quantity of electricity they use for their own consumption.

The above provisions together indicate that MAVIR off-takes the RES-Electricity under its purchasing obligation on a regulated price level and sells it on the Hungarian Power Exchange ("**HUPX**"). MAVIR also ensures that traders and/or users procure the difference between the RES-Electricity's regulated purchasing price and its selling price on HUPX by paying the appropriate amount of levy corresponding to the proportion of electricity they sell to end-customers/the quantity they use for their own consumption, as a proportion of the total Hungarian electricity sold to users/consumed (not including electricity sold to customers eligible to universal service).

The detailed terms and conditions of the off-take obligation of renewable electricity are regulated by the Off-take Ordinance.

1 The prescribed efficiency rates of the nominal heat and electricity generator is measured at fifteen degrees (15°) temperature, by 1.013 bar pressure and sixty percent (60%) relative humidity.

4.3 Procedure for determining the feed-in tariff

The Electricity Act defines the maximum initial purchase price of RES-Electricity that is subject to the mandatory off-take as k*24.71 HUF/KWh (excluding VAT), where k is the annual indexation factor and 24.71 HUF is the initial purchase price defined for 2007.

In the framework of the Electricity Act, the Off-take Ordinance applies differentiated off-take prices based on, e.g. the installed capacity, energy source and date of the HEO resolution regarding the quantity and the duration of the mandatory off-take except for new wind power station capacity that is allocated in the framework of a tender proceeding. These prices are indexed each year by the HEO. The currently applicable off-take prices (for 2016) were published in December 2015 and are the following:

MANDATORY OFF-TAKE PRICES FOR ELECTRICITY GENERATED FROM RES APPLICABLE FROM 1 JANUARY 2016[2]			
POWER PLANT UNIT	PEAK PERIOD HUF/KWH[3]	LOW PERIOD HUF/KWH[4]	DEEP LOW PERIOD HUF/KWH[5]
Solar power plant unit	31.77	31.77	31.77
Power plant with a capacity less than 20 MW (except solar power plant and except hydro power plant with a capacity of 5 MW or more)	35.50	31.77	12.96
Power plant with a capacity of 20 MW or more, but less than 50 MW (except wind power plant)	28.39	25.42	10.36
Wind farm with a capacity of 20 MW or more, but less than 50 MW	35.50	31.77	12.96
Power plant that also includes used equipment	22.07	14.13	14.13
Hydro power plant with a capacity of 5 MW or more and any other power plant with a capacity of 50 MW and more	22.07	14.13	14.13

4.3.1 Revision and/or indexation of the feed-in tariffs

The mandatory off-take prices applicable for a specific installation are subject to an annual indexation, based on the consumer price index last published by the Central Statistics Office relative to the same period of the previous year, subject to an efficiency reduction of one percent (1%).

Pursuant to the Off-take Ordinance, based on the initial price and index formula prescribed by the Electricity Act, the HEO shall adjust the mandatory off-take prices applicable for the year in question and publish these on its Web site preceding the year in question. Hence, the above prices have already been subject to indexation.

4.4 Other financial incentives for RES-Electricity

4.4.1 General description of incentives

The most important subsidy programmes currently applicable are as follows: (i) development assistance from the EU; (ii) the Environmental and Energy Efficiency Operative Programme (*Környezeti és Energiahatékonysági Oper-*

2 The figures are valid for cases where the resolution of the HEO regarding the quantity and the duration of mandatory off-take was issued after 1 January 2008, the date of entry in force of the Off-take Ordinance.
3 The prices exclude VAT.
4 The prices exclude VAT.
5 The prices exclude VAT.

atív Program – KEHOP); (iii) financial funds from trading of Hungary's Assigned Amount Units issued pursuant to the Kyoto Protocol; (iv) preferential loans from the so-called "Energy Efficiency Loan Fund," and (v) preferential grid connection. Special tax allowances are also worth noting.

Apart from KEHOP, the measures of the Rural Development Programme (*Vidékfejlesztési Program*), as another operative programme aiming at using the resources of the EU Cohesion Policy 2014-2020, also support the propagation of renewable energy use in Hungary. The objective of this plan is to ensure that rural areas intensively participate in the development of the bio energy segment apart from producing the necessary raw materials. This plan supports the production of RES in three strategic directions: liquid biomass (bioethanol and biodiesel), solid biomass (wooden and soft stemmed energy plantation) and biogas. The subsidy resources are provided by the European Agricultural Fund for Rural Development, which provides assistance to competitive production of biomass and its processing to primary semi-finished products and the producer's own energy supply.

A third EU co-financed operative programme, the Economic Development and Innovation Operative Programme (*Gazdaságfejlesztési és Innovációs Operatív Program* – GINOP) is also worth mentioning as this programme provides financial support among others for research and innovation in the territories of energy efficiency and the generation of energy from renewable energy sources.

There was also a special fund called the Energy Efficiency Loan Fund (*Megújuló energiaforrás hasznosítására irányuló beruházások finanszírozását szolgáló pénzügyi konstrukció KEOP-2013-4.8.0*) financed by the EU Cohesion Policy 2007-2013 established to make preferential loans available to RES-Electricity producers. A similar but revised financial instrument is expected to be introduced within the framework of the KEHOP 2014-2020.

In Hungary, certain "extraordinary" taxes have recently been imposed on energy market players. Though there are no special tax exemptions from general tax paying obligations available to RES-Electricity producers, certain tax exemptions and allowances are granted to them from these new extraordinary taxes.

The tax rate of the so-called "Robin Hood" tax is thirty-one percent (31%) of the positive tax base; that is the profit before tax with certain deductions and increases defined by law. RES-Electricity producers selling in the mandatory off-take with an inbuilt capacity of or below 50 MW are not subject to this tax.

The so-called "energy tax" is HUF 310/MWh. This tax is payable by producers of electricity produced for their own consumption, but RES-Electricity is fully exempted.

Finally, the so-called "public utility line tax" introduced by Act CLXVIII of 2012 is HUF 125/meter, and payable by those licensees whose utility lines are for the supply of consumers (electricity transmission and distribution systems are included). Hence, generators' lines connecting to the national grid are generally not subject to this new tax.

4.4.2 Criteria governing entitlement to financial incentives

4.4.2.1 KEHOP

Investors may access subsidies through a competitive tender application system. Generally, the ratio of subsidy as compared to the total project value (subsidy-intensity) in case of tenders aimed at utilisation of renewable energy sources may be between ten to fifty percent (10-50%) but the final subsidy intensity is determined per project after a cost efficiency analysis.

Within the framework of the KEHOP 2014-2020, electricity generation from RES and investments enhancing energy efficiency are also promoted. According to government officials, only in the first half of 2016 tenders with a total value exceeding EUR 1 billion are expected to be announced in this area. The RES technologies to be promoted are biogas, biomass, solar energy, hydro energy and geothermic energy. The subsidies are expected to support non-household size generation capacities connected directly to the public electricity grid. The promotion of cogenera-

tion technologies are intended to be a priority. The most important performance indicator when evaluating the planned projects will be the achievable decrease of the primary energy consumption.

If the project receives other kind of support (e.g. refundable subsidy and/or interest subsidy, energy efficiency credit, the subsidy content of the development tax relief), this shall also be taken into consideration when defining the support intensity of the project.

4.4.2.2 GREEN INVESTMENT SCHEME

Government Decree No. 323/2007 (XII.11) on certain provisions of enforcement of the Act LX of 2007 on the enforcement of the UNFCCC and the Kyoto Protocol has created the green investment scheme.

The aim of the Green Investment Scheme (*Zöld Beruházási Rendszer*) is to provide subsidies to green installations. The financial fund for the subsidy is secured by the trading of Hungary's Assigned Amount Units issued pursuant to the Kyoto Protocol. Pursuant to Hungarian law, the price received by Hungary for the transfer of these Assigned Amount Units in the first undertaking period must be used to subsidise the domestic emission reduction projects.

The subsidies for green installations are granted by a tender proceeding published by the Ministry of National Development ("**Ministry**"). The tender must be published on the official Web site and in the Official Journal of the Ministry. The fact of publishing the tender shall also be posted in two national newspapers.

4.5 Support scheme for cogeneration

Cogenerated electricity generally was also covered by the mandatory off-take system, however, from 1 July 2011 all cogeneration power plants have been excluded from mandatory off-take, except for those generating electricity from renewable source or waste. This is a significant restriction when compared to the previous regime and also to the previously published plans of the government. The governing motive of the new concept regarding cogeneration technology and its present omission from the mandatory off-take supporting scheme of electricity is that in the future heat generation would be supported rather than the cogenerated electricity.

To remedy this situation, a subsidy regulation has been introduced. According to this, generators up to a maximum capacity of 50 MW can sell their electricity in the organised market. In order to enable these generators to possibly sell their electricity also during this transitional period, a special price has been set for these cogeneration plants; thus, this prioritised price also contains a kind of minimal subsidy. This prioritised off-take is also controlled by MAVIR in the form of a separate balance circle operated for this purpose. Another source for centrally subsidising the cogeneration power generators is a special levy included in the electricity price of end users (excluding users eligible to universal service). The support of heat generation in the future rather than the cogenerated electricity as being the governing motive of the present situation (i.e. for omission of the cogeneration technology from the mandatory off-take supporting scheme of electricity) is the same as declared by the regulation conception also published for MeTáR as well. Hence, the new support scheme for cogeneration (if any) is expected to come as part of or together with MeTáR expectedly by the end of 2016.

4.6 Guarantees of origin for RES-Electricity

Generators of electricity from renewable sources or waste or electricity cogenerated with heat may request from the HEO the issuance of a certificate guaranteeing the origin of such electricity generated in a given period (at least one (1) month) until the last day of the sixth (6^{th}) month following the generation of such electricity or, in case of cogeneration, until the last day of the thirteenth (13^{th}) month, which the HEO must issue within sixty (60) days.

The detailed provisions governing the guarantee of origin for RES-Electricity were recently changed with the entry into force of Government Decree No. 309/2013 (VIII. 16). This decree also repealed all provisions of the Off-take Ordinance related to guarantees of origin.

As a kind of prerequisite, the HEO declares, upon the request of the generator, whether the generating unit is capable of providing electricity generated from renewable sources or highly effective cogeneration production (qualification).

The application for the guarantee of origin may be submitted with the application form published on the HEO's official Web site (this can also be filed electronically) while the mandatory annexes of the application are listed by Government Decree No. 309/2013 (VIII. 16).

The guarantees are recorded, administered and managed by the HEO responsible for the operation of the guarantee of origin registry. An important new rule is that the HEO should be informed within five (5) days of the utilisation of the guarantee of origin. The HEO monitors the utilisation, the transfer and the traffic account of the guarantees of origin.

In case of a request, the HEO approves guarantees of origins issued in other EEA member countries or Energy Community member countries.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

A power plant may either be connected to the national transmission network or to the distribution network depending on the voltage level of the connection point. As an authorised derogation to the general principle of non-discrimination, the transmission operator and the distribution system operators are obliged, in relation to the operation of and access to networks, to give priority to generating installations using renewable energy. However, the actual content of such priority right is not specifically defined in the law.

5.2 Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid

Generally, the RES-Electricity producer must bear the costs of technical adaptations to the public utility system, such as grid connections and grid reinforcement, which are necessary in order to integrate the new generators feeding RES-Electricity into the interconnected distribution and transmission network. The Network Connection Decree provides that the grid connection fee to be paid by the power plant is subject to the agreement entered into between the network operator and the operator of the power plant. However, generators using renewable energy sources enjoy the following preferences:

- if the power plant uses only solar, wind, geothermic or hydro energy for the purpose of electricity generation, the grid connection fee cannot exceed fifty percent (50%) of the actual value of the investment necessary for the connection;
- if the power plant uses at least seventy percent (70%) of renewable energy sources (solar, wind, geothermic, hydro energy or biomass/biogas) for the purpose of electricity generation (with respect to the total operational hours within a given year) the grid connection fee cannot exceed seventy percent (70%) of the actual value of the investment necessary for the connection; or
- if the share of RES-Electricity (generated from solar, wind, geothermic, hydro energy or biomass/biogas) in the facility's generation is ninety percent (90%), the grid connection fee cannot exceed fifty percent (50%) of the actual value of the investment necessary for the connection.

The discount on the grid connection fee shall be taken into account as a subsidy when determining the period of purchase obligation. The power plant may waive the right to the grid connection fee discount with respect to the sale of electricity within the scope of the purchase obligation. However, the ranking criteria of the recent call for tenders on rights to establish wind power station capacity does not refer to the grid connection discount as being a factor to be considered when determining the requested feed-in tariffs.

Please note that signing the grid connection agreement is conditional upon having a valid environmental and building permit.

5.3 Special allowance/tolerance for intermittent generation in relation to balancing charges for unscheduled deviations

Scheduling obligations of RES-Electricity producers are primarily regulated in: (i) the Off-take Ordinance; (ii) the Allocation Decree; and (iii) in the Commercial Code of the Hungarian grid. The Off-take Ordinance makes special allowance/tolerance for intermittent generation when determining balancing charges in case of unscheduled deviations. Generators are obliged to provide MAVIR, as the operator of the green balance circle, with annual generation forecasts with monthly breakdowns until the seventh (7^{th}) working day of each calendar month for the following twelve (12) months. Until the seventh (7^{th}) working day of each calendar month, RES-Electricity producers are obliged to provide MAVIR with monthly generation schedules for each day of the following month. Additionally, until 10:00 a.m. each day after the eighth (8^{th}) working day of each calendar month, generators are also entitled to amend the daily schedule for each following day until the end of the following month. Control surcharges for any deviations are calculated by MAVIR until the eighth (8^{th}) working day of each calendar month.

The Off-take Ordinance provides the widest tolerance (i.e. allows the biggest deviation from the schedules provided) in the case of wind farms; the control surcharge is due only after a deviation of +/- fifty percent (50%) or more.

As from 1 April 2016, each RES-Electricity producer is obliged to provide daily generation schedules and to pay control surcharges for the deviations from the daily forecasts.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all the jurisdictions is the prohibition of incompatible state aid, which is contained both in the EU Treaty and in the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission's new Guidelines on State Aid for Environmental Protection and Energy, adopted on 9 April 2014, be considered as compatible with the common market.

In Hungary, for those RES-Electricity generators who sell energy under the mandatory off-take system, the standard contract terms of MAVIR shall be applied. The few RES-Electricity generators who, although entitled to sell energy under the mandatory off-take system, decide not to benefit from this scheme may instead sell energy under bilateral contracts, which are governed by the Hungarian Civil Code and the general principles of law, including competition rules.

As a practical limitation, the usual competition law regulations relating to the dominant position of the seller/purchaser shall be taken into consideration.

Under Hungarian law, if the buyer of electricity is subject to Hungarian public procurement law, publication and notification requirements must also be observed.

7. Carbon Credits

Hungary has ratified Annex I to the Kyoto protocol.

Hungary has already adopted the necessary legal framework for obtaining carbon credits for RES-Electricity installations, which is set out in Government Decree 323/2007 (XII.11) on the implementation of the Act LX of 2007 on the implementation framework of the UN Framework Convention on Climate Change and the Kyoto Protocol thereof.

As EU emission regulations are becoming more and more rigorous, Hungary has submitted and received approval for a temporary derogation request to the European Commission, which temporarily enables electricity generation facilities in Hungary to obtain a certain amount of carbon dioxide allowances for free. Therefore, certain power generation facilities have received a portion of the free allowances allocated to Hungary during the next period. At the same time, the value of the freely allocated allowances has to be used for modernisation of electricity generation.

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Main permits required for RES-Electricity generating facilities

Environmental permit	Environmental Impact Assessment ("**EIA**") procedures applied by the Ministry of Environment and Spatial Planning ("**Ministry**"). EIA procedure is mandatory for thermal power stations and other combustion installations with a heat output of 50 MW or more. In other cases, EIA procedure may be applicable. The Ministry issues water permits through a decree. The Ministry may also delegate powers under which the municipalities and the competent authority may issue the water permits.
Building permit	Issued by either the municipalities or by the Ministry (the Ministry issues a construction permit for construction of hydropower dams and power plants with power of 10 MW or more).
Authorisation under Energy law/right (concession) to exploit natural resources	The Energy Regulatory Office ("**ERO**") issues permits for the construction and operation of new generation capacities. Tendering procedures for the construction of facilities may be launched only if a licensing procedure has not resulted in the building of sufficient capacity to ensure security of supply or to meet environmental targets.
Right (concession) to exploit natural resources	A mandatory tender procedure for granting the right to exploit natural resources is applicable only in exceptional cases, when the regular licensing procedure does not apply.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	Electricity Generation Licence to be issued by the ERO, except when capacity does not exceed 5 MW or in the case of generation of electricity for self-consumption.
PROMOTION SCHEME	
Outline	The applicable laws foresee a feed-in tariff promotion system. Furthermore, the ERO has adopted the "Rule on support scheme (On support of generation of electricity from renewable energy sources)".
Other financial incentives	No
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	Yes
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	No specific rules have been published to date.
Special allowance/tolerance for intermittent generation in relation to balancing charges	No
CARBON CREDITS	
Status	Kosovo has not ratified the Kyoto Protocol.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

- Law No. 2010/03-L-184 ("**Law on Energy**") establishes the general principles and rules that govern activities in the energy sector in the Republic of Kosovo.
- Law No. 2010/03-L-201 ("**Law on Electricity**") establishes common rules for performing generation, transmission, distribution and supply of electricity, and for access to interconnections; for the organisation of access to the transmission system and distribution system, and the operation of, and access to the electricity market. This law provides that the Transmission System Operator, KOSTT j.s.c ("**KOSTT**") and the distribution system operator (currently an integral part of Kosovo Energy Corporation j.s.c. ("**KEK**"), see section 1.2 below) shall give priority to generators using renewable energy resources.
- Law No. 2010/03-L-185 ("**Law on the Energy Regulator**") regulates the functioning of the ERO as an independent agency and defines the powers, duties and functions of the ERO, including the conditions for issuing licences to carry out energy activities, procedures for granting authorisations for the construction of new generating capacity, the creation and efficient functioning of competitive energy markets, and the criteria for regulating tariffs and the conditions of energy supply. The ERO is empowered to issue certificates of origin of electricity generated from renewable energy sources.
- Law No. 2011/04-L-016 ("**Law on Energy Efficiency**") regulates the issuance of energy efficiency plans, their preparation, approval and reporting, as well as the determination of roles, duties and responsibilities of the institutions in this regard. Furthermore, this law addresses the obligations arising from the Energy Community Treaty which was entered into by certain countries in South-Eastern Europe in 2005.
- Law No. 2009/03-L-025 ("**Law on Environmental Protection**") and Law No. 2010/03-L-214 (the "**Law on Environmental Impact Assessment**") regulate the protection of the environment and the impact thereon by the construction of new generating capacities.
- Law No. 2011/04-L-012 ("**Law on Fire Protection**") sets forth certain general rules to define protective mechanisms to prevent the causes and spread of fire.
- Law No. 2012/04-L-174 ("**Law on Spatial Planning**") establishes rules to ensure rational spatial planning and development, achieving balance of development and preservation of open space and protection of the environment.
- The "Rule on authorisation procedure for construction of new generation capacities," adopted by ERO on 11 November 2014 ("**Rule on Authorisation Procedure**"), which abrogated the previous and homonymous Rule, establishes the procedure for the authorisation of projects for construction of new generating capacities, new systems for transport and distribution of gas, including interconnector, direct electric-energetic lines and direct pipelines for distribution of natural gas.[1]
- The "Rule on licensing of energy activities in Kosovo," adopted by ERO on 29 August 2011 ("**Rule on Licensing**"), has the general aim of creating a public, transparent and non-discriminatory licensing procedure to promote the establishment of a competitive energy market operation and stimulate investment while ensuring security and stability of the energy sector in Kosovo.
- The Energy Community Treaty, to which Kosovo is a Contracting Party.

The principles contained in EU Directive 2001/77/EC have been implemented into the laws of Kosovo. In particular, principles in respect of the following have been implemented: (i) determination of renewable sources; (ii) determination of preferred producers; (iii) issuance of guarantees of origin; and (iv) feed-in tariffs. Implementing legislation and regulations are, however, for the most part still missing.

1 Note: The Rule contains two different dates regarding the time of adoption, making it not entirely clear when the Rule was actually adopted. The cover sheet is dated 11 November 2014, the recital clause states 11 January 2014.

1.2 Changes in legal and regulatory framework

The main laws (Law on Energy, Law on the Energy Regulator and Law on Electricity) were amended in October 2010. In order to harmonise all acts, decisions and other documents adopted or promulgated in accordance with the new laws, the ERO has adopted the following Rules:

- Rule on licensing of energy activities in Kosovo;
- Rule on authorisation procedure for construction of new generation capacities;
- Rule for the establishment of a system of certificates of origin for electricity produced from renewable energy sources, from waste and cogeneration in combination with heat in a single generating unit;
- Rule on general conditions of energy supply;
- Rule on Transmission System Operator and Market Operator Pricing ("**TSO/MO Pricing Rule**");
- Rule on Distribution System Operator Pricing ("**DSO Pricing Rule**");
- Rule on Regulated Generator Pricing ("**Generation Pricing Rule**");
- Rule on Public Electricity Supplier Pricing ("**PES Pricing Rule**");
- Rule on the resolution of complaints and disputes in the energy sector;
- Rule on disconnection and reconnection of customers in the energy sector;
- Rule on administrative measures and fines;
- Rule on confidential information;
- Rule on taxes; and
- Rule on organisation and operation of the Energy Regulatory Office.

Thereafter, on 29 December 2010, the ERO adopted:

- Rule on the support of electricity for which a certificate of origin has been issued and procedures for admission to the support scheme" ("**Rule for Admission to the Support Scheme**"); and
- Rule for the establishment of a system of certificates of origin for electricity produced from renewable energy sources, from waste and cogeneration in combination with heat in a single generating unit ("**Certificates of Origin Rule**"). On 23 December 2014, the ERO adopted and amended respectively the Rule on the support scheme, abrogating the Rule previously adopted by the ERO on 29 December 2010.

Furthermore, the Government of Kosovo ("**GoK**") has initiated a series of reforms in the energy sector, as well as the privatisation process of both the electricity generation and the electricity distribution and supply business. Within this context, the GoK has appointed the International Finance Corporation ("**IFC**") as its lead advisor for the privatisation and sale of the Electricity Distribution and Supply business ("**KEDS**"), to be established as a separate legal entity following the unbundling of the networks (distribution) and supply (generation) divisions from KEK. In addition, the GoK is still pursuing privatisation of generation capabilities (i.e. Kosovo C, New Kosovo).

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

2.1.1 Energy Law

Under the Law on the Energy Regulator, the ERO issues permits for the construction and operation of new generation capacities. A construction permit issued by the ERO is required for the construction of new energy facilities and direct lines. Together with the application form, the applicant has to submit to the ERO certain documents regarding, *inter alia*, the corporate standing of the applicant, its financial situation, its experience, its management and a feasibility study. The construction of new generating capacity shall be based on either an authorisation procedure or a tendering procedure. A tendering procedure for the construction of facilities may be launched only if an authorisation procedure has not resulted in either: (i) the building of sufficient electricity generation capacity to ensure security of supply or to meet environmental targets; or (ii) adequate energy efficiency or demand-side management measures.

The authorisation procedure is conducted by the ERO. For the tendering procedure there are two possibilities:

- If the Republic of Kosovo controls an electricity generation, transmission, distribution or supply company, the tendering procedure shall be conducted by the ERO (which may delegate the management of the tendering process to another authority established to ensure independent decision making in procurement).
- The Public Private Partnerships Inter-Ministerial Steering Committee ("**PPP-ISC**") established by the Law on Public Private Partnerships and Concessions in Infrastructure and the Procedures for Their Award[2] ("**PPP Law**") is responsible for all other cases.

The appropriate authority shall make available to the successful bidder or, as appropriate, shall assist in obtaining such rights (permits) related to the project site, as may be necessary for the implementation of the project.

The authorisation procedure is quite similar to the procedure for obtaining a licence for the generation of electricity and may be initiated simultaneously with the application for the permit for construction and operation of new generation capacities.

In particular, the ERO is obliged to notify the applicant as soon as all required documents and information have been submitted and must then issue the permit within ninety (90) days of such notification. However, if the ERO considers it necessary, it may determine that the period for consideration of the application shall be extended by a period of up to sixty (60) days.

The tendering procedure is regularised in the PPP Law and follows the principle of a fair tender.

2.1.2 Preliminary Authorisation by the ERO

As a first step in the authorisation process, the ERO issues a Notice of Preliminary Authorisation to the economic operator. In addition to such preliminary authorisation, a final authorisation will be issued once certain criteria and statutory requirements have been met, such as the obtaining of environmental permits and completed EIA procedures. The preliminary authorisation is the precondition for obtaining all other permits.

2 Law No. 2010/03–L–090. In 2011, an updated Law on Public Private Partnership came into force (Law No. 04/L-045). This Law established the Public Private Partnerships Committee ("**PPPC**") which shall oversee and coordinate Public Private Partnership Projects in all economic and social sectors. However, the provisions of this Law regarding the tendering procedures conducted by the PPP-ISC shall not apply where potential bidders have already been pre-qualified in compliance with the previous law, or where an official request for proposal documents has been published.

2.1.3 Environmental Impact Assessment

The competent authority for applying the EIA procedures is the Ministry. Thermal power stations with a heat output of 50 MW or more are subject to a mandatory EIA procedure, whereas installations for the production of electricity, steam and hot water may be subject to such requirement, depending on the decision of the Ministry on a case-by-case basis, in light of the characteristics of the project, its location and potential impacts. Based on the information presented together with the application, the Ministry must inform the applicant within ten (10) days whether an EIA report and a formal proceeding will be required. If the Ministry requires an examination of the project's environmental impact, this will involve a complex administrative proceeding (involving, *inter alia*, the provision of information to concerned parties, public debates, etc.) and the procedure could take substantially longer (at least two (2) to three (3) months have to be scheduled for such a proceeding). The applicant bears all the costs of preparing the EIA report, the public debate, and the review and consultation process.

2.1.4 Other Environmental Laws and Permits

According to the Law on Waters of Kosovo (Law No. 2012/04-L-147), which came into force on 20 April 2013, the Ministry issues water permits through a decree (sub-legal act). The Ministry may also delegate powers under which the municipalities and the competent authority may issue the water permits. The Ministry may determine the following by secondary legislation: the procedure, content, form, conditions, manner, and preservation and other important issues regarding the issuing and abolition of water permits. Water permits are issued by the designated deadline depending on the type of facility and equipment, as well as the purpose of the water use, but not longer than fifteen (15) years, except for a permit for the extraction of sand, gravel and stone from the river basins and shores of surface water bodies, which is issued for a duration of one (1) year, with the possibility of extension. In case the water permit is issued for energy needs, the permit term may be up to forty (40) years. The Law on Waters does not specify an exact period within which the respective competent authority must issue the water permit, but it can be assumed that the procedure may be protracted. The holder of the water right can be any natural and legal person registered in Kosovo.

The Ministry also issues the environmental permits based on the Law on Environmental Protection and the Law on Environmental Impact Assessment, in essence obliging the economic operator to adhere to the criteria and measures for environmental protection as set forth in the respective EIA report.

In addition, the Ministry is competent to issue urban permits certifying certain technical conditions for the construction of the new generating capacities pursuant to the Law on Spatial Planning.

Fire permits are issued pursuant to the Law on Fire Protection by the Agency of Emergency Management, a department of the Ministry of Internal Affairs. Obtaining a fire permit is also a precondition for the final construction authorisations and construction permits to be issued.

2.1.5 Construction Law

According to the Law on Construction (Law No. 2012/04-L-110) a construction permit shall be issued on the basis of the following classifications:

- Category I – construction works with low risk;
- Category II – construction works with medium risk; and
- Category III – construction works with high risk and of national interest (including, *inter alia*, the construction of hydropower dams and power plants with power of 10 MW or more).

The detailed characteristics of the categories shall be determined by the Ministry and the municipalities by a sub-legal act. The Ministry shall have the authority to issue construction permits for category III construction works. Municipalities shall issue construction permits for categories I and II construction works.

If the conditions as provided by the Law on Construction have been fulfilled and if the applicant has submitted evidence of the payment of the construction permit fee, the competent body shall, within thirty (30) days for category I and within forty five (45) days for categories II and III, issue the construction permit from the date of submission of the application.

2.2 Process for obtaining the right (concession) to exploit natural resources

The legislation of Kosovo generally foresees a tender procedure in order to grant a licence to construct facilities for generating power. However, the tender procedure is only subsidiary to the regular authorisation procedure. According to Article 39 of the Law on the Energy Regulator, the tender procedure applies only if: (i) existing facilities for generating power (constructed in accordance with the regular authorisation procedure) are insufficient to ensure the security of energy supply or if they are insufficient to meet the environmental targets; or (ii) the authorisation process has not resulted in adequate energy efficiency or demand-side management measures. The tender procedure is conducted, monitored and controlled either by the ERO or the PPP-ISC as described under Section 2.1.1.

Therefore, the legislation of Kosovo foresees a mandatory tender procedure for granting the right to exploit natural resources only in exceptional cases when the regular licensing procedure according to the Law on the Energy Regulator does not apply. In this respect, the legislation of Kosovo does not foresee a possibility of triggering a public tender by way of an unsolicited proposal of an interested private entity. This was recently (albeit not explicitly) confirmed by a statement of the Public Procurement Regulatory Commission of Kosovo. Nevertheless, all authorities are still of the opinion that any large infrastructure project should be somehow subject to either the Procurement Law or the PPP Law.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

Simultaneously or at any time subsequent to an application for granting a permit for the construction and operation of new generation capacities to the ERO, the applicant may also submit to the ERO an application for a licence for energy generation in accordance with the Rule on Licensing. No licence is required for the generation of electricity at an electricity site with a capacity not exceeding 5 MW or for the generation of electricity for self-consumption, where neither the generation facility nor the consumers of the electricity are connected to the transmission system or the distribution system.

When applying for the licence, an applicant must submit to the ERO certain documents evidencing, *inter alia*,: (i) the good standing of the applicant; (ii) the adequate financial status of the applicant; (iii) the applicant's experience in performing relevant energy activities; and (iv) the applicant's compliance with various legal requirements such as tax law, safe and secure working conditions, technical requirements and environmental protection. Furthermore, the applicant has to submit to the ERO a statement that: (i) managers of the applicant have not been convicted or prosecuted for criminal acts; (ii) the applicant's licence for the same activity has not been withdrawn within the five (5) years foregoing the date of submitting the application; (iii) all required approvals for construction and environmental protection or other approvals specified in different laws are available; and (iv) the applicant understands and is aware of its obligations to comply with all applicable energy legislation including laws, rules issued by the ERO, technical and commercial codes, and other applicable legislation.

Upon determination that the application for a licence is complete, the ERO shall instruct the applicant to publish an announcement in two (2) daily newspapers, which will include (i) a brief summary of the licence application; and (ii) instructions for interested parties who may file an objection to the project with the ERO within eight (8) working days from the date of announcement.

Any objection to an application of third parties must be submitted to the applicant and published on the Web site of the ERO.

The ERO must make a formal decision on every application within ninety (90) days from the submission of the complete application. The ERO shall inform the applicant on the date when its application is deemed as complete.

A licence may be granted for a period of up to forty (40) years and may be extended for the same period.

3.2 Designated/preferred legal form of investment vehicle

Article 29 of the Law on the Energy Regulator provides that a licence shall be issued to any energy company registered under Kosovo law. The legislation does not require or recommend a particular legal form. However, currently energy generation licences are held by limited liability companies, joint stock companies as well as branches of foreign companies registered under the laws of Kosovo.

3.3 Anticipated time frame for the issue of licences/authorisations

The ERO is the competent authority for issuing construction permits, licences for the generation of electricity as well as for all other energy activities.

According to Article 32.2 of the Law on the Energy Regulator, the ERO may issue the licence unconditionally, with conditions, or refuse to issue the licence for generation altogether, if such refusal would be justified, within ninety (90) days of the submission of the complete application. In case of a construction permit the ERO may, if it considers it necessary, determine that the period for consideration of the application may be extended by a period of up to two (2) months. In practice, procedures take more time due to the tendency of the ERO and other authorities to require additional documentation.

4. Promotion System for the Production of RES-Electricity

The Law on Electricity and the Law on Energy provide for a feed-in tariff promotion system. Furthermore, the Rule for Admission to the Support Scheme was adopted by the ERO on 23 December 2014, abrogating the previously effective and homonymous rule adopted on 29 December 2010.

4.1 Applicability of promotion scheme

The Law on Electricity does not provide for any guarantee that the promotion system will remain in place for any specified duration.

4.2 General description of promotion scheme

Pursuant to Article 7 of the Law on Electricity, a producer with a power plant of installed capacity exceeding 5 MW, that existed and was operational as of the date of the coming into force of the Law on Electricity, is obliged to offer the produced electricity to the “public supplier” (currently KEK) at a regulated price if the public supplier needs that electricity. Furthermore, public suppliers must give “purchasing priority” to “renewable energy” for which a guarantee of origin has been issued (Article 9.3 of the Law on Electricity). However, the Law on Electricity does not provide any further detail regarding how such purchasing priority shall operate.

According to the Rule for admission to the support scheme, the applicable promotion scheme consists of the Public Supplier (KEK) entering into a ten (10) year power purchase agreement with RES-Electricity producers generating

electricity by hydropower, wind or solid biomass (twelve (12) years for electricity generated by photovoltaic panels) and admitted to the support scheme, pursuant to which KEK purchases electricity at feed-in tariffs. The unit price applicable to the sale of electricity to KEK is defined and adjusted annually by the ERO.

4.3 Procedure for determining feed-in tariff

Article 8 of the Law on Electricity provides that the "public supplier" is required to purchase the entire amount of electricity at a regulated price, for which a certificate of origin has been issued, in order to meet the needs of electricity consumption in Kosovo. However, this obligation does not apply to any amount for which the producer has entered into contracts pursuant to the provisions of the Law on Electricity.

Pursuant to the ERO Pricing Rule, the tariffs for the sale of electricity (and/or capacity) to the public supplier by public producers shall be specified in annual contracts between the public supplier and each public producer. The public producer tariffs shall allow the recovery of all reasonable costs of public producers associated with the supply of electricity (and/or capacity) to the public supplier. They are only applicable up to an amount equal to that required to serve the demand from non-eligible customers each year.

4.4 Revision and/or indexation of the feed-in tariffs

The regulated tariffs are subject to regular price reviews conducted by the ERO.

4.5 Other financial incentives for RES-Electricity

There are no other financial incentives for the production of RES-Electricity under the laws of Kosovo. Various transnational (i.e. World Bank, IFC) promotional schemes are planned.

4.6 Support scheme for cogeneration

In case of cogeneration, the Rule for Admission to the Support Scheme applies.

4.7 Guarantees of origin for RES-Electricity

The principle of certificates of origin is provided in the applicable laws. Furthermore, the "Rule for the establishment of a system of certificates of origin for electricity produced from renewable energy sources, from waste and cogeneration in combination with heat in a single generating unit" was adopted by the ERO on 29 December 2010.

According to the Certificates of Origin Rule, the ERO shall establish and maintain an electronic Register of Certificates of Origin. As of December 2015, no such electronic Register of Certificates of Origin has been made available by the ERO.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

The Law on Energy provides that when dispatching generation, the KOSTT shall give priority to RES-Electricity as permitted under the grid code and other applicable rules and regulations. However, the actual content of such priority right is not specifically defined in the law.

5.2 Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid

The Law on Energy provides that system operators shall establish and publish standard rules on cost liability of technical adaptations, including the cost of grid connections and grid reinforcements, necessary to integrate new generators feeding RES-Electricity into the interconnected system. Furthermore, the system operators shall provide any new RES-Electricity producer wishing to be connected with a comprehensive and detailed estimate of the costs associated with the connection and the ERO shall ensure that the transmission and distribution fees do not discriminate against electricity from renewable energy sources.

However, the Law on Energy does not provide any further details regarding how these principles should be implemented, and no secondary legislation has been adopted to date.

5.3 Special allowance/tolerance for intermittent generation in relation to balancing charges for unscheduled deviations

The Grid Code/Balancing Code does not provide for any special allowance/tolerance for intermittent generation in relation to balancing charges.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all jurisdictions is the prohibition of incompatible state aid, which is included in both the EC Treaty and the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission's new Guidelines on State Aid for Environmental Protection and Energy, adopted on 9 April 2014 and which entered into force on 1 July 2014, be considered as compatible with the common market.

Article 18 of the Law on Electricity appears to indicate that any purchase of electricity must be governed by a power purchase agreement ("**PPA**") between the public supplier and the relevant generator.

The provisions of any PPA thus entered into between the public supplier and the relevant generator shall be subject to the approval of and monitoring by the ERO. Any further specifications of PPAs have been removed from the legislation, presumably in expectation of the planned privatisation of KEDS.

7. Carbon Credits

Kosovo has not ratified the Kyoto Protocol.

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Main permits required for RES-Electricity generating facilities

Environmental permit	The developer will need to obtain a positive opinion of the Ministry of Environment and Civil Planning on the Environmental Impact Assessment ("**EIA**") Study or a positive opinion on the Environmental Protection Elaborate.
Building permit	The process is done electronically, by submitting a request for the issuance of the building permit along with the following documents: (i) architectural-urban project duly verified if required pursuant to local planning documentation; (ii) main design including the audit of the main design or written report and approval if the main design has been prepared outside Macedonia and positive opinion for mechanical stability, solidity and seismic protection of the construction when required by the law; (iii) draft design if it has been previously submitted and approved in accordance with the law; (iv) presentation of the evidence for the right on construction (i.e. property deed evidencing the right of ownership over the real estate where the RES-Electricity plant will be constructed, or evidence of right to long-term lease, or evidence of right of usufruct, or the deed for transfer of the right of construction, or concession agreement or agreement for PPP; or declaration by the investor in the RES-Electricity facility confirming that it undertakes the obligation to regulate the property issues in the course of the construction and that the property issues will be finalised prior to issuance of the operational permit, when the property issues are not resolved before commencing the procedure for issuance of the building permit and during the process of construction); (v) geodetic elaboration of numerical data for the construction land; and (vi) issuance of the approval for construction of facility for electricity production (when necessary, as issued by the Government of the Republic of Macedonia). The application for a construction permit and the above listed documents must be submitted to the Ministry of Transport and Communications or to the local government as the case may be.
Authorisation under Energy law/right (concession) to exploit natural resources	Before a developer can measure the potential for wind power, the developer must obtain the approval of the Energy Agency. Measuring of the potential has to be completed within a period of one (1) year from the date of issuance of the approval, with the right of prolonging the approval for an additional period of three (3) years based on a motivated request and after presentation of evidence for the installed operative measuring facility. Preliminary process for water hydro power plants will require obtaining a water concession for which there is a mandatory tender procedure or establishment of a Public Private Partnership.

LICENCE TO GENERATE RES-ELECTRICITY	
Outline	The application for the licence to produce RES-Electricity must be submitted to the Energy Regulatory Commission. The RES-Electricity plant must be registered in the Registry of RES facilities maintained by the Energy Agency.
PROMOTION SCHEME	
Outline	Measures of support of RES-Electricity can be in the following forms: (i) investment support; (ii) tax holidays; (iii) mandatory purchase of the RES-Electricity; (iv) feed-in tariffs; (v) issuing of guarantees of origin; and (vi) increasing the prices that the customers are paying for use of RES-Electricity.
Other financial incentives	Financial incentives for RES-Electricity can be ensured from: (i) the Budget of the Republic of Macedonia; (ii) grants, donations and sponsorships; (iii) credits; or (iv) state aid pursuant with the law.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	The transmission and distribution system operators ensure priority access to RES-Electricity plants taking into consideration the limitations of the operative potentials of the energy system.
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The Energy Regulatory Commission ("**ERC**") will oblige the system operator to cover the fees for connection of the RES-Electricity plants to the respective system and to reimburse those fees through the tariff for the regulated service under certain conditions.
Special allowance/tolerance for intermittent production in relation to balancing charges	The electricity market operator is obliged to cover the balancing fees and the required system services arising from the activities of the preferential producers. The electricity market operator is also obliged to reimburse to the transmission system operator the balancing charges and the appropriate fees for system services for the preferential producers.
CARBON CREDITS	
Status	Ratified Kyoto Protocol, as a non-Annex 1 Party to the UNFCCC.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

- The Energy Act (Official Gazette of Republic of Macedonia Nos. 16/11, 136/11, 75/13, 79/13, 164/13, 41/14, 55/14, 92/14, 151/14, 33/15, 192/15, 215/15, 6/16) ("**Energy Act**") is the central regulatory act defining the RES and governing the main principles regarding the production of RES-Electricity. The Energy Act's primary intention is to encourage the production of RES-Electricity by making it a priority in the energy policy of the Republic of Macedonia. The Government is obliged under the Energy Act to issue: (i) a strategy for energy development which will determine the stimulus measures for investments in energy facilities using RES and the programme for realisation of such strategy within a period of five (5) years; (ii) the Energy Balance of the Republic of Macedonia for the period of one (1) year; and (iii) the strategy for RES which will define the aims and the measures for use of RES and the action plan for RES for a period of ten (10) years.

- Strategy for the development of the energy sector in the Republic of Macedonia until 2030 (Official Gazette of Republic of Macedonia No. 61/10) ("**Strategy**") was adopted by the Government of the Republic of Macedonia as prepared by the Macedonian Academy of Science and Art, in order to ensure qualitative standards and certain energy supply to the customers. The maximum use of RES-Electricity is one of the priorities of the Strategy. Ac-

cording to the Strategy, the participation of RES in total energy use in Macedonia presented as a percentage will increase from thirteen point eight percent (13.8%) in the year 2005 to twenty-one percent (21%) in the year 2020.

- Programme for realisation of the Strategy for the development of the energy sector for the period from 2013 to 2017 (Official Gazette of Republic of Macedonia No. 50/13) ("**Programme**") was adopted by the Government of the Republic of Macedonia whereby the building of new small HPPs, solar turbines, photovoltaic systems, turbines of biogas fired by biomass is planned. In addition, feed-in tariffs will still be used and it is anticipated that these tariffs will be increased for energy produced from geothermal sources. The construction of two cogenerated gas plants with a total installed power of 230-270 MW for electricity generation and 160-190 MW for heating energy is also planned.

- Energy Balance of the Republic of Macedonia for 2016 (Official Gazette of Republic of Macedonia No. 229/15) ("**Energy Balance**") was adopted by the Government of the Republic of Macedonia as proposed by the Ministry of Economy and consulted with the Energy Regulatory Commission, presenting the needs of energy in the country and the possibilities to ensure production from domestic capacities and from import. According to this document, the total need of RES-Electricity sources is planned to be 316.7 ktoe, which is an increase of ten percent (10%) compared to year 2014 and a decrease of nine percent (9%) compared to year 2015. The decrease results from the decreased production of the HPPs. The participation of the RES sources in the final energy consumption is planned to be sixteen point for percent (16.4%) and towards the total needs of energy eleven point six percent (11.6%).

- Rulebook for energy balances and energy statistics (Official Gazette of Republic of Macedonia No. 140/15) ("**Rulebook for energy balances**") was adopted by the Minister of Economy of the Republic of Macedonia regulating: (i) the content of the Energy Balance; (ii) the content, the terms and the conditions for delivery of the data necessary for preparation and monitoring the realisation of the Energy Balance; (iii) those parties obliged to deliver the data necessary for preparation and monitoring the realisation of the Energy Balance and the terms for delivery thereof; and (iv) the content, the terms and the conditions for delivery of the data necessary for preparation of the Strategy. The preferential producers of RES-Electricity are also those parties obliged to deliver data under the Rulebook for energy balances.

- Strategy for use of RES in the Republic of Macedonia until 2020 (Official Gazette of Republic of Macedonia No. 125/10) ("**Strategy for RES**") was adopted by the Government of the Republic of Macedonia as prepared by the Macedonian Academy of Science and Art. It aims to ensure maximum use of RES-Electricity and gives recommendations for measures to be undertaken by the authorities to achieve that aim. Accordingly, there are certain proposals to improve the Energy Act and the bylaws thereto and to issue market rules which will regulate the purchase of RES-Electricity from preferential producers. It is recommended that the procedures for being recognised as a preferential producer be simplified so the risks to investors may be reduced. It is also recommended that a manual for construction of SHPPs (small hydropower plants) be issued and that the Energy Regulatory Commission and the Government be obliged to regularly monitor the situation in order to improve the regulatory framework for the benefit of investors and to thereby encourage production of RES-Electricity.

- In accordance with the Energy Act, the Government of the Republic of Macedonia is obliged to issue an Action Plan for the use of RES ("**Action Plan**") for a ten (10) year period of time, which is intended to enable realisation of the Strategy for RES. The Action Plan shall define the accepted measures for encouraging the use of RES-Electricity and in particular: (i) determine targets and annual dynamics for increasing the participation of RES-Electricity in the electricity consumption; (ii) measures for realisation of such targets; (iii) presentation of the relevant politics and promotion of RES; (iv) special measures for decreasing of administrative barriers and development of the distribution and transmission systems; (v) assessment of the expected contribution of each RES type in realisation of the targets of the Strategy for RES; (vi) joint projects with other countries for realisation of the targets of the Strategy for RES; (vii) financial resources for promotion of RES; and (viii) parties responsible and time limits for realisation of the planned activities. The Ministry of Economy prepares the report every two (2) years for the realisation of the Action Plan and the Government of the Republic of Macedonia determines the targets and annual dynamics in order to increase the percentage of RES-Electricity in total electricity consumption, under a decision based upon the Action Plan and the obligations undertaken by the Republic of Macedonia pursuant to the ratified international treaties. The Action Plan for the period until 2025 and the vision until 2030 was adopted by the Government of the Republic of Macedonia (Official Gazette of Republic of Macedonia No. 207/15) ("**Action Plan 2025-2030**"). Pursuant to the Action Plan 2025-2030, the contribution of RES in the gross energy consumption is targeted to be twenty-one pint zero one percent (21.01%) in 2020, twenty-five percent (25%) in 2025 and twenty-eight percent

(28%) in 2030, with the largest contribution to RES-Electricity to be achieved by HPPs, SHPPs and wind turbines. The largest contribution of RES in heating generation is expected to be achieved from biomass, biofuels and geothermal energy. The Action Plan 2025-2030 also proposes a "one-stop-shop" proceeding to obtain the necessary approvals from the state bodies in order to simplify the procedure for registration of RES facilities. In addition, the Action Plan 2025-2030 encourages local governments, pursuant to national legislation and national strategic documents, to provide measures for increased use of RES in energy efficiency programmes at the local level.

- The ordinance on the licences for performance of energy activities (Official Gazette of Republic of Macedonia Nos. 143/11, 78/13, 33/15) ("**RES Licensing Ordinance**") regulates the licensing of RES-Electricity production facilities.

- The ordinance on renewable energy sources (Official Gazette of Republic of Macedonia No. 113/11, 73/15 ("**RES Ordinance**") regulates: (i) facilities using RES for electricity production; (ii) the methodology for calculation of the necessary percentage for mixing fossil and bio fuels for transport; (iii) the assessment of wind energy potential and issuing of the approvals for measuring wind energy potential; (iv) the registry of RES-Electricity facilities; (v) the terms and conditions for issuing, transferring and withdrawing the guarantees of origin for RES-Electricity; (vi) the terms and conditions for recognition of the guarantees of origin issued aboard; and (vii) the registry of issued guarantees of origin. The principal aims of the RES Ordinance are: (i) to increase the use of RES in the country; (ii) to create substitutes for the use of fossil fuels and decrease the amount of imported energy in the long-term; (iii) to encourage entrepreneurship in the sector and establishment of new jobs; (iv) to encourage new technologies; and (v) to ensure a sustainable supply of electricity while protecting the environment.

- The ordinance on preferential producers of electricity from RES (Official Gazette of Republic of Macedonia Nos. 18/12, 97/12, 63/13, 25/15) ("**RES Preferential Producers Ordinance**") regulates the terms and the procedure for achieving the status of RES-Electricity preferential producer, the terms and the procedure for deciding on the use of feed-in tariffs and the maintenance of the Registry of the RES-Electricity preferential producers.

- The Decree for feed-in tariffs for electricity (Official Gazette of Republic of Macedonia No. 56/13) ("**Feed-in Tariff Decree**") regulates the specific conditions that an energy facility must fulfil in order to receive the status of preferential producer of electricity, the maximum installed power of the facility, feed-in tariffs and the period of their use.

- The following ordinances are in place with respect to the determination of feed-in tariffs for the purchase/sale of electricity produced from RES facilities with the status of preferential producers: (i) in small hydro power plants (Official Gazette of Republic of Macedonia Nos. 16/07, 30/07); (ii) by wind turbines (Official Gazette of Republic of Macedonia No. 61/07); (iii) in energy facilities using biogas derived from biomass (Official Gazette of Republic of Macedonia Nos. 142/07, 44/10); (iv) in photovoltaic systems (Official Gazette of Republic of Macedonia Nos. 112/08, 44/10); (v) by energy facilities fired by biomass (Official Gazette of Republic of Macedonia No. 44/10); and (vi) on regulating prices for geothermal energy (Official Gazette of Republic of Macedonia No. 158/09).

- Decision on the total installed power of the preferential producers of electricity produced by certain RES (Official Gazette of Republic of Macedonia Nos. 56/13, 10/14) determines the total installed generation capacities that certain RES producers have to achieve to be entitled to use the fee-in tariffs.

- The ordinance on highly efficient cogeneration facilities (Official Gazette of Republic of Macedonia No. 128/11, 73/15) ("**Highly Efficient Cogeneration Facilities Ordinance**") regulates the maintenance of the Registry of highly efficient cogeneration facilities, issuing, transferring and withdrawal of the guarantees of origin for RES-Electricity produced in highly efficient cogeneration facilities and the maintenance of the Registry of issued guarantees of origin for RES-Electricity produced in highly efficient cogeneration facilities.

- Decision for the aims and the annual dynamics of increasing the participation of RES-Electricity in the final electricity consumption (Official Gazette of Republic of Macedonia No. 100/11), implemented as of 1 January 2013, whereby the Government of Macedonia determined the aimed percentage of twenty-one percent (21%) to be achieved from RES facilities in the electricity consumption until 31 December 2020.

- **Electricity Market Rules** (Official Gazette of Republic of Macedonia Nos. 38/14, 42/14, 57/14, 194/14) issued by the Energy Regulatory Commission of the Republic of Macedonia, regulating, among others: (i) organisation of the electricity market; (ii) conditions to be fulfilled by the electricity market participants; (iii) terms and conditions for joining of the purchasers and/or electricity producers into balance groups for the purpose of decreasing the

balancing fees; (iv) establishment, organisation and control of the electricity trading and system services including cross-border trading; (v) purchasing of electricity from preferential producers and selling it to the electricity suppliers and traders, as well as regulation of the rights and obligations of the market operator and the transmission and distribution system operator and the preferential producers; and (vi) reporting to the ERC.

- Grid Rules for electricity transmission of MEPSO AD Skopje (Official Gazette of Republic of Macedonia Nos. 95/06, 12/15) and Grid Rules for electricity distribution of EVN Elektrostopanstvo na Makedonija AD Skopje (Official Gazette of Republic of Macedonia No. 87/12, 30/14, 189/14) ("**Grid Rules**") regulate the terms and conditions and the procedure for connection to the appropriate network and putting into operation the RES-Electricity facility.
- Tariff System for electricity transmission and for electricity market (Official Gazette of Republic of Macedonia No. 44/14) and the tariff systems of distributors ("**Tariff System**") regulating all tariffs for use of the electricity transmission system and the electricity market and the electricity distribution system, which the electricity transmission system operator, the electricity market operator and/or the distributors may invoice to their users. There is also an existing Tariff System for the selling of geothermal energy.
- The Energy Community Treaty, to which Macedonia is a contracting party.
- The Statutes of IRENA (International Renewable Energy Agency) have been signed by Macedonia, which is one of 75 founding members of this institution.

1.2 Additional laws and regulations

Please note that this list is not exhaustive.

- The Law on Environment (Official Gazette of Republic of Macedonia Nos. 53/05, 81/05, 79/06, 101/06, 109/06, 24/07, 159/08, 83/09, 1/10, 48/10, 124/10, 51/11, 123/12, 93/13, 187/13, 42/14, 44/15, 129/15, 192/15) ("**Environment Act**") regulates the terms and conditions and the procedures for issuing environmental permits.
- Law on Construction (Official Gazette of Republic of Macedonia Nos. 130/09, 124/10, 18/11, 36/11, 49/11, 54/11, 13/12, 144/12, 25/13, 79/13, 137/13, 163/13, 27/14, 28/14, 42/14, 115/14, 149/14, 187/14, 44/15, 129/15, 217/15, 226/15) ("**Construction Act**") regulates the terms and conditions and the procedures for issuing the Building Permit and the Operation Permit.
- Law on Waters (Official Gazette of Republic of Macedonia Nos. 87/08, 6/09, 161/09, 83/10, 51/11, 44/12, 23/13, 163/13, 180/14, 146/15) ("**Waters Act**") regulates the terms and conditions and the procedure for granting of the concession or Public Private Partnership for use of water.
- Law on Concessions and Public Private Partnership (Official Gazette of Republic of Macedonia No. 6/12, 144/14, 33/15, 104/15, 215/15) ("**Act on Concessions and PPP**") regulates the general rules of the procedure for granting of concessions and Public Private Partnerships.
- Law on Trade Companies (Official Gazette of Republic of Macedonia Nos. 28/04, 84/05, 71/06, 25/07, 87/08, 17/09, 23/09, 42/10, 48/10, 08/11, 21/11, 24/11, 166/12, 70/13, 119/13, 120/13, 187/13, 38/14, 41/14, 138/14, 88/15, 192/15, 217/15, 6/16) ("**Companies Act**") regulates the incorporation and functioning of the companies.

1.3 Expected changes

- For the purpose of harmonising the Macedonian legislation with EU directive 2009/28/EC, a new Energy Act and the corresponding secondary legislation is planned for introduction in 2016, whereby the new Energy Act shall promote those RES-Facilities using RES-Electricity for heating and cooling. In the near future, EU directive 2009/28/EC must also be transposed through the introduction of appropriate legislation concerning RES-Electricity production from biofuels. The Strategy for RES may also be revised in 2016.

2. General Regulatory Framework

Any party interested in building a RES-Electricity plant in Macedonia will need to establish a legal entity on the territory of the Republic of Macedonia, according to the Companies Act. The core activity of such company has to be electricity production.

2.1 Outline of the permitting procedures for RES-Electricity plants

The permitting procedure for construction of RES-Electricity plants is a complex procedure subject to the provisions of different laws including the laws regarding: (i) concessions and public private partnerships; (ii) water; (iii) civil and urban planning; (iv) construction; (v) environment; and (vi) energy. The principal state bodies involved are: the Ministry of Transport and Communication; the Ministry of Environment and Civil Planning; the Ministry of Economy; the Energy Regulatory Commission of the Republic of Macedonia; and the Energy Agency of the Republic of Macedonia[1] ("**Energy Agency**"). Please note that this list is not exhaustive.

PRELIMINARY STEP

The preliminary process starts with an assessment of the potential of the wind power resource as regulated under the RES Ordinance. There are no provisions imposing measurements for assessing the resource potential of other types of RES. The potential of hydro power is measured by the state institutions and must be performed before granting the water concession.

Approval for measuring the potential of the wind power resource must be issued by the Energy Agency within thirty (30) days from the completed application, provided that a proper set of documents is delivered. To be complete the documents must include:

- extract of the applicant from the commercial register;
- preliminary analysis of the expected results of the measurement including the basic data for the wind turbine that will be constructed;
- geodesy report for numerical data for each measurement plot; and
- graphic description of the plot where the measuring will take place.

Only one approval may be issued for each measurement plot.

Measuring approval is issued for the duration of one (1) year. The applicant may request that the measuring approval be prolonged for an additional three (3) year period.

Measuring has to be completed within a period of one (1) year from the date of issuance of the approval, with the right of prolonging the approval for an additional period of three (3) years upon a motivated request and after presentation of evidence for the installed operative measuring facility.

The Ministry of Transport and Communications of the Republic of Macedonia is the competent authority for issuing formal approvals for the installation of the measuring station. The Agency for Civil Aviation is the competent authority for issuing formal approvals for the installation of facilities that might impact the security of aircraft transport; which is also an obligatory document to be obtained for the installation of a measuring station. Both procedures are formal and typically finalised in a few business days.

1 The Energy Agency is established for the purpose of realisation of the energy policy of the Republic of Macedonia and the Strategy for RES. Its competencies include providing initiatives for use of RES, encouraging the use of RES in electricity production, maintaining the Registry of RES-Electricity producers, issuing of green certificates and maintaining the Registry of issued green certificates (green certificates hereinafter referred to as guarantees of origin according to the local legislation).

In the case of hydro power plants, a water concession must be obtained or a public private partnership must be established, as a preliminary step.

The process then continues with the following steps, regardless of the RES:

STEP 1

The ownership rights over the real estate should be secured by proper legal transfers of the land from the owner (Republic of Macedonia or private entity) to the developer of the RES-Electricity plant. However, according to the existing legislation, it is possible that the property rights are secured until the issuing of the operational permit.

STEP 2

The applicant must submit a request to obtain the consent of the respective operator for connection to the transmission or distribution system according to the Grid Rules.

STEP 3

The developer of the RES-Electricity plant will need to take into consideration the environmental impact of the project. In this context, the procedure described in the Environment Act shall be followed considering the need of receiving the:

- positive opinion of the Ministry of Environment and Civil Planning on the Environment Impact Assessment Study; or
- positive opinion of the Ministry of Environment and Civil Planning on the Environment Protection "Elaborate" (as stated in the legislation).

The relevant process for a particular case (whether the Environment Impact Assessment Study shall be prepared for a certain project or only the Environment Protection Elaborate) depends upon the type of project as defined in the "Ordinance for the projects and the criteria for determination of the need for realisation of the procedure for preparation of environment impact assessment" and the "Ordinance for activities subject to obligatory preparation of the Elaborate to be approved by the Ministry of Environment and Civil Planning[2]."

According to the above-mentioned legislation, projects for the construction of thermo-electricity power plants or similar installations with heating capacity of 200 MW and above are subject to an obligatory Environment Impact Assessment. Projects for the construction of other installations for electricity generation, HPPs and wind turbines are subject to a determination process for estimating the need for an Environment Impact Assessment procedure under certain criteria established in the Environment Act.

In addition projects for the construction of installations for electricity generation with power less than 10 MW, projects for the construction of HPPs up to 10 MW and RES-Electricity plants with a power up to 200 MW, according to the legislation are designated as projects subject to the obligatory preparation of an Elaborate to be approved by the Ministry of Environment and Civil Planning.

STEP 4

Thereafter, the procedure for obtaining approval for the construction of a new RES-Electricity plant is initiated. This procedure is commenced before the Government of the Republic of Macedonia with the aim of receiving approval for the construction of a new RES-Electricity or cogeneration facility with an installed power in excess of 10 MW. The same approval is required also when increasing the installed power of the existing energy facilities. This form

2 Issued pursuant to the Environment Act.

of approval is not required for: (i) construction of electricity production facilities with an installed power equal to or below 10 MW; (ii) electricity production facilities where the installed power is increased by a maximum of 10 MW; (iii) electricity production facilities having a concession over the natural resource; or (iv) any electricity production facility where the produced RES-Electricity will be for the facility owner's own consumption.

The following set of documents must be delivered with the request for issue of the construction permit:

- draft design and economic analysis;
- consent for connection to transmission or distribution network;
- approval of the environmental impact assessment study or environmental elaborate;
- excerpt from the Urban Plan;
- financial means secured for the construction of the RES-Electricity plant;
- statement from a first class financial institution which will serve as the issuer of any credit facility for the project;
- evidence of the financial standing of the applicant;
- references of the applicant;
- management structure;
- evidence of the registration status of the applicant;
- evidence of no pending bankruptcy or liquidation procedures against the applicant; and
- statement from the applicant for verification of the data supplied.

The request for issuance of the approval for construction of a new RES-Electricity facility or for the reconstruction of an existing facility must be published in the Official Gazette of the Republic of Macedonia.

The approval is issued by the Government under the proposal of the Minister of Economy within sixty (60) days from the date of submission of a completed request and after receiving the prior opinion of the ERC.

The approval for construction of a new RES-Electricity facility or for the reconstruction of an existing facility stipulates:

- the type, the characteristics, installed power and expected annual production of electricity;
- location of the facility as determined in the Urban Plan;
- the time limit of the approval;
- the use of the facility after expiry of its lifetime;
- the manner of use of the public infrastructure;
- the conditions to be fulfilled for the purpose of protection of the environment;
- the conditions to be fulfilled with regard to the efficiency of the work of the facility;
- the conditions regarding the efficiency of the facility; and
- any other conditions concerning the construction of the energy facility.

The approval issued by the Government of the Republic of Macedonia must be published in the Official Gazette of the Republic of Macedonia.

The duration of the approval is three (3) years from the date of entering into force of the approval.

Upon a formal request of the applicant, the approval for construction of the RES-Electricity facility may be transferred to any third party subject to prior consent of the Government of the Republic of Macedonia.

STEP 5

The request for obtaining a construction permit must be submitted to the Ministry of Transport and Communications or to the local government as the case may be and must be accompanied by the following documents:

- architectural-urban project duly verified if required pursuant to local planning documentation;
- main design including the audit of the main design or written report and approval if the main design has been prepared outside Macedonia and positive opinion for mechanical stability, solidity and seismic protection of the construction;
- draft design if it has been previously submitted and approved in accordance with the law;
- evidence for the right of construction (property deed evidencing the right of ownership over the real estate where the RES-Electricity plant will be constructed, or evidence of right to long-term lease, or evidence for right of usufruct, or the deed for transfer of the right of construction, or concession agreement or agreement for PPP, or declaration by the investor in the RES-Electricity facility confirming that it undertakes the obligation to regulate the property issues in the course of the construction and that the property issues will be finalised prior to issuance of the operational permit, if the property issues are not resolved before commencing the procedure for issuance of the building permit and during the process of construction);
- geodetic elaborate of numerical data for the construction land; and
- permit for construction of the RES-Electricity facility.

The responsible authority is obliged to review the request for obtaining a building permit within a term of five (5) business days as of receipt. The authority must determine during that review if the application for the building is complete and legal, having obtained (within at least two (2) days) approvals also from the various authorities responsible for: (i) heating, water and gas infrastructure; (ii) the Ministry of Interior; (iii) the Agency for health and safety; and (iv) the Agency for electronic communications. The responsible authority will approve the main design and will require that the applicant pay within fifteen (15) business days the administrative fee for regulation of the construction land. The building permit should then be issued within five (5) business days thereafter. The procedure for issuing the building permit is performed electronically through a special IT system for processing.

STEP 6

The applicant can start the procedure for obtaining the licence for RES-Electricity production by applying to the ERC.

STEP 7

The application for issuing the operational permit is filed with the Ministry of Transport and Communications or the local government as the case may be, together with:

- main design or implementation design if any changes on the main design in the course of construction have been implemented;
- final report from the supervision engineer; and
- excerpt from the real estate registry evidencing the current status of the right of ownership.

The operational permit is issued within fifteen (15) days from the date of the technical supervision of construction works.

STEP 8

The licence for RES-Electricity production is to be issued by the ERC when all relevant documents for construction and operation of the facility are obtained and all the conditions and proceedings as stipulated in the RES Ordinance on licensing are fulfilled.

STEP 9

The RES-Electricity plant must be registered in the registry of RES facilities maintained by the Energy Agency of the Republic of Macedonia.

STEP 10

The RES-Electricity plant can request achievement of the status of preferential producer.

The RES-Electricity plant can receive guarantees of origin on the produced RES-Electricity.

Registration of preferential producers and issuing the guarantees of origin is within the competencies of the Energy Agency and granting the feed-in tariffs for the preferential producers is within the competencies of the Government of the Republic of Macedonia.

STEP 11

The RES-Electricity plant is connected to the proper grid and goes into operation under the procedure established by the Grid Rules.

2.2 Process for obtaining the right (concession) to exploit natural resources

The procedure for granting a right (concession) to exploit natural resources in the Republic of Macedonia is organised in the form of a tender procedure and is governed by the Act on Concessions and PPPs, unless provided otherwise by a special law referring to the specific natural resource. The concession types, and the terms and conditions are regulated by special laws referring to the specific natural resource, which is the subject of the concession. Special laws referring to natural resources also provide detailed rules on which authority may issue the initial proposal commencing the procedure for granting the concession and the procedure for obtaining the necessary consents and opinions from the relevant public authorities. These rules may also include the possibility for an electronic auction in the last phase of the procedure to grant a concession to a natural resource and before granting the concession agreement.

A concession must be obtained for the use of water in electricity production in a hydro power plant.

The Waters Act provides that the concession for water use shall be granted under a public tender or following a formal request.

The tender procedure can be in the form of a public call initiated with a formal proposal from the competent Ministry of Environment and Civil Planning under the prior consent of the other competent Ministries for: agriculture, economy, transport and communications, defence, interior and culture and prior consent of the State institution for monument protection. The decision to grant the concession must be passed by the Government of Macedonia and published in the Official Gazette of the Republic of Macedonia.

The formal request for water use may be submitted by public companies, public institutions and trade companies established by the Republic of Macedonia. For companies where the state has direct or indirect control on the owner-

ship (i.e. companies where the state owns a significant part of the capital of the company, has majority shareholder's votes and where the state appoints half of the members of the management or the supervisory board or the management bodies of the company) and other legal entities performing public functions, the concession will be granted without a public call for tenders. The formal proposal (under the above-mentioned formal request) for granting the water concession must emanate from the competent Ministry of Environment and Civil Planning and the decision to commence the procedure and the decision to grant the water concession must be passed by the Government of Macedonia.

In addition, prior to the conclusion of the Concession Agreement, the permit for water use must also be obtained from the Ministry of Environment and Civil Planning.

The duration of the water concession for electricity generation in HPPs is determined by the concession agreement and the maximum period is: (i) seventy (70) years for HPPs with power over 10 MW; (ii) fifty (50) years for HPPs with power from 2 MW to 10 MW; or (iii) thirty (30) years for HPPs with power up to 2 MW.

According to the Energy Act, starting from 1 September 2016 the determination of the tariffs and prices for water use services will be done by the Energy Regulatory Commission of the Republic of Macedonia. The applicable law for the determination of the tariffs and prices for water use services is not yet published.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

Legal entities whose core activity is registered as being in the energy field are entitled to apply to the ERC for a licence to perform such activities. If the shareholder of the applicant company is a foreign entity, the ERC is entitled to request a letter of recommendation from the competent state/regulatory body of original registration of the shareholder. The ERC is also entitled to cooperate directly with the competent state/regulatory body in the country of original registration and/or the respective competent body in any country where the shareholder holds a licence for performance of the respective energy-related activity.

The applicant is entitled to ask the ERC for a detailed explanation of the terms and conditions for licensing the energy facility before commencing the licensing procedure. The ERC is obliged to give the requested explanation within five (5) days from the date of submission of the request.

The licensing procedure begins with the official request of the applicant, accompanied by (i) proper documentation proving the registration, the financial status of the applicant and technical qualifications; (ii) a statement verifying the data and documents submitted; and (iii) the time period for which the licence is required.

The applicant must pay a fee of EUR 500 for the procedure performed by the ERC.

The ERC responds within eight (8) days from the date of receipt of the application, stating whether the necessary documentation has been duly submitted. The applicant can be asked to amend the request within fifteen (15) days of submission and if the applicant does not do so, the ERC is entitled to reject the application. Once the application is accepted, the ERC confirms the conditions and commences a public debate procedure. Within three (3) days from the ERC's confirmation, the applicant must prepare a notification for publishing the application and deliver the notification to the ERC for approval.

Within five (5) days of the approval by the ERC, the notification must be posted on the Web site of the ERC and published in at least two daily newspapers (Macedonian and Albanian).

Interested parties can submit their suggestions and opinions to the ERC within the term approved by the ERC but not shorter than five (5) days as of publication. Once this term has expired, the ERC submits the received suggestions and opinions to the applicant for review. The applicant must respond within a three (3) day time period.

The ERC holds a preliminary meeting within a maximum of fifty (50) days from the date of commencement of the licensing procedure in the presence of the applicant and all other interested parties.

A regular meeting must be held within ten (10) days after the preliminary meeting, during which a decision is made. The decision is published in the Official Gazette and, if affirmative, the certificate for the licence is issued.

The licence is issued for a minimum of three (3) and a maximum of thirty-five (35) years for production or transmission and distribution of certain types of energy as well as for managing the systems for transmission and distribution of certain types of energy. For all other types of activities the duration of the licence may be for a minimum of three (3) and maximum of ten (10) years.

As a rule, the licence may not be transferred, except: (i) when the licensed energy activity is performed under a concession right; and (ii) the energy facility is a part of a non-energy object that is sold to another owner.

No licence is required for performance of the following activities:

- electricity production for private consumption; or
- transmission and distribution of electricity through direct lines.

3.1.1 Issuing of the licence in the construction period

The investor is entitled to ask for the licence to be issued before receiving the operational permit for the RES-Electricity energy facility, or before technical acceptance of the energy facility if it is the type of energy facility for which an operational permit is not required or before putting into operation the RES-Electricity plant under the condition that: (i) the approval for construction of the energy facility is issued by the Government of the Republic of Macedonia; or (ii) the construction permit is issued in cases when no approval for construction of the energy facility is required by the Government of the Republic of Macedonia; or (iii) the investor has acquired the right of construction of the energy facility on the basis of a public tender for construction of facilities for electricity production or cogenerated electricity production and heating or heating generation; or (iv) the investor has acquired the right for construction of the energy facility on the basis of a concession. Within seven (7) days from the date of delivery of the operational permit for the energy facility, the ERC will issue the decision on the licence issued in the construction period entering into legal force.

3.1.2 Issuing of temporary licence

The ERC issues a temporary licence within seven (7) days of receiving the request and accompanying documents from the applicant who was issued with the licence in the construction period for the energy facility starting with the probation work. A temporary licence may be issued only once for a maximum period of nine (9) months, with the right of prolonging the temporary licence for a further six (6) months. The terms and the conditions as well as the procedure for temporary connection of the electricity facility to the transmission or distribution network are regulated under the Grid Rules. The owner of the temporary licence has all the rights and obligations as the owner of the licence.

3.2 Designated/preferred legal form of investment vehicle

There is no designated legal form of investment vehicle in the renewable energy sector. Normally it would be a limited liability or a joint-stock company.

3.3 Anticipated timeframe for the issue of licences/authorisations

The licensing procedure must be performed within a sixty (60) days term, which can be extended subject to additional conditions.

4. Promotion System for the Production of RES-Electricity

Pursuant to the Energy Act, for the purpose of encouraging RES-Electricity production, the Government of Macedonia may release public tenders for the construction of facilities for the production of RES-Electricity and highly efficient cogeneration facilities that will achieve the status of preferential producers.

Macedonia has introduced preferential electricity tariffs (feed-in tariffs) for the production of RES-Electricity and issuing of certificates of origin.

Pursuant to the RES Preferential Producers Ordinance, the status of preferential producer of RES-Electricity is achieved under a resolution issued by the ERC, if the facility fulfils the following conditions: (i) produces RES-Electricity; and (ii) fulfils the specific conditions determined in the Decree for feed-in tariffs issued by the Government of the Republic of Macedonia.

In addition, one of the following conditions must also be fulfilled: (i) the facility has received the approval for construction of the RES-Electricity plant pursuant to the Energy Act; or (ii) has obtained the construction permit for the facilities for which the approval for construction of the RES-Electricity plant pursuant to the Energy Act is not necessary; or (iii) the concession is granted; or (iv) the right of construction of the RES-Electricity plant is received in a public call procedure, pursuant to the Energy Act.

The procedure for achieving the status of a preferential producer of RES-Electricity in front of the ERC is divided into two parts: (i) obtaining a temporary resolution for achieving the status of preferential producer; and (ii) obtaining the actual resolution for achieving the status of preferential producer. The first type of resolution is issued in the period of the construction of the RES-Electricity plant whereby the ERC determines also the term until when the energy facility must be put into operation and the installed power of the energy facility pursuant to the main project for the construction of the energy facility. There is the option that this temporary resolution is prolonged but only once and including a detailed description of the reasons for the prolongation. The resolution for granting the status of preferential producer will be issued upon the request of the applicant for achieving the status of preferential producer and user of the feed-in tariff under the condition that the energy facility is put into operation and the applicant has a licence for performance of energy activity. In addition to this, the Energy Agency has to issue the certificate to the ERC that the facility has the determined installed power and fulfils the specific conditions determined in the Decree for feed-in tariffs. The resolution for achieving the status of a preferential producer of RES-Electricity is issued within a period of about forty (40) days as of the date of submission of the request, whereby the preliminary session on the request is to be scheduled in the period of thirty-five (35) days as of the date of submission of the request and the regular session on the request is to be issued within five (5) days after the preliminary session on the request. The resolution for achieving the status of preferential producer of RES-Electricity is published in the Official Gazette of the Republic of Macedonia and on the Web site of the ERC.

The ERC maintains the Registry of the RES-Electricity preferential producers.

The feed-in tariffs introduced under the Decree for feed-in tariffs aim to: (i) encourage investments for the optimal use of available capacities for RES-Electricity in the Republic of Macedonia; (ii) ensure sustainable work for the RES-Electricity producers; and (iii) guarantee environment protection.

Pursuant to the Decree for feed-in tariffs issued by the Government of the Republic of Macedonia, an energy facility registered with the Registry of the facilities using RES-Electricity (maintained within the Energy Agency) will receive the status of preferential producer if it fulfils the following special conditions: (i) produces electricity from hydro power,

wind power, solar energy through photovoltaic cells, biomass (except wood) and biogas derived from biomass; (ii) the installed power of the facility does not exceed the installed power determined in the Decree for the feed-in tariffs for each and every facility; (iii) the equipment and objects for electricity production and for connection to the transmission or distribution system are functionally unified and the facility has connection to the appropriate system and the facility uses only one type of RES energy; (iv) the aggregate of the installed power of the facility and the total installed power of the facilities of the same type up to that date registered within the Registry of preferential producers maintained within the ERC do not exceed the total installed power for the preferential producers of that type determined in the Decision for the installed power of the preferential producers of electricity generated in each RES-Electricity power plant; and (v) the facility is in use as of 18 February 2011.

4.1 Applicability of promotion scheme

The Government of the Republic of Macedonia has adopted feed-in tariffs for the following facilities: (i) hydro-power plants; (ii) wind turbines; (iii) photovoltaic facilities; (iv) thermal plants on biomass; and (v) thermal plants fired by biogas.

4.2 General description of promotion scheme

Pursuant to the Energy Act and the RES Preferential Producers Ordinance, the electricity market operator is obliged to purchase the electricity produced by the preferential RES-Electricity producers. The electricity market operator is obliged to conclude a power purchase agreement ("**PPA**") with the RES-Electricity preferential producers upon their request.

4.3 Procedure for determining feed-in tariff

Pursuant to the Decree for feed-in tariffs, the feed-in tariffs are determined in Eurocents for KWh electricity delivered in the energy system VAT excluded.

4.3.1 Hydro Power Plants ("HPPs")

HPPs receive the status of preferential producer if the installed power of the plant is less or equal to 10 MW. The fee for the electricity produced during one (1) calendar month shall be calculated on the basis of the feed-in tariffs for certain blocks, according to the following table:

BLOCK	AMOUNT OF ELECTRICITY DELIVERED PER BLOCK (KWH)	FEED-IN TARIFF FOR THE DELIVERED ELECTRICITY PER BLOCK (EUROCENTS/KWH)
I	< 85,000	12.00
II	> 85,000 and < 170,000	8.00
III	> 170,000 and < 350,000	6.00
IV	> 350,000 and < 700,000	5.00
V	> 700,000	4.50

The preferential RES-Electricity producer is entitled to use the feed-in tariff for a twenty (20) year period.

4.3.2 Wind turbines

Wind turbines receive the status of preferential producer if the installed power is less or equal to 50 MW. The feed-in tariff for the electricity produced and delivered from wind turbines is 8.9 Eurocents/KWh. The preferential RES-Electricity producer is entitled to use the feed-in tariff for a twenty (20) year period.

4.3.3 Photovoltaic facilities

A RES-Electricity plant using photovoltaic technology is entitled to the status of preferential producer if the installed power of the facility is less or equal to 1 MW.

The feed-in tariffs for the electricity produced and delivered from the RES-Electricity facility, depending on the installed power of the facility, are:

INSTALLED POWER OF THE FACILITY	FEED-IN TARIFF (EUROCENTS/KWH)
< 0.050 MW	16
> 0.050 MW	12

The preferential RES-Electricity producer is entitled to use the feed-in tariff for a fifteen (15) year period.

4.3.4 Thermal plants using biomass

Thermal plants using biomass receive the status of preferential producer if their installed power is less or equal to 3 MW. The preferential RES-Electricity producer is entitled to use the feed-in tariff for a fifteen (15) year period. The highest percentage of fossil fuels in the total energy value of the fuels used is thirty percent (30%).

The feed-in tariffs depend on the installed power of the facility and the percentage of the fossil fuels in the total energy value of the fuels used.

If the percentage of the fossil fuels in the total energy value of the fuels used is less or equal to fifteen percent (15%), the feed-in tariff for the RES-Electricity produced in thermal plants using biomass is 15 Eurocents/KWh.

If the percentage of the fossil fuels in the total energy value of the fuels used is more than fifteen percent (15%) and is less or equal to thirty percent (30%), the decreased feed-in tariffs are calculated under the following formula:

$$PT = PT0 \times (1.15 - p \times 0.01) \times 0.01$$

Whereby:

- PT is the decreased feed-in tariff;
- PT0 is the tariff 15 Eurocents/KWh, depending on the installed power of the facility;
- p is the percentage of the fossil fuels in the total energy value, as determined by the Ministry of Economy.

4.3.5 Thermal plants fired by biogas

Thermal plants fired by biogas are entitled to the feed-in tariff for a fifteen (15) year period. The highest percentage of fossil fuels in the total energy value of the fuels used is twenty percent (20%).

The feed-in tariffs depend on the installed power of the facility and the percentage of the fossil fuels in the total energy value of the fuels used.

If the percentage of the fossil fuels in the total energy value of the fuels used is less or equal to ten percent (10%), the feed-in tariffs for the RES-Electricity produced in thermal plants fired by biogas is 18 Eurocents/KWh.

If the percentage of the fossil fuels in the total energy value of the fuels used is more than ten percent (10%) and less or equal to twenty percent (20%), the decreased feed-in tariffs are calculated under the following formula:

$$PT = PT0 \times (1.10 - p \times 0.01) \times 0.01$$

Whereby:

- PT is the decreased feed-in tariff;
- PT0 is the tariff 18 Eurocents/KWh, depending on the installed power of the facility;
- p is the percentage of the fossil fuels in the total energy value, as determined by the Ministry of Economy.

Decisions of the ERC on feed-in tariffs are officially published in the Official Gazette.

The parameters regarding the installed power of a RES-Electricity preferential producer in order to be entitled to the feed-in tariffs are:

- Wind power – the total installed power of the wind turbines to which the feed-in tariffs may apply at the latest until 31 December 2025, must be 150 MW, pursuant to the following dynamics:
  - total installed power of the wind turbines to which the feed-in tariffs apply until 31 December 2016 must be 65 MW;
  - total installed power of the wind turbines to which the feed-in tariffs apply until 31 December 2020 must be 100 MW;
  - total installed power of the wind turbines to which the feed-in tariffs apply until 31 December 2025 must be 150 MW.
- Solar photovoltaic systems – the total installed power of the photovoltaic systems with less than or equal to 50 KW installed power to which the feed-in tariffs shall apply is 4 MW. The total installed power of the photovoltaic systems with more than 50 KW but less than or equal to 1 MW of installed power, to which the feed-in tariffs may apply, is 14 MW.
- Electricity power plants fired by biomass – the total installed power of the electricity power plants using biomass, to which the feed-in tariffs may apply, is 10 MW.
- Electricity power plants fired by biogas – the total installed power of electricity power plants fired by biogas, to which the feed-in tariffs shall apply, is 7 MW.

4.4 Revision and/or indexation of the feed-in tariffs

Pursuant to the RES-Electricity Preferential Producers Ordinance, if the Ministry of Economy shall submit the notification to the ERC that the conditions for decreasing the feed-in tariff of the preferential producer using fossil fuels are fulfilled together with the estimation of the decreased feed-in tariff pursuant to the Decree for the feed-in tariffs, the ERC will commence the procedure for use of a decreased feed-in tariff.

When the Ministry of Economy submits the notification to the ERC that the preferential producer has increased the installed power of the facility and the conditions for a change of the feed-in tariff are presented pursuant to the Decree for the feed-in tariffs, the ERC will commence the procedure for changing the decision for the use of feed-in tariffs.

These decisions are subject to publishing in the Official Gazette of the Republic of Macedonia.

4.5 Other financial incentives for RES-Electricity

Subject to the provisions of the Energy Act, for the realisation of the Strategy for use of RES, the mechanism of financial support is established on the grounds of financial means collected from: (i) the state budget; (ii) grants, donations, sponsorships; (iii) credits; and (iv) state aid pursuant with the law. The Strategy for use of RES does not currently recommend any other incentive/s besides the feed-in tariffs and guarantees of origin. According to Action Plan 2025-2030, in 2016 a fund is planned for establishment on the basis of a special law, which will enable easier financing and co-financing of small RES-Electricity projects (although what constitutes "small" for purposes of accessing this fund is not yet defined).

4.6 Guarantees of origin for RES-Electricity

Guarantees of origin for RES-Electricity are issued in a formal procedure by the Energy Agency which also maintains the Registry of the guarantees of origin issued for RES-Electricity.

The guarantees of origin are issued to producers of RES-Electricity when: (i) the electricity is produced in facilities producing RES-Electricity registered in a specially designated registry; and (ii) no feed-in tariffs are used. The law distinguishes between the preferential electricity producers and RES-Electricity producers who are owners of guarantees of origin.

The guarantees of origin are issued to producers of RES-Electricity for the electricity produced in the Republic of Macedonia during one (1) calendar year, unless the producer needs to be issued with the guarantees of origin for a shorter time period which cannot be less than one (1) calendar month.

The guarantees of origin have a validity of twelve (12) months as of the date of expiration of the period when the electricity was produced.

The guarantee of origin is issued for electricity of minimum 1 MWh.

Guarantees of origin can be transferred from the title to other entities having a licence for trading or supply of electricity in the Republic of Macedonia.

Foreign guarantees of origin may be approved and registered with the designed registry upon request and after receiving the confirmation that there is nothing to prevent the recognition of the guarantee of origin.

4.7 Support scheme for highly efficient cogeneration

Pursuant to the applicable Highly Efficient Cogeneration Facilities Ordinance, the technological processes for cogenerating production are: (i) combined cycle of gas and steam turbine using exit heat; (ii) anti-pressuring steam turbine; (iii) steam condensation turbine with deduction of steam; (iv) gas turbine using exit heat; (v) engines with internal combustion; (v) micro turbines; (vi) engines with Stearling cycle; (vii) fuel cells; (viii) steam power machines; (ix) organic Renkin cycles; or (x) any other type of technologies or combination thereof where the cogenerating production of energy is taking place in one process.

The ERC issues the Resolution for achieving the status Highly Efficient Cogeneration Preferential Producer and maintains the Registry of Highly Efficient Cogeneration Preferential Producers.

The Energy Act provides incentives for highly efficient cogeneration facilities by: (i) purchasing the electricity generated by them; (ii) covering the fees for connecting to the network by the energy system operator; (iii) granting the status of preferential electricity producer for the highly efficient cogenerating facilities; and (iv) issuing the guarantees of origin for the electricity produced in highly efficient cogeneration facilities. Pursuant to the Energy Act, the Government

of the Republic of Macedonia is the competent authority to determine the feed-in tariffs for the electricity produced by highly efficient cogeneration facilities.

4.8 Guarantees of origin for highly efficient cogeneration facilities

Pursuant to the applicable Highly Efficient Cogeneration Facilities Ordinance, guarantees of origin for the electricity generated from highly efficient cogenerating facilities are issued by the Energy Agency and it also maintains the Registry for issued guarantees of origin of Highly Efficient Cogeneration Facilities, together with the Registry of Highly Efficient Cogeneration Producers.

The guarantees of origin are issued to producers of highly efficient cogeneration electricity where: (i) the electricity is produced in highly efficient cogeneration facilities registered in a specially designated registry; and (ii) no feed-in tariffs are used. The law distinguishes between the highly efficient preferential electricity producers and highly efficient cogeneration producers who are owners of guarantees of origin.

The guarantees of origin are issued to producers in highly efficient co-production facilities for the electricity produced in the Republic of Macedonia during one (1) calendar year, unless the producer needs to be issued with the guarantees of origin for a shorter time period which cannot be less than one (1) calendar month.

The guarantees of origin have a validity of twelve (12) months as of the date of expiry of the period when the electricity was generated.

The guarantee of origin is issued for electricity of 1 MWh.

Guarantees of origin can be transferred from the title to other entities having a licence for trading or supply of electricity in the Republic of Macedonia.

Foreign guarantees of origin may be approved and registered with the designed registry upon request and after receiving the confirmation that there is nothing to prevent the recognition of the guarantee of origin.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

According to the Energy Act, in the Grid Rules the system operator (which includes both the transmission system operator and the distribution system operator) should determine the rules for connection to the respective network and the methodologies for calculation of the fees for connecting to the grid. The rules on grid connection regulate matters related to the connection and its potential impact on other connected users, the connection point of the facilities, buildings and the means to be connected and the type of installation necessary for connecting to the network. The system operator is obliged to provide a detailed estimation of the connection fees.

The transmission and distribution system operators ensure priority access to RES-Electricity plants taking into consideration the limitations of the operative potentials of the energy system.

5.2 Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid

As a rule, investors requesting to be connected to the network should receive an approval from the applicable system operator in line with the requirements thereof and should bear the costs associated with the connection.

The ERC will oblige the system operator to cover the fees for connection of the preferential producers from RES to the respective system and to reimburse those fees through the tariff for the regulated service under certain conditions.

The minimum technical requirements for connection are provided in the applicable Grid Rules and are determined with the approval of the connection.

The electricity transmission system operator is obliged to maintain, improve and increase the transmission grid and to connect it to producers and other parties on an objective, transparent and non-discriminatory basis, as well as to ensure connection to the transmission system of the neighbouring countries. The electricity transmission system operator is responsible for long-term planning of the development of the transmission system.

The distribution system operator is obliged to maintain, improve and develop the distribution grid and to secure connection of the distribution grid with the transmission grid. It is obliged to deliver to the ERC plans, studies and other information for increasing and enlarging the distribution grid, including the financial plans for the fees involved for that particular activity.

5.3 Special allowance/tolerance for intermittent generation in relation to balancing charges for unscheduled deviations

The Energy Act provides that preferential electricity producers are obliged to sell the electricity produced to the market operator pursuant to their mutual power purchase agreement, to supply the market operator with the plans for electricity production according to Market Rules and to respect the feed-in tariffs.

The market operator is obliged to purchase the electricity produced by the preferential producers. According to the Electricity Market Rules, the preferential producers, based upon the measurements by the system operator, must submit an invoice to the electricity market operator for the delivered electricity within the respective calendar month by presenting the amount for payment in local currency, calculated according to the average exchange rate of the National Bank of the Republic of Macedonia on the last business day of the calendar month to which the invoice relates. The electricity market operator sells the electricity produced by the preferential producers to the electricity suppliers and the electricity traders, which are obliged to purchase every day the electricity produced by the preferential producers.

The price at which the electricity market operator sells the electricity to the suppliers and the traders is calculated at the end of the month as the average price at which the electricity market operator has purchased the electricity from the preferential producers, increased by the balancing fees and the necessary system services for the work of the preferential producers and the nominated quantities of the electricity produced by the preferential producers, made in the same month.

ERC issued the Direction for calculation of the monthly level of the expenditures and the tariffs for purchasing the electricity produced by the preferential producers. The Direction regulates: (i) the calculation of the average price at which the electricity market operator has purchased the electricity from the preferential producers; (ii) the calculation of the average price at which the electricity market operator sells the electricity to the suppliers and the traders; (iii) the calculation of the average tariff for purchasing the electricity produced by the preferential producers at which the suppliers and the traders shall invoice the customers; (iv) the calculation for the percentage of electricity produced by the preferential producers; (v) the terms for publishing the calculations.

The electricity supplier and the electricity traders are obliged to present information in their customer invoices as to the percentage of electricity produced by preferential producers and the average price.

According to the Electricity Market Rules, the electricity market operator is obliged to prepare and to publish on its Web site preliminary forecasts for the consumption and preliminary forecasts for the production of electricity for the calendar month at the latest fifteen (15) days before the beginning of the month, based on forecasts for electricity consumption in the entire electrical energy system, prepared in cooperation with the electro-transmission system

operator and according to the predicted RES-Electricity production. In addition the electricity market operator is obliged to prepare and to publish on its Web site preliminary hourly forecasts for the consumption and preliminary hourly forecasts for the production of electricity seven (7) days prior to the physical delivery of the electricity, based on forecasts for electricity consumption in the entire electrical energy system, prepared in cooperation with the electro-transmission system operator and according to the predicted RES-Electricity production. The electricity market operator is obliged to prepare final hourly forecasts for the electricity consumption in the electro-energy system and the forecasted hourly production from the preferential producers and to publish on its Web site not later than ten (10) o'clock one (1) day before the term of delivery of the physical schedules. These final forecasts present the percentage of electricity produced by the preferential producers in the total consumption and it uses for determination of the final hourly quantities that the traders and the suppliers have to purchase from the preferential producers for every nominated MW for the needs of the consumers. The data in the two preceding sentences are published for every day of the month.

In accordance with the Electricity Market Rules all the traders and the customer suppliers are obliged in their physical schedules to predict purchases of electricity from the preferential producers and to deliver them through its balancing party. Also, due to the selling of the electricity produced in the Republic of Macedonia, the suppliers or the traders which are selling electricity to suppliers and traders are obliged to notify the origin.

Electricity Market Rules consider preferential producers as one balance group with the electricity market operator entitled to function as their responsible balancing party. Preferential producers have no balancing responsibility since this responsibility is transferred to the transmission system operator. The electricity market operator is obliged to cover the balancing fees and the required system services arising from the activities of the preferential producers. The Energy Act also provides that the electricity market operator is obliged to reimburse to the transmission system operator the balancing charges and the appropriate fees for system services for the preferential producers.

Pursuant to the Electricity Market Rules, preferential producers of RES-Electricity with an installed capacity of less than 10 MW have no obligation to submit physical schedules. They do have the obligation to submit draft schedules to the electricity market operator for the expected generation of RES-Electricity. Preferential producers of RES-Electricity with an installed capacity of 10 MW or more have the obligation to submit to the electricity market operator the data for planned electricity production according to the procedure and the time limits as set by the electricity market operator. The electricity market operator submits complete physical schedules for all preferential producers of RES-Electricity to the transmission system operator.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all the jurisdictions is the prohibition of incompatible state aid, which is contained both in the EC Treaty and in the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission's Community Guidelines on State Aid for Environmental Protection, be considered as compatible with the common market.

With regard to the standard Power Purchase Agreements ("**PPAs**") applicable to RES-Electricity in Macedonia, there are no statutory provisions in the Energy Act. Pursuant to the Energy Act, the Electricity Market Rules adopted by the ERC regulate the PPAs.

According to the Energy Act, the Electricity Market Rules shall regulate especially:

- organisation of the electricity market;
- conditions that have to be met by the market participants;
- terms and conditions on joining the purchasers and/or electricity producers into balancing groups for the purpose of decreasing the balancing costs;

- establishing, organising and controlling the electricity trading and the system services, including the cross-border trading;
- methodology on calculation of the balance fee and the terms of payment for services, including the financial guarantees for securing the financial obligations of the market participants for payment of the balancing fee;
- purchasing of the electricity from the RES-Electricity plant and selling such energy to the suppliers and the traders, as well as regulation of the rights and obligations of the system market operator and the transmission system operator, the distributive system operator and preferential electricity producers;
- special allowance/tolerance for intermittent transactions; and
- reporting to the ERC.

The Electricity Market Rules adopted by the ERC determine the terms and conditions for concluding the obligatory PPAs between the preferential producers and the market operator, pursuant to the prescribed feed-in tariffs.

Electricity Market Rules regulate:

- organisation of the electricity market;
- conditions to be fulfilled by the electricity market participants;
- terms and conditions for joining the purchasers and/or electricity producers into balance groups for the purpose of decreasing the balancing fees;
- establishment, organisation and control of the electricity trading and system services including cross-border trading;
- purchasing of electricity from preferential producers and its sale to the electricity suppliers and traders, as well as the regulation of the rights and obligations of the market operator and the transmission and distribution system operator and the preferential producers; and
- reporting to the ERC.

In accordance with the Electricity Market Rules, preferential producers are considered to be market participants and as such, they are entitled to participate on the electricity market if they: (i) are registered with the Registry of the electricity market participants maintained by the electricity market operator and which follows after the conclusion of the agreement for purchase of the electricity produced by the preferential producer with the electricity market operator; and (ii) conclude an agreement on the terms and conditions for participation on the electricity market, which regulates the rights and obligations of the electricity market operator and the market participants and the duration of such agreement They are also required to complete certain registration procedures, whereby the electricity market participant is obliged to submit the official form of the Request to the electricity market operator accompanied by the following information and documents:

- Resolution for the registration into the Commercial Registry or current excerpt from the Commercial Registry;
- certificate for the EIC code; and
- copy from the appropriate licence.

If the request is complete, the agreement on the terms and conditions for participation on the electricity market must be concluded within ten (10) days from the date of submission of the request and the market participant must be registered with the Registry of market participants.

Within five (5) days from registration with the Registry, market participants are obliged, to submit a request to define the virtual points with the appropriate ID number for all the measurement points from which it will deliver and/or offtake electricity. Market participants may not carry out any market transactions before the registration is completed.

Market participants may also terminate their participation on the electricity market by submission of an official request. The proposed date for such termination may not be less than thirty (30) days from the date of the request.

The electricity market operator may also suspend the market participant for either of the following reasons: (i) failure to respect the Electricity Market Rules; or (ii) failure to meet payment obligations.

In accordance with the Electricity Market Rules, preferential producers are electricity market participants with regulated bilateral agreements. The electricity market operator is obliged to purchase the electricity produced by the preferential producers on the basis of an agreement for purchasing of the electricity from the preferential producers ("**PPA**").

Preferential producers are obliged within a term of five (5) business days of the Resolution for achieving the status of preferential producers entering into legal force to submit a request to the electricity market operator to conclude a PPA, accompanied with the following documentation submitted in original or notarised copy:

- resolution for the status of preferential producer of RES-Electricity;
- decision for use of feed-in tariffs for production of RES-Electricity; and
- resolution for the right of connection issued by the appropriate system operator.

The electricity market operator is obliged to conclude a PPA with the preferential producer within a term not longer than thirty (30) days as of the submission of the request and valid as of the date of entry into force of the resolution for achieving the status of a preferential producer. The consideration amount under the PPA during the period of the feed-in tariff is determined within the decision applying the feed-in tariff.

The PPAs must contain the following provisions:

- object of the contract;
- duration of the contract;
- electricity production plan;
- measurement of the electricity;
- feed-in tariff, calculation and payment conditions;
- use of the decreased feed-in tariff for the electricity of the preferential producer using fossil fuels;
- termination of the agreement;
- notifications; and
- secrecy.

The Electricity Market Rules determine that any disputes between two or more electricity market participants and/or the appropriate operators should be resolved in an amicable manner before submission of any notice for dispute resolution in front of the ERC. If the dispute is not resolved in such an amicable manner, the ERC's decision is considered final. Any party which is dissatisfied with the ERC's decision may commence a legal action before the competent Administrative Court.

The ERC is obliged to regularly review the Electricity Market Rules every two (2) years. Each market participant is entitled to propose amendments and supplements to the Electricity Market Rules.

7. Carbon Credits

The Republic of Macedonia bases its policy on climate change and harmonises it with the general policies on a European Union level. As a Party to the UNFCCC and as a non-Annex 1 country, the Republic of Macedonia is eligible for implementation of the Clean Development Mechanism ("**CDM**").

The basic requirements for implementation of CDM are fulfilled, as follows:

- Kyoto Protocol to UNFCCC has been ratified in 2004;
- "**DNA**" (Designated National Authority) has been established by a Decision of the Government of Macedonia and that is the Ministry of Environment and Civil Planning;
- an Article regarding CDM was introduced in the Environmental Act;
- the procedure for issuing the letter of approval under the CDM project cycle has been established;
- the possibilities for carbon funding are highlighted in the National Strategy for Investment; and
- the legal basis for the establishment of the National System for inventory of the emission of greenhouse gases is provided within the Environment Act. Secondary legislation is under preparation.

The country signed up to the Copenhagen Accord at the end of January 2010 and submitted its reduction targets and a preliminary list of mitigation actions (without quantifying the associated emission reductions) based on the action plan developed as part of the Second National Communication to the UNFCCC.

The analyses of the Third National Communication to the UNFCCC recognises the solutions for mitigation of climate changes in the energy sector through significant investments in: (i) small hydro power plants; (ii) investments in wind turbines with total installed power of 150 MW until the year 2032; and (ii) solar turbines with total installed power of 25 MW until the year 2032.

The Ministry of Environment and Civil Planning has signed bilateral MoUs for carbon financing with the Ministries of Environment of Slovenia and Italy and with UNDP for carbon financing from the MDG Carbon Fund.

The country is starting preparations for implementation of an EU ETS scheme as part of its obligations under the Stabilisation and Association Agreement with the EU. Currently, the Project on Capacity Building for the introduction of this scheme is on-going, supported by the Norwegian Government.

The country has delivered its intended national determined contributions (INDCs) on climate change mitigation to the Framework Convention of the UN for climate changes; thus presenting its intention to join the worldwide efforts to combat climate change. According to Government's Decision 42 17/19 dated 28 July 2015, the Republic of Macedonia intends to make the following contributions to decrease the level of their greenhouse gas emissions (INDCs): the emissions of CO_2 due to combustion of fossil fuels to be decreased by thirty percent (30%) within existing measures or by thirty-six percent (36%) through a commitment to certain additional measures until 2030. These additional measures include among others the generation of electricity through geothermal facilities and by increasing the use of biofuels.

The Republic of Macedonia participated at the Paris Climate Conference in December 2015 at both the Presidential and Ministerial levels. The Republic of Macedonia is dedicated to achieving the global agreement reached at the Paris Conference, whereby all the Parties thereto should participate on a fair and equal basis, (given the capacities and the specifics of each country), to reach the global goal to stabilise and reduce greenhouse gas emissions into the atmosphere to a level that will prevent global warming by more than an average of 2°C.

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POLAND

POLAND

Main permits required for RES-Electricity generating facilities

Environmental permit	An Environmental Impact Assessment ("**EIA**") is performed as part of the proceedings regarding Decisions on environmental conditions, issued by the Regional Director for Environmental Protection, head of the commune or mayor. Renewable energy projects may be classified as: ▪ Having a considerable material impact on the environment; ▪ Having a potential considerable impact on the environment; or ▪ Having a potential considerable impact on Natura 2000 areas not included in the two above-mentioned groups. EIA is usually performed by means of an Environmental Impact Report. Decisions on environmental conditions are valid for four (4) years and within that time, an application for a building permit should be filed.
Building permit	The competent authority for the permitting procedure: starost[1] (*starosta*) of the respective district. A building permit is issued prior to the commencement of the construction work. Upon completion of the construction work, an occupancy permit (*pozwolenie na użytkowanie*) is issued. A building permit is valid for a period of three (3) years. In the case of power service connections, a notification (*zgłoszenie*) of construction work is required instead of a building permit. Construction work should then be commenced no later than two (2) years from the date indicated in the notification.
Authorisation under Energy law/right (concession) to exploit natural resources	A separate licence (concession) regarding the exploitation of natural resources, other than the licence to generate electricity, is not required.

1 The administrative division of Poland is based on three levels of subdivision: voivodeships (states), which are further divided into powiats (counties) and these in turn are divided into gminas (communes or municipalities). A Starost is the head of a middle level of division, i.e. of a powiat.

LICENCE TO GENERATE RES-ELECTRICITY	
Outline	In order to generate electricity from renewable resources, a licence issued by the President of the Energy Regulatory Office is required. A licence is granted for a period of no less than ten (10) and no more than fifty (50) years. Prior to the licence, an investor may be granted the promise of a licence, which constitutes a commitment to issue a positive decision regarding the licence. The promise is valid for no less than six (6) months.
PROMOTION SCHEME	
Outline	The promotion scheme of RES in Poland is based on certificates of origin, which confirm that a certain volume of electricity has been generated from renewable sources. Every entity that produces renewable energy has a right to apply for green certificates, which are tradable, non-tangible commodities. Green certificates may be sold by the company independently from energy and thus increase the company's income. The green certificate promotion scheme is supported by "quota obligations", i.e. obligations to source a certain percentage of electricity from renewable energy, imposed on energy traders and producers. These obligations are facilitated by tradable green certificates, as power producers, and traders are obliged to obtain a certain number of certificates for each year and present them to the President of URE for cancellation.
Other financial incentives	An obligation to purchase power generated from RES is imposed on suppliers of last resort. Suppliers of last resort are obliged to purchase power generated from RES connected to a distribution or transmission grid located within an area, in which a given supplier is active. The purchase price should be equal to the average selling price of electricity in the preceding calendar year. The average price is published by the President of URE by 31 March each year. The support scheme for cogeneration is also based on certificates of origin – yellow (gas and small-scale plants), violet (methane and biogas) and red (others, mainly large scale and coal). The support system is similar to the RES promotion scheme.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	Electricity produced from renewable energy sources has priority access to the grid-system.
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The cost of the grid connection is borne by the power producer in the form of a one-off payment to the respective grid operator. The cost of grid reinforcements, improvements and other similar upgrades are borne by end-customers and grid operators. This cost is paid annually.
Special allowance/tolerance for intermittent generation in relation to balancing charges	No
CARBON CREDITS	
Status	Poland ratified the Kyoto Protocol in 2002. The necessary framework for obtaining carbon credits has been adopted into domestic legislation.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

The key legal act related to renewable energy in Poland is the Energy Law (dated 10 April 1997 ("**Energy Law**), which was last amended on 5 September 2014, Journal of Laws of 2014 No. 1101).

The Energy Law:

- defines renewable energy;
- regulates the grid connection procedure;
- sets out support schemes; and
- provides for obligations of the distribution system / transmission system operators.

Other legal acts of relevance with regard to RES-Electricity are:

- The ordinance of the Minister of Economy on detailed conditions for power system operation of 4 May 2007;
- The ordinance of the Minister of Economy specifying detailed conditions for the obligation to acquire and cancel certificates of origin, on the substitution fee and on purchasing power and heat produced from renewable energy sources of 18 October 2012;
- The ordinance of the Minister of Economy on detailed rules for the development and calculation of tariffs with regard to electricity dated 18 August 2011 (unified text dated 10 October 2013); and
- The Act on Biocomponents and Liquid Biofuels dated 25 August 2006 (Journal of Laws of 2006 No. 169, Item 1199, last amended on 15 January 2015).

1.2. Recent changes

The support scheme for renewable energy in Poland has been fundamentally changed through a new legal act on renewable energy sources ("**RES Act**") that was enacted in February 2015. The RES Act introduces an entirely new support scheme based on an auction system. Auctions are organised by the President of the Energy Regulatory Office ("**URE**") at least once a year and result in a selection of entities which offer supplies of a given amount of RES-Electricity at the lowest price.

The new support scheme is anticipated to come into force on 1 July 2016. After this date, two support systems (the existing one, based on green certificates, and a new auction system) will exist in parallel, until 31 December 2035, which is the deadline for receiving support under both schemes (with the exception of off-shore wind farms, which may receive support until 2040).

Installations already in operation as of the date when the RES Act comes into force may choose to stay with the old support system, or opt for the new one. In the case of new RES installations, the only available support system will be the new auction system.

The initial effects of the planned changes in the law have already materialised. Many companies tried to accelerate their investments in the RES sector, in order to put these into operation under the old RES support regime (which will also allow them to choose between both support schemes). In 2013, 894 MW of new wind power capacities were installed in Poland, which placed Poland in third place in Europe in terms of new wind investments. The trend continued throughout the years 2014 and 2015. According to the data published by the President of URE, as of 31 December 2014, 444 MW of new wind power was installed in 2014. At the same time, total wind power capacities in Poland amounted to 3,833 MW and overall renewable power capacities amounted to 6,028 MW. According to data disclosed by the President of URE in July 2015, in mid-2015 overall wind power capacities in Poland already

exceeded 4,000 MW, reaching the amount of 4,117 MW, whereas the overall renewable power capacities amounted to 6,330 MW. The changes introduced by the RES Act are described in detail in Sections 4.5 and 4.6 below.

It should be noted that in early 2013, the European Commission referred Poland to the European Court of Justice for its failure to fully transpose the Directive 2009/28/EC into national legislation. On 11 December 2014, the Advocate General at the Court issued an opinion stating that Poland had failed to fulfil its obligation to transpose the Renewable Energy Directive and should therefore be ordered to pay a daily penalty payment of EUR 61,380 (the European Commission filed for a daily penalty in the amount of approximately EUR 133,000) effective from the date of the delivery of the Court's judgement. However, Poland was able to avoid the sanction by adopting the Law amending the Act on Biocomponents and Liquid Biofuels and other Laws dated 15 January 2015 (Journal of Laws of 2015, Item 151). Except for the new support scheme set forth in the new RES Act, other provisions of the Law came into force on 4 April 2015.

2. General Regulatory Framework

2.1. Outline of permitting procedures for RES-Electricity generating facilities

2.1.1 Environmental Law

Environmental issues related to RES projects are regulated by the act on the disclosure of information concerning the environment and environmental protection, participation of society in environmental protection and assessments of environmental impact (Journal of Laws of 2008 No. 199, Item 1227) dated 3 October 2008 ("**Environmental Act**") and in the Ordinance of the Council of Ministers concerning types of investments with potential material impact on the environment dated 9 November 2010 ("**Environmental Ordinance**").

According to the Environmental Act, RES projects may be classified as:

- having a considerable material impact on the environment;
- having a potential considerable impact on the environment; or
- having a potential considerable impact on Natura 2000 areas not included in the two above-mentioned groups.

According to the Environmental Ordinance, projects which have a considerable impact on the environment are, for instance, investments in wind farms with a total capacity of at least 100 MW and wind farms located within the Polish coastal waters.

An example of projects which have a potential considerable impact on the environment are, for instance, wind installations of less than 30 meters height or installations located in protected areas such as national parks, nature reservations or Natura 2000 areas, as well as hydropower projects.

In the case of projects which have a considerable material impact on the environment, an environmental impact report ("**Report**") must be prepared before the decision on environmental consideration ("**Environmental Decision**") is issued. In the case of projects which only have a potential considerable impact on the environment, such a Report is optional, depending upon the decision of the respective public authority.

Finally, in the case of a project which has a potential considerable impact on Natura 2000 areas, an Environmental Impact Assessment ("**EIA**") must be carried out if such a requirement is stated by the respective regional director of environmental protection (*regionalny dyrektor ochrony środowiska*). If such a requirement is stated, the EIA is also performed by this public authority. The regional director states such a requirement on the basis of documentation regarding the project filed by the investor upon the district governor's demand. Such a demand takes place only if the

project is assessed as potentially having an impact on Natura 2000. The EIA can be performed within the following proceedings:

- A procedure regarding the Environmental Decision; or
- A procedure regarding a building permit, approval of a building project, a permit for resumption of construction work or a permit for a road investment or investment regarding a public airport.

However, in any case where a building permit, water permit or zoning decision must be issued (as is typically the case with RES projects), the Environmental Decision needs to be issued first.

Moreover, a renewed EIA might be necessary in the following cases:

- when such a requirement was expressly stated in the Environmental Decision (in particular if this decision was issued before a zoning decision, such that more detailed information about the project was still unknown);
- an investor applies for such a renewed EIA; or
- a public authority competent to issue the building permit (or another similar administrative decision related to construction work as mentioned above) states that circumstances indicated in a motion for such a decision have changed since the last EIA.

The Environmental Decision is issued, in most cases, by the head of the commune or mayor (*wójt, burmistrz, prezydent miasta*). In other cases, it is the regional director of environmental protection that issues the Environmental Decision.

Additionally, in the case of hydro power plants, a water permit must be issued, usually by the starost, except in expressly indicated cases by the voivodship marshal (*marszałek województwa*).

2.1.2 Building Law

There are generally three (3) main aspects which are crucial for the development of RES-Electricity projects in Poland.

First, if for a certain area a zoning plan (*miejscowy plan zagospodarowania przestrzennego, MPZP*) exists, it is necessary for a RES-Electricity project to be located and designed in accordance with that plan. For many areas in Poland, there are no zoning plans in place.

If no zoning plan exists, a RES-Electricity project may be permitted in a so-called "zoning decision" (*decyzja o warunkach zabudowy*) or a decision on the location of a public investment (*decyzja o lokalizacji inwestycji celu publicznego*). In the case of a zoning decision, the development of a power plant is subject to many conditions, most importantly a "similarity of development" rule. This rule means that the new development must match the features of those already existing on the neighbouring plots. In practice, it means that the new RES-Electricity project would have to be located in a neighbourhood of already existing, similar projects. For many new investments, this requirement will likely prove difficult or even impossible to meet. However, recent court decisions have brought their own interpretation of this legal provision. Specifically, according to court rulings, electricity generating wind-turbines may also be qualified as "technical infrastructure" and consequently they would not fall within the "similarity of development" condition. This allows for the issuance of a zoning decision even if the above requirement is not met. According to the Planning and Spatial Development Act dated 27 March 2003, the construction and maintenance of power lines and transmission facilities may be qualified as public investments and as a result, a decision on the location of a public investment can be issued for these elements of the RES-Electricity project. Contrary to EU-Directive 2009/28/EC, wind turbines as such are not considered to constitute public purpose investments.

On 11 September 2015, the so-called "Landscape Protection Act" came into force. This Act introduced "landscape audits" contemplated by the Planning and Spatial Development Act, which may limit the possibilities of locating wind farms under zoning plans.

The second key step in the investment process is obtaining a building permit (*pozwolenie na budowę*) prior to the commencement of construction work. The competent authority to issue a building permit is usually the starost (*starosta*) of a respective district. A granted permit expires if construction work is not commenced within three (3) years from the date of the permit becoming final (non-appealable).

In the case of power service connections (i.e. elements of an electrical installation serving to connect receiving installations to the electrical networks of a power supplier), it is sufficient to notify (*zgłoszenie*) the respective authorities of the construction work instead of filing for a building permit. In such a case, construction work must be commenced within two (2) years from the date indicated in the notification. In some cases, such as the construction of a free-standing sun collector, neither a building permit nor a notification is required, unless it is taller than three (3) meters and is installed on other constructed objects.

The last step before a project is put into operation is obtaining an occupancy permit (*pozwolenie na użytkowanie*). According to the Construction Act dated 7 July 1994, an occupancy permit needs to be obtained by an investor in expressly indicated circumstances, i.e. if a building permit was required to construct a certain object, or if an object falls into one of the categories stated therein. Such a permit is usually issued by the district building inspector (*powiatowy inspektor nadzoru budowlanego*). Usually, RES-Electricity projects are classified as requiring an occupancy permit. However, if a relevant authority classifies a project otherwise, only notification on the completion of construction is required, provided that the authority does not raise objections within twenty-one (21) days from the date of notification.

2.2. Process for obtaining the right (concession) to exploit natural resources

In order to exploit natural resources, an investor or entity needs to obtain a concession according to the Mining Act as well as the Act on Freedom of Business Activity, which regulates concessions in general. The application for a concession must be filed with the respective authority, which is usually the Ministry of Environmental Protection and sometimes the starost (*starosta*). RES are not covered by the Act on Freedom of Business Activity as regards the exploitation of natural resources. Thus, apart from the licence described in Section 3 below, no other licences are required for RES-Electricity projects.

Additionally, the generation of energy from biomass is a registered business activity and requires entry into the register of producers kept by the Agricultural Market Agency.

3. Licence to Generate RES-Electricity

3.1. Outline of the licensing process

The production of RES-Electricity requires a licence (*koncesja*) issued by the President of URE. This is usually one of the final steps in developing a RES-Electricity project. A licence is necessary to apply for green certificates.

The licence is granted for a definite period of time, between ten (10) and fifty (50) years. This period can be extended. The licence may not be transferred to another entity.

Prior to the application for a licence, the RES-Electricity project investor may apply for a promise of a licence (*promesa*). It is a commitment to issue a positive decision granting the licence, provided all requirements to get the licence are fulfilled. The President of URE indicates the promise term which is usually not less than six (6) months. Within that time, the licence must be granted, unless circumstances or the legal status indicated in the application for the licence have changed.

3.2. Designated/preferred legal form of an investment vehicle

There is no regulation providing for a legal form of an investment vehicle for RES-Electricity projects. However, the vast majority of special purpose vehicles (SPVs) in Poland are limited liability companies (*spółka z ograniczoną odpowiedzialnością*).

3.3. Anticipated time frame for the issue of licences/authorisations

The licence requires the opinions of other authorities and thus the duration of the process may vary depending on how fast different authorities proceed. The statutory term for the issuing of a licence is one (1) month, and in particularly complicated cases, two (2) months. However, when calculating the maximum duration of the proceedings, delays not attributable to URE (e.g. due to requests for additional documents or clarifications) are not taken into account. In practice, licence proceedings usually last approximately three (3) months.

4. Promotion System for the Production of RES-Electricity

From 1 July 2016, two (2) different support systems (the legacy one, based on green certificates, and the new auction system) will exist in parallel. The co-existence of both support systems will continue until 31 December 2035, which is the deadline for receiving support under both schemes (with the exception of off-shore wind farms, which may receive support until 2040).

The promotion scheme of RES-Electricity in Poland is based on certificates of origin, commonly known as green certificates.

Certificates of origin certify that a certain volume of electricity has been generated from renewable sources. Every entity that produces green energy has a right to apply for green certificates, which are tradable, non-tangible commodities. Green certificates may be sold by the power producer independently from energy and thus increase the power producer's income.

Pursuant to the RES Act, on 1 July 2016 Poland will implement a new support scheme, based on contracts for difference. After that date, two (2) support systems will exist in parallel. The planned changes will be described in more detail in Sections 4.5 and 4.6 below.

4.1. Applicability of promotion scheme

In Poland, the RES-Electricity promotion scheme applies to entities that produce electricity from all types of renewable energy sources. However, as a general rule, only licensed entities may apply for green certificates. As a consequence, the first condition that needs to be met by every green electricity producer in order to benefit from the RES-Electricity support scheme is the obtaining of a licence, as described in Section 3 above.

Once licensed, every entity that produces RES-Electricity may apply for a certificate of origin. Renewable energy sources include, among others, hydro power plants, wind farms, biomass plants, solar photovoltaic, heat collectors, geothermal sources, as well as part of the energy recovered from the incineration of municipal waste.

4.2. General description of the promotion scheme

Although the vast majority of EU Member States use feed-in tariffs as the main mechanism for supporting green energy production, Poland originally opted for a support system based on the trading of certificates of origin.

Certificates of origin confirm that a given volume of electricity has originated from a renewable source. They are issued by the President of URE upon application. The energy volume declared in the application must be confirmed by the relevant grid operator. In general, applications are filed on a monthly basis. Failure to file an application within the statutory deadline results in the authority's refusal to issue a certificate.

If the application meets the formal requirements, the President of URE issues a certificate of origin within fourteen (14) days of filing. Simultaneously, electronic information is provided to the commodity exchange, on which the rights incorporated in the certificates are traded, namely to the Polish Power Exchange (*Towarowa Giełda Energii S.A.,* "**TGE**"). Thus, a RES-Electricity producer needs to open an account on the TGE, so the green certificates may be registered on its account.

Green certificates incorporate intangible rights connected with the certificates of origin granted to the company, and so can be compared to securities (commodities). They are issued for each 1 KWh of generated green energy confirmed in the certificate of origin, irrespective of its source (no "coefficients" are applied that would differentiate the number of certificates depending on the type of RES). Green certificates are sold and traded by the members of TGE. The trading process is described in more detail under Section 4.4 below.

4.3. Quota obligations

The green certificate promotion scheme is closely connected with the so-called "quota obligations", i.e. obligations to source a certain percentage of electricity from renewable energy. Quota obligations are imposed on energy traders and producers. Every company that produces or trades electricity and supplies it to ultimate consumers (collectively "**Energy Companies**") needs to confirm that a certain volume of the electricity supplied to the end-costumers on the Polish market originated from RES. This obligation is facilitated by the trading of green certificates.

Energy Companies are obliged to obtain green certificates and present them to the President of URE for cancellation. The volume of green certificates that a given Energy Company is obliged to present for cancellation in relation to a given year depends on the volume of energy that has been sold by that Energy Company to end-costumers during the same period. At the same time, however, green certificates are not year-specific, i.e. green certificates issued in 2013 can also be presented for cancellation in 2014 and the following years. The rights incorporated in certificates expire upon cancellation.

Upon enactment of the RES Act, industrial consumers remained obliged to present green certificates for cancellation, however certain amendments were introduced. As one of the changes, the current factor, which determines the scope of the quota obligation (i.e. "cost of energy purchased compared to the production value") was replaced by the "energy use intensity" factor.

The RES Act was aimed at decreasing the existing oversupply of green certificates. However, in the course of Parliamentary work, the Ministry of Economy withdrew its initial proposal and implemented an amendment pursuant to which quota obligations will remain at the unchanged level in 2015 and 2016 (i.e. at the level of fourteen percent (14%) and fifteen percent (15%) respectively).

The quota obligations for the respective years are established by the Minister of Economy, who determines their level taking into account the national energy policy and the international obligations of Poland. However, there are no "stiff" statutory factors or formulae that would directly indicate the level of the quota.

Finally, in order to avoid further oversupply of certificates (for details please see Section 4.4. below), the Minister of Economy introduced new, higher obligation quotas, at the following levels:

- 13% - in 2014;
- 14% - in 2015;
- 15% - in 2016.

Quota obligations can be illustrated by the following example: if an Energy Company supplied 1 TWh of energy to end-costumers in 2012, by 31 March 2013 it needed to present certificates of origin for a minimal volume of 104 GWh to the President of URE for cancellation. If the Energy Company cannot present the relevant volume of green certificates, it must pay a so-called "substitution fee" (*opłata zastępcza*) for each MWh of energy that has not been "covered" by green certificates. This substitution fee thus sets a notional "cap" to the price at which the green certificates are traded on the Polish Power Exchange (*Towarowa Giełda Energii S.A.*, "**TGE**"), which is based on the assumption that if the green certificate trading prices are much higher than such substitution fee, the Energy Company would prefer to pay the substitution fee rather than purchasing the more expensive green certificates. However, in practice, mechanisms governing the market have proven to be more unpredictable. For example, during the significant drop in the price of green certificates in 2012 (caused to a large extent by an oversupply of green certificates on the market), many companies still chose to pay the substitution fee, in spite of the fact that the price of green certificates was significantly lower (e.g. PLN 209.27/MWh (EUR 52) in comparison to the substitution fee of PLN 286.74 per MWh (EUR 71 per MWh)), The RES Act introduced changes prohibiting similar practices in the future. It remains to be seen whether such measures will prove effective.

The substitution fee amount applicable in a given year is published by the President of URE annually, by 31 March of a given year. It is based on an initial amount of PLN 240 (approximately EUR 60) per MWh fixed in the Energy Law, which is subject to annual indexation by the Consumer Price Index announced by the Central Statistical Office of Poland. The indexation formula is fixed. Thus the President of URE has no discretion when announcing the current fee. The relatively late deadline for publishing the updated fee amount (31 March) corresponds with the time frame for announcing the official inflation rates (CPI Index) by the Central Statistical Office. In 2015 the substitution fee amounted to PLN 300.03 per MWh (approximately EUR 75 per MWh). The fee income is paid to the account of the National Fund for Environmental Protection and Water Management, which provides funding to support renewable energy and cogeneration sources located in Poland.

4.4. Trading green certificates

One of the characteristics of the RES-Electricity support system based on certificates of origin is that the price for the certificate remains uncertain, and is in each case determined by the market. In standard market conditions, the substitution fee constitutes a key factor for green certificate market prices in a given year. In 2010-2011 green certificate market prices were slightly higher than the substitution fee. If the average price of green certificates drops below seventy-five percent (75%) of the substitution fee amount for a period of at least three (3) months, market participants are not permitted to pay the substitution fee in order to meet the quota obligation. In such a case, the only admissible way of complying with the quota obligations is to present green certificates for cancellation.

In 2012 the Polish market for green certificates experienced an oversupply of green certificates, which resulted in significant reduction of their market prices. The price of green certificates hit an all-time low in early 2013, trading at only PLN 130.83 per MWh.

There are several reasons that could have contributed to the deterioration of the green certificate market. First, a compulsory green energy share of ten point four percent (10.4%) remained at a steady level throughout 2010-2012. At the same time, the production of RES-Electricity in the given years increased systematically. Thus an increasing number of green certificates were traded on the market. The production of electricity in co-combustion and in wind plants grew faster than assumed by the government establishing the obligation quota. Finally, the economic crisis prevented the growth of electricity consumption in 2011 and caused a slight decrease in electricity demand in 2012. Consequently, the overall sale of energy to end-customers (which also constitutes one of the factors influencing the final quota obligation) remained relatively stable. This, combined with the compulsory green energy share being kept at ten point four percent (10.4%), resulted in the demand for green certificates to remain constant, while the green certificates' supply increased. The combination of the above caused an oversupply of green certificates on the market and resulted in a rapid drop in their prices. In addition, some companies preferred to pay the substitution fee and keep the green certificates, hoping to cancel or sell them in 2013 at a better price.

In 2014, the average price of green certificates amounted to approximately PLN 184/MWh (EUR 46/MWh). After the peak in the first months of 2014, when the green certificate prices were at the level of approximately PLN 225/MWh (EUR 56), prices started to gradually fall. The average trading price in December 2014, amounted to PLN 155.98/MWh (EUR 39), which is scarcely above fifty percent (50%) of the substitution fee of PLN 300.03 (EUR 75) per MWh. Until mid-2015 the prices continued to decrease: trading prices in May 2015 amounted to PLN 125.58/MWh (EUR 29) and one (1) month later in June 2015, only to PLN 113.59/MWh (EUR 26), thus slightly above thirty percent (30%) of the current substitution fee.

The collapse of green certificate prices was due to the oversupply of green certificates on the market (about 12 TWh as of December 2014, which corresponds to about three quarters (¾) of the overall estimated demand for green certificates in 2014, which is estimated at the level of 15.5 TWh). The RES Act, besides introducing a new support scheme, also introduced changes to the green certificate system, aiming to address the existing deficiencies and prevent such oversupply. Among other changes, it limits the support for hydro-energy and biomass co-combustion. Hydropower plants with a capacity exceeding 5 MW will no longer receive support. In practice, this change relates to only a few hydro plants which have been in operation for many years and which are already amortised. Support for biomass co-combustion has been limited, in particular by lowering the amount of green certificates granted for the electricity produced. Until 2020, 0.5 certificate will be granted for each 1 MWh of electricity. After this date the volume of support will be determined by the Council of Ministers. The above limitations do not apply to the so-called "dedicated installations", which will be awarded full support.

4.5. Auction System

The new RES support scheme will be based on contracts for difference. Support (contracts) will be awarded in auctions organised by the President of URE for entities that will supply a given amount of RES-Electricity at the lowest price. Auctions will be held electronically, via an internet platform.

There will be no minimum bidding price, but there will be a maximum price for which one MWh can be offered in a given year, a so-called "reference price". The reference price will be published by the Minister of Economy at least sixty (60) days before the first auction in a given year. There will be separate reference prices for different renewable energy sources and also for different capacities of installations. At least twenty-five percent (25%) of the electricity sold in auctions should be produced in installations with an overall capacity below 1 MW.

In order to participate in the auction, RES installations must prequalify. Generally speaking, in order to pass prequalification, the project must achieve a ready-to-build stage (obtain a final building permit). The certificate of qualification will be valid for twelve (12) months.

Bidders will have to commence RES-Electricity production within forty-eight (48) months as of the closing of the auction (in the case of PV installation, this time frame will amount to twenty-four (24) months, and in the case of off-shore wind farms, this will be seventy-two (72) months).

Installations of less than 0.5 MW capacity will then sell the RES-Electricity to the suppliers of last resort (further described in Section 4.7) at the price indicated in the bid. Other energy producers will sell the RES-Electricity on the market. They will then be entitled to apply for a refund of the difference between the amount of RES-Electricity sold by them in the preceding month multiplied by the stock market prices and the same amount of RES-Electricity multiplied by the price offered in the auction. The authority responsible for settlements and support payments will be the newly established Renewable Energy Settlement Operator (*Operator Rozliczeń Energii Odnawialnej S.A.,* "**OREO**"). Settlements will take place on a monthly basis. OREO is obliged to pay out the support amount within thirty (30) days as of receiving the relevant data from the RES-Electricity producer. If the value of the RES-Electricity that is sold based on the market prices is higher than its value based on the price offered at auction, no support will be paid, and the difference will be deducted from the amount of the support payment in the next settlement period. If, at the end of the entire support period, such difference is not yet settled, the outstanding amount will be paid by the RES-Electricity producer to OREO in six (6) equal, monthly instalments.

The price of the selected bidders offered in the auction will be annually adjusted by the inflation rate.

The overall term of support for installations in the auction system is fifteen (15) years. However, the support may in no case last longer than until 31 December 2035, with the exception of off-shore wind farms, that may receive support until 31 December 2040. The last auction may not be settled later than by 30 June 2021.

The meeting of the obligation to produce the declared volume of RES-Electricity by a given producer will be verified by the President of URE in three (3) year intervals. In this three (3) year settlement period, the producer will be obliged to produce at least eighty-five percent (85%) of the RES-Electricity volume declared at auction. Otherwise it will be obliged to pay a fine, the amount of which will depend on the volume of the shortfall.

4.6. Controversies about the new support scheme

One of the most significant risks in connection with these new laws is the decision of the Council of Ministers not to notify the new regulations to the European Commission under the State Aid Directive. Generally, Member States are free to design their RES support schemes, but they must notify any state aid that does not benefit from an exemption. The Polish government declared that the support system provided for in the RES Act falls within the scope of exemption, and decided not to pursue the notification procedure (which would significantly delay the implementation of the new laws). This decision has been heavily criticised in Poland and raised objections even on a governmental level. Poland did not only risk being subject to penalties for implementing laws in violation of Article 107 of the Treaty on the functioning of the European Union, but also any state aid granted under the support system is likely to be held for unlawful and could be ordered to be returned, which is a risk to be borne directly by the investors.

The current RES support system (green certificates) was also not originally notified to the European Commission. In 2014, the European Commission initiated a state aid investigation against Poland in this respect. These proceedings have not yet been finalised.

In November 2015, Polish authorities finally notified both support systems to the European Commission and are now awaiting the outcome of these proceedings. As a general rule, the European Commission should issue a decision within two (2) months following notification. However, these proceedings may be extended if the European Commission decides to pose additional queries to the Polish authorities. The notification to the European Commission was a reason for delaying the entry into force of the provisions of the RES Act regarding the auction system from 1 January 2016 to 1 July 2016.

Another factor criticised in the auction system is the high investment risk. In the green certificates system, each installation producing energy was to receive support. In the auction system, even if a given installation successfully passes prequalification, it may still not receive a contract, even though the project already reached the ready-to-build stage.

In addition, the chances of winning an auction depend not only upon the price offered by a given bidder (and consequently on the efficiency of a given installation), but also on external factors, such as the volume of the RES-Electricity to be sold at auction that will be established each year by the Council of Ministers. If the volume is too low, and at the same time there are a large number of RES installations participating in the auction, even cost effective installations may not receive support.

Another risk connected with the new support system is underbidding, where the price offered at the bid by auction participants proves ultimately to be too low, and the winning project is not put into operation. Underbidding may be caused by investors' expectations as to a decrease of investment costs (which will be borne sometimes two to three (2-3) years after the auction). The RES Act provides for measures aimed at preventing the situation where selected bidders fail to finalise the RES installations after winning the auction (namely loss of the deposit amounting to PLN 30 (EUR 7.5) for each kW of installed capacity, and three (3) years of exclusion from participation in auctions). However, planned measures may prove insufficient for securing the implementation of the winning projects.

The greatest positive change connected with the RES Act is its actual implementation. Work on the new regulations had been ongoing since 2011. The governmental proposals related thereto evolved from simply amending the existing green certificates system to the introduction of an entirely new promotion scheme. The insecurity as to the legal regulations was seen as the most significant investment hurdle in Poland with respect to RES-Electricity investments. This may finally change in the near future now that the RES Act has been implemented.

4.7. Other financial incentives for RES-Electricity

An important instrument supporting RES-Electricity is the obligation to purchase RES-Electricity that is imposed upon suppliers of last resort ("**SOLR**"). This form of support is again applicable only to licensed producers. Suppliers of last resort (i.e. gas and electricity suppliers serving household customers) are obliged to purchase electricity generated from RES connected to a distribution or transmission grid located within the area, in which a given SOLR is active. The purchase price should be equal to the average selling price of electricity in the preceding calendar year. The average price is published by the President of URE by 31 March of each year. It is calculated based on income generated by energy producers in transactions concerning the sale of electricity to energy trading companies (inter-company sales excluded) and to the energy stock market, and the volume of electricity sold in these transactions. The average electricity sale price for 2013 (i.e. price applicable in 2014) was PLN 181.55 (approximately EUR 45) per 1 MWh, and dropped by about PLN 19 (EUR 5) in comparison to the price for 2013, which was at the level of PLN 201.36 (approximately EUR 50). This was the most significant price decrease in many years, which continued in 2015. The average electricity sale price for the second (2nd) quarter of 2015 was PLN 170.19 (approximately EUR 39) per 1 MWh.

The RES Act introduced some changes to the above obligation. Taking advantage of the right to sell RES-Electricity to SOLR at the price indicated by URE is possible only if the producer undertakes to sell its entire RES-Electricity production that way for the next ninety (90) days. The reason for this change indicated by the government is that the right to sell RES-Electricity to the obliged purchasers was abused. As described above, the sale price in the transactions with SOLR is fixed, and is based on the average selling price in the preceding year. In practice, electricity prices have been decreasing over the past three (3) years, and so the sale price in these transactions was above the actual market price. This means that SOLR were obliged to purchase electricity at a loss, especially when the market prices were low, e.g. during the night. On the other hand, when the demand for electricity was high and the market prices increased, RES-Electricity producers have been selling the electricity on the market (and not to SOLR). The amendment is aimed at preventing similar market practices, in case the RES-Electricity producers choose to take advantage of their right to sell RES-Electricity to SOLR at the indicated price, by requiring that they have to sell them their RES-Electricity for the next ninety (90) days. In addition, there are several other incentives applicable for RES-Electricity. They consist of certain tax benefits and the possibility to obtain additional funding for projects, e.g. from EU funds. The most significant tax benefit is the exemption of RES-Electricity from excise duty, which currently amounts to PLN 20 (approximately EUR 5) per 1 MWh. This exemption is being applied based upon the volume of certificates of origin that have been presented to the President of URE each year. The volume of electricity exempted from tax duty corresponds to the volume of energy stated in a document confirming the cancellation of certificates of origin.

4.8. Support scheme for cogeneration

The support scheme for cogeneration is similar to the support system for RES-Electricity presented above. It is based on "coloured" certificates of origin. There are three types of certificates of origin, issued for electricity produced in high efficiency cogeneration plants: 1) for electricity produced in gas-fired CHP plants or plants of up to 1 MW of installed capacity (yellow certificates); 2) for electricity derived from methane released from coal mines or biomass (violet certificates); and 3) for electricity produced in other plants, i.e. plants of a capacity higher than 1 MW, and derived from other sources, mainly coal (red certificates). For each of the above-mentioned certificates there are different obligation quotas.

The support scheme for cogeneration expired at the end of 2012; however it was re-introduced in 2014 by virtue of amendment to the Energy Law, which came into force on 30 April 2014. According to these regulations, the support scheme should be in force until the end of 2018. As of 2015, the quota obligations were established at the level of

four point nine percent (4.9%) with respect to yellow certificates, one point three percent (1.3%) with respect to violet certificates and twenty-three point two percent (23.2%) with respect to red certificates. For 2016, the quota obligations are respectively six percent (6%), one point five percent (1.5%) and twenty-three point two percent (23.2%).

In addition, entities producing electricity from cogeneration can benefit from other mechanisms of support, such as an obligation imposed upon companies that trade and sell heat to purchase heat generated from RES connected to a grid.

5. Grid Connection

5.1. Access of RES-Electricity to the electricity network

For a RES-Electricity project to be connected to the grid, the grid operator first issues so-called "grid connection terms" (*warunki przyłączenia*) and afterwards a grid connection agreement (*umowa o przyłączenie do sieci*) between the grid operator and RES-Electricity producer is signed. According to the Energy Law, the grid operator is obliged to issue connection terms upon the producer's request, provided technical and economic conditions for such a connection exist and the producer fulfils certain conditions regarding the grid connection and energy collection.

As the grid is of poor quality in some areas of Poland, the above-mentioned technical and economic conditions very often constitute an obstacle for RES-Electricity producers to be connected to the grid as grid operators abuse their discretionary power to determine whether these conditions have been met. Disputes between the grid operators and the RES-Electricity producers in this regard are settled by the President of URE. The decision of the President of URE may be appealed to the District Court in Warsaw – the Court of Competition and Consumer Protection.

The grid connection terms are valid for two (2) years. Within this time frame, the grid operator is obliged to connect the RES-Electricity project to the grid (provided the above-mentioned technical and economic conditions exist). After two (2) years, this obligation expires. Within fourteen (14) days from the application for the grid connection terms, an advance payment equal to PLN 30 must be paid for each KW of connection power, up to a total of PLN 3 million. According to the Energy Law, the grid operator is obliged to issue the grid connection terms within one hundred and fifty (150) days from the day of the advance payment.

The next step is the conclusion of a grid connection agreement. The key elements of the agreement, such as connection payment, date of connection to the grid, scope of construction work or connection power are indicated in the Energy Law. However, the provisions of such agreements are often disputable. For instance, the calculation of the connection payment is based upon actual costs incurred to complete the grid connection. The "actual costs" phrase is considered to be vague and grid operators often include costs for the grid's modernisation and construction in connection payments. This, in turn, results in sometimes extremely high connection fees and leads to disputes. Disputes are settled by the President of URE, whose decision regarding the functionality overrides any bilateral statement of will between a grid operator and RES-Electricity producer as to the grid connection.

RES-Electricity has priority access to the grid. The company providing the transfer or distribution of energy is obliged to conclude a contract for connection to the grid with entities who apply for a connection under the rules of equal treatment and first of all connect RES installations (if there are technical and economic conditions for connection to the grid and for supplying fuel or energy), and the applicant for the connection contract meets the conditions for the connection to the grid and receiving of energy.

5.2. Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid

The grid operator is, by virtue of law, obliged to conclude a grid connection agreement with a RES-Electricity producer consistent with general terms and conditions provided for in the Energy Law, as well as established bilaterally be-

tween the parties (or, as in practice, unilaterally imposed by the grid operator). The costs of grid connection are borne by the RES-Electricity producer in the form of a grid connection payment to the grid operator for the connection to the grid. The remaining costs of grid improvements, upgrades and other similar costs are incurred by the end-customers and grid operators, who draw electricity from the grid, by way of an annual payment for the use of the grid system.

Grid operators are also responsible for maintaining the stable operation of the grid system. In particular, the grid system operator must guarantee the functionality (technical safety) of its grid system through long-term investments. Frequently, grid operators impose costs of such modernisation and development on RES-Electricity producers by including these costs in the grid connection payment, although such payment should cover only costs for a single connection to the grid.

5.3. Special allowance/tolerance for intermittent generation in relation to balancing charges for unscheduled deviations

The operator of the transmission grid is responsible for the safety of the electro-energetic system in Poland and for ensuring access to adequate reserves of production capacity required for balancing the current demand for electric energy with energy supplies. However, due to the fact that most energy producers are located in the south of Poland, it is hard to ensure a continuous and reliable supply of energy, especially to users located in the north of Poland.

Thus, unscheduled deviations in RES-Electricity production are not sanctioned by balancing charges for the generator and therefore there is no need for Polish law to stipulate a special allowance/tolerance for intermittent generation. Any planned legislative amendments to address this issue will likely be in the future, since the generation of “unstable” RES-Electricity is currently a relatively small percentage of the overall energy production in Poland.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all the jurisdictions is the prohibition of incompatible state aid, which is contained both in the EU Treaty on the functioning of the European Union and in the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission’s new Guidelines on State Aid for Environmental Protection and Energy adopted on 7 April 2014, be considered as compatible with the Internal Market.

A separate type of support for RES is indirectly provided by the so-called “Infrastructure and Environment Operational Programme” for the years 2014-2020. One of its aims is promote renewable sources and improve efficiency. The Energy Law stipulates certain minimum standards for different agreements related to the energy system in Poland, such as power purchase agreements or agreements on services of transmission and distribution of energy. Apart from that, the grid operators are obliged to publish the terms and conditions of their agreements on their Web sites. However, no such general template is imposed by the regulatory authorities.

7. Carbon Credits

Poland ratified the Kyoto Protocol in 2002. The act on the trade system of rights to the emission of greenhouse gases dated 28 April 2011 fulfils the main assumptions of the Kyoto Protocol as well as the respective regulations of the European Union.

The above-mentioned act includes in the trade system not only carbon dioxide, but also nitrogen monoxide and PFCs.

The trade system is managed by the National Centre for Emission Balancing and Management (*Krajowy Ośrodek Bilasowania i Zarządzania Emisjami*).

WOLF THEISS

ROMANIA

ROMANIA

Main permits required for RES-Electricity generating facilities

Environmental permit	Hydro power plants and wind power plants always require an Environmental Impact Assessment ("**EIA**"). Others only require an EIA when the project is likely to have a "significant impact" on the environment.
Building permit	An administrative deed is issued by the mayor of the local administrative unit where the plant will be built, or by the president of the county council if the premises are located outside the city limits.
Setting Up Permit	Establishment authorisation issued by the Romanian Energy Regulatory Body ("**ANRE**") required for creating new generation installation.
Accreditation	The activity of ANRE is based upon a regulation to grant an economic operator, which has electricity facilities using renewable energy sources ("RES"), the right to benefit from the RES Support Scheme.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	The generation licence is issued by ANRE.
RES SUPPORT SCHEME	
Outline	The RES Support Scheme is a green certificate ("**GCs**") support system under which eligible producers of electricity from renewable energy sources ("**RES-Electricity Producers**") receive a specific number of GCs, depending on the technology used, for each MW produced and delivered to the grid together with an obligation imposed on the electricity suppliers and certain producers ("**Entities**[1]") to purchase a mandatory quota of GCs. GCs can be traded on a GC centralised market administrated by OPCOM, separately from RES-Electricity. The final date when new beneficiaries can enter the RES Support Scheme is set for 31 December 2016.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	Yes, provided the safety of the National Electricity Grid is not affected.
Guaranteed access to the electric grid given to the RES-Electricity	Yes, for the electricity sold.
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The licence holder benefits from regulated access to the electricity grid of public interest. Access to the electricity grid of public interest is a regulated, obligatory service to be managed by the transport and system operator and by the distribution operator. Both entities must provide their services to all users of the electricity grid, in a non-discriminatory manner, ensuring access to the electricity grid in accordance with the law. The expenses for modifying any distribution installations are borne, according to legal requirements, based upon objective criteria.

1 Electricity suppliers and producers of: (i) the electricity purchased and used by the suppliers for their final consumption as well as the electricity invoiced to end consumers; (ii) electricity used by a producer for their final end consumption, other than the electricity used for their technological consumption; and (iii) the electricity used by a producer to power consumers connected through direct lines to the production facility.

CARBON CREDITS	
Status	Romania has ratified the Kyoto Protocol, as a UNFCCC Annex 1 Party. The necessary legal framework has already been adopted into national law. The first commitment period ended in 2012 for Romania, which had as its benchmark year in 1989. At the Doha climate change talks held in 2012, Romania agreed to a second commitment period of emissions reduction from 1 January 2013 to 31 December 2020.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

- Law No. 220/2008 regarding the establishment of a system for promoting the production of energy from renewable sources of energy as subsequently amended and supplemented ("**Law 220/2008**" or "**RES Support Scheme Law**") by (i) Law No. 139/2010 ("**Law 139/2010**"); (ii) Emergency Ordinance No. 88/2011 ("**EO 88/2011**"), as approved with amendments by Law No. 134/2012 ("Law 134/2012"); (iii) Emergency Ordinance No. 57/2013 ("**EO 57/2013**") as approved with amendments by Law No. 23/2014; (iv) Emergency Ordinance No. 79/2013 ("E**O 79/2013**"); and (v) Law No. 122/2015 ("**Law 122/2015**").
- ANRE Order No. 48/2014 ("**Order 48/2014**" or "**Accreditation Regulation**") regarding the approval of the Regulation for the accreditation of producers of RES-Electricity for the application of the GCs promotion scheme, subsequently amended by ANRE Order No. 100/2015 ("**Order 100/2015**") and ANRE Order No. 138/2015 ("**Order 138/2015**").
- ANRE Order No. 4/2015 ("**Order 4/2015**") regarding the approval of the Regulation for the issuance of GCs.
- ANRE Order No. 60/2015 ("**Order 60/2015**") regarding the approval of the Regulation for the organisation and functioning of the GC market ("**GC Market Regulation**").
- ANRE Order No. 101/2015 ("**Order 101/2015**") regarding the approval of the Methodology for the establishment of the annual acquisition quota of GCs ("**GC Acquisition Quota Order**").
- Government Decision No. 1232/2011 regarding the approval of the Regulation certifying the origin of electricity produced from renewable energy sources ("**GD 1232/2011**").
- ANRE Order No. 78/2014 ("**Order 78/2014**") regarding the approval of the Regulation regarding the modalities for concluding bilateral energy agreements by way of extended auction and continuous negotiation and by processing agreements.
- ANRE Order No. 12/2015 ("**Order 12/2015**") regarding the approval of the Regulation for obtaining the licences and authorisations in the electricity field subsequently amended by Order No. 158/2015.
- ANRE Order No. 91/2015 ("**Order 91/2015**") regarding the approval of the Procedure for the confirmation of the right of certain foreign legal entities headquartered in an EU Member State to participate in the electricity markets of Romania.
- ANRE Order No. 59/2013 ("**Order 59/2013**") to approve the Regulation for the connection of users to electricity grids of public interest subsequently amended by Order No. 63/2014 ("**Order 63/2014**").
- Government Decision No. 1069/2007 regarding the approval of the "National Energy Strategy 2007-2020" ("**National Energy Strategy GD**") which established among its principal objectives (i) the promotion of electricity production from renewable sources of energy; and (ii) the implementation of new technologies and clean technologies (i.e. low carbon technologies).
- Energy and Natural Gas Law No. 123/2012 ("**Energy Act**"), amended by Law No. 255/2013 ("**Law 255/2013**"), Emergency Ordinance No. 20/2014 ("**EO 20/2014**"), Emergency Ordinance No. 35/2014 ("**EO 35/2014**"), Emer-

gency Ordinance No. 86/2014 ("**EO 86/2014**"), Law No. 117/2014 ("**Law 117/2014**"), Law No. 127/2014 ("**Law 127/2014**") and Law 227/2015 regarding Fiscal Code, sets forth the general legal framework applicable to the electricity and natural gas sector.

- Order No. 25/2004 subsequently amended by Order No. 82/2014 ("**Order 82/2014**") and Order No. 68/2015 ("**Order 68/2015**"), for the approval of the Commercial Code for the Wholesale Electricity Market ("**Commercial Code for the Wholesale Electricity Market**").

Romania has transposed all relevant EU Directives in the renewable energy field into its regulatory framework. Law 220/2008 was approved by the Commission's decision on 13 July 2011 in the case SA.33134 (2011/N).

1.2 Significant Legislative Changes in 2015

The most relevant changes introduced in 2015 may be summarised as follows:

1.2.1 Mandatory quota

1.2.1.1 CHANGES TO THE OBLIGATION TO ACQUIRE GCS

In accordance with an amendment to the RES Support Scheme Law in 2015[2], once again the Entities are required to comply with the obligation to acquire GCs on a quarterly basis, similar to the previous provisions adopted in 2013 and subsequently repealed in 2014. In complying with this obligation, the Entities must purchase each quarter a number of GCs equal to the value of the mandatory quota set for the respective year multiplied by the amount of electricity invoiced to end consumers and/or self-supplied as the case may be.

Furthermore, the Entities must report to ANRE the fulfilment of the quota on both a quarterly and annual basis. Following such reporting, ANRE will assess compliance within forty-five (45) days from the end of each quarter.

For 2016, a quota of twelve point fifteen percent (12.15%) was established. Given that the estimated number of MWh produced by commissioned RES-Electricity facilities is expected to be higher than this quota, it is likely that a significant number of GCs will continue to remain unsold in 2016.

1.2.1.2 NEW SANCTIONS FOR NON-COMPLIANCE

Failure to achieve at least ninety percent (90%) of the annual mandatory quota is sanctioned by fines amounting to the maximum value set for each GC, multiplied by the number of GCs not acquired, corresponding to the difference between ninety percent (90%) of the annual mandatory quota and the actual quota achieved for the respective quarter.

In addition, the failure to timely submit to ANRE the required information or to accurately communicate this information may trigger higher fines ranging from RON 10,000 to RON 100,000. The new fines are applicable to Entities, which are either individuals or legal persons. Furthermore, for two (2) or more breaches during a calendar year, the fines can increase to up to five percent (5%) of the turnover of the respective Entity.

1.2.1.3 LARGE ELECTRICITY CONSUMERS

As an exception to the requirements to purchase the mandatory quota on a quarterly basis, until 31 December 2015, large electricity consumers were allowed to comply with such requirements on an annual basis.

Large electricity consumers are those consumers, which, depending on the fulfilment of certain conditions, can be exempted from the acquisition of up to eighty-five percent (85%) of the regular GCs quota. Such exemption is based

2 According to Law 122/2015.

on the Large Consumers Aid Scheme approved by the Commission's decision SA.39042 (2014/N) and applicable from 1 December 2014 until 31 December 2024.

In accordance with a press release issued on 4 December 2015 by the Ministry of Economy, 37 companies were exempted or in the process of receiving such an exemption from the obligation to purchase the regular GCs quota for a total quantity of energy estimated at 7 TW.

1.2.1.4 NEW FACILITIES FOR BILATERAL ELECTRICITY AGREEMENTS FOR OWNERS OF SMALL RES-ELECTRICITY PRODUCTION FACILITIES

In accordance with Law 23/2014, the RES-Electricity producers which own groups/power production facilities with installed powers which do not exceed 1 MW per RES-Electricity Producer and 2 MW for high efficiency cogeneration producers can conclude bilateral electricity and GC contracts outside the centralised markets, provided that such agreements are concluded only with the suppliers of end consumers.

In addition, in accordance with Law 122/2015, an additional exemption was introduced for those RES-Electricity producers with installed powers from 1 MW to 3 MW per unit or from 2 MW to 3 MW for high efficiency cogeneration produced from biomass, benefiting from the RES Support Scheme and considered to be small and medium enterprises according to Law No. 346/2004 regarding the establishment and development of small and medium enterprises. The newly added facility does not apply to GC trading.

Those RES-Electricity producers, which meet the criteria for concluding such bilateral agreements, must submit information to ANRE regarding the price and quantity of electricity sold in accordance with such contracts. Failure to observe this obligation triggers fines and, (in the case of RES-Electricity producers with installed powers exceeding 100 KW), the generation licence may also be suspended for a period of three (3) months.

1.2.2 Changes to the RES Support Scheme

1.2.2.1 NEW ELIGIBILITY CRITERIA FOR BIOMASS

In accordance with Law 122/2015, electricity generated from biomass acquired from import becomes eligible for the RES Support Scheme.

1.2.2.2 EXCLUSION OF ELECTRICITY SOLD AT NEGATIVE PRICES

In accordance with Law 122/2015, RES-Electricity sold at negative prices does not qualify for the RES Support Scheme. As of the date of this Report, ANRE has not issued the necessary clarifications and regulations for implementation, although the deadline set by Law 122/2015 has expired.

1.2.2.3 OPENING OF THE RES SUPPORT SCHEME TO RES-ELECTRICITY PRODUCERS LOCATED IN OTHER EU MEMBER STATES & RECIPROCAL BILATERAL AGREEMENTS

In accordance with amendments introduced by Law 122/2015, the RES Support Scheme will be open to RES-Electricity producers located in other EU Member States. This means that RES-Electricity generated in other EU Member States could be eligible to obtain GCs in Romania provided reciprocal bilateral agreements with the respective EU Member State are concluded. Given that a number of EU Member States did not reach their agreed targets, Romanian RES-Electricity producers might benefit from such reciprocal agreements. However, as of the date of this report, the relevant Government decision and ANRE regulations, which need to be adopted in order for this mechanism to be implemented, have not been adopted, although the deadline set by Law 122/2015 has expired.

1.2.3 Requirement for individual state aid notifications raised to projects over 250 MW

In accordance with Law 122/2015 and the applicable EU guidelines on state aid, the threshold for obtaining an individual authorisation decision from the European Commission in order to benefit from the RES Support Scheme was raised from projects of over 125 MW to projects of over 250 MW.

RES-Electricity producers with installed capacities in excess of 125 MW (i.e. the former threshold for individual state aid notifications), which for reasons not imputable to them, did not receive the individual authorisation decision from the European Commission within twenty-four (24) months from accreditation, may apply for a new temporary accreditation for the RES-Electricity generated from the date of the temporary accreditation until the date when the individual decision is issued.

RES-Electricity producers with installed capacities between 125 and 250 MW, which did not benefit from the RES Support Scheme, may be accredited by ANRE without having to obtain an individual decision of the European Commission.

1.2.4 New regulation adopted regarding the authorisation/licences issued by ANRE

Please see below a short summary of the main changes brought by the new regulation approved by Order 12/2015:

1.2.4.1 SIMPLIFIED LICENSING REGIME FOR EU ENTITIES

Following the opening of an antitrust procedure against the Romanian energy market operator OPCOM for abuse of a dominant position and discriminatory treatment of foreign traders, Order 12/2015 eliminated:

- the requirement of having a permanent establishment in Romania as a pre-requisite for obtaining an ANRE licence; and
- the requirement of having to obtain a licence issued in Romania for those operators already licensed in other EU Member States.

1.2.4.2 REGULATION OF THE ELECTRICITY TRADING

Electricity trading, defined as the wholesale of electricity (including import/export activities), was first regulated, independently from supply activities, in a 2014 amendment to the Energy Act. However, only in 2015 by way of Order 12/2015 was the relevant procedure adopted. In addition, the general conditions attached to the trading licence have been approved by way of ANRE Order No. 13/2015.

The conditions applicable to the electricity trading licence, both in terms of required documentation and financial capabilities, are less restrictive than those applicable to the supply licence.

Those Entities, which have already obtained a supply licence, do not have to obtain a separate licence for trading, as the supply licence also covers this activity.

1.2.4.3 SETTING UP PERMIT

No Setting Up Permit will be further required for the execution/retrofitting of the stations, electrical installations and lines.

1.2.4.4 SEPARATION OF THE AUTHORISED/LICENSED ACTIVITIES FOR THE TRANSMISSION AND DISTRIBUTION SYSTEM OPERATORS

Order 12/2015 implements the necessary regulation for the separation of the activities for transmission and distribution system operators stating that:

- the transmission system operator cannot simultaneously hold operation, supply, and/or trading licences; and
- the distribution system operator, subject to concession, cannot simultaneously hold operation, transmission, supply, and/or trading licences with respect to the same geographical area for which the concession was granted.

However, in both cases, a separate trading licence is not required for electricity producers holding an operation licence.

1.2.4.5 ADDITIONAL DOCUMENTATION REQUIRED FOR THE DISTRIBUTION AND SUPPLY LICENCES

Order 12/2015 requires additional documentation in order to obtain a distribution of electricity supply licence, specifically documents evidencing the ownership right or the right of use over the energetic capacities which will be operated on the basis of the respective licence.

1.2.5 Invoicing of GCs

Law 122/2015 implements a new method of calculating the value of the invoiced GCs to end consumers. This is done by multiplying the annual GC mandatory quota estimated by ANRE (GCs/MW) with the quantity of the invoiced electricity in MW and an average price of GCs published by OPCOM on its Web site, calculated based on the transactions carried out in the previous quarter.

1.3 Significant and/or expected changes in 2016

1.3.1 Feed-in Tariff ("FiT") for installations below 0.5 MW

In accordance with Law 122/2015, RES-Electricity producers with power production facilities below 0.5 MW will be able to choose between the RES Support Scheme and a FiT system. The RES-Electricity producers opting for the FiT will no longer be entitled to receive GCs.

As of the date of this Report, the Government decision establishing the mechanism for the FiT has not yet been adopted, although the deadline set by Law 122/2015 has expired.

1.3.2 New National Energy Strategy 2016-2030

As of the date of this Report, the Ministry of Energy was in the process of drafting and finalising a new National Energy Strategy for the years 2016-2030. It is expected that the new National Strategy will provide more clarification on the future development of the RES-Electricity market in Romania. In accordance with the current draft, biomass projects have not reached their full potential and will be further encouraged.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

In order to obtain the right to operate a RES-Electricity production facility, the following main approvals/certifications must be obtained:

- a planning certificate;
- an environmental approval/authorisation;
- a Building Permit;
- a Setting Up Permit for new RES-Electricity production facilities or for the refurbishment of the existing ones and/or an energy licence, together with related technical permits (e.g. a technical permit for connecting to a public network, technical permit from the transport operator, etc.);
- a licence from ANRE in order to operate the new RES–Electricity production facility;
- an accreditation from ANRE in order to qualify for the RES Support Scheme; and
- registration with the Romanian Transmission and System Operator, Transelectrica ("**TSO**"), in order to obtain the GCs and registration with the GC market administrated by OPCOM S.A., ("**OPCOM**") in order to trade GCs.

2.1.1 Environmental Law

Depending upon the characteristics of the project to be implemented, the Environmental Protection Agency ("**EPA**") may require an Environmental Impact Assessment ("**EIA**") specifying:

- whether the project is likely to have a significant impact on the environment;
- what mitigation measures should be put in place; and
- the most suitable options/alternatives for developing such a project.

According to Government Decision No. 445/2009, which sets the legal framework for assessing the effects of certain public and private projects on the environment, only installations for the generation of hydroelectric or wind power (i.e. wind farms) fall within the categories of projects for which an EIA is required by the EPA. For projects using other renewable sources, an EIA is mandatory only if such a project is likely to have a "significant impact" on the environment.

Hydro power plants must also comply with the water protection regulations. These require a specific approval for the construction of a new hydro power plant. In addition, the producer of electricity must enter into an agreement with the national administrator of water resources, "Romanian Waters," for the use/exploitation of water resources.

2.1.2 Building Law

A Building Permit is issued by the mayor of the administrative unit in the location where the plant will be built or by the president of the county council if the premises are located outside the city limits. The issuance of a Building Permit is a relatively time consuming and costly process. The procedure takes a minimum of three (3) months, since many prior approvals/authorisations are pre-requisites, including the receipt of a zoning certificate, approval for connection to public utilities, and environmental protection, civil defence and fire protection approvals. However, the building permit should be issued within thirty (30) days after submission of a complete application. The charge for issuing a building permit is one percent (1%) of the estimated value of the construction works.

2.1.3 Energy Act

ANRE is the regulatory authority, which grants authorisations and licences for operating in the electricity field, including the production of heat by using cogeneration units. ANRE will issue Setting Up Permits for the execution and refurbishment of an electricity production facility, including for cogeneration electricity and thermo production facilities, if the installed capacity is higher than 1 MW or exceeds 1 MW after refurbishment.

As an exception to the above, a Setting Up Permit is not required in the following cases:

- refurbishment of surveillance systems, telecommunications and/or command systems, independent from works which include modification of the electricity production facilities or of the cogeneration electricity and thermo production facilities; or
- execution or refurbishment works to the electricity production facilities or to the cogeneration electricity and thermo production facilities with an installed capacity under 1 MW.

A licence from ANRE is required for the performance of the following activities in the field of electrical energy:

- commercial exploitation of electricity production facilities;
- commercial exploitation of cogeneration electricity and thermo production facilities;
- performance of electricity transport services;
- performance of system services;
- performance of electricity distribution services;
- administration of centralised electricity markets;
- supply of electricity; or
- performance of electricity trading activities.

As an exception to the above, a licence is not required in the following cases:

- operation of an electricity production facility, which could be started without electrical voltage from the National Grid and self-start capacities, used for the electricity safety supply of own equipment and installations;
- household clients, owners of electricity production facilities or cogeneration electricity and thermo production facilities, interconnected to the electrical grid, irrespective of the interconnection manner, whether this is the same or distinct from the consumption, with electrical power under 100 kW;
- cogeneration electricity and thermo production facilities, if from the total of the energy produced, traded thermo energy amounts to less than twenty percent (20%);
- owners of electricity distribution networks, if, according to the ATRs issued to those who interconnect to the electricity distribution network of the owner, the approved power is under 1 MW; or
- owners of electricity distribution networks, in case their users have consumption points exclusively inside the building/s which are supplied through that electricity distribution line.

For Entities headquartered in an EU Member State, the requirement to have a permanent establishment in Romania as a pre-requisite for obtaining an ANRE licence has been eliminated. Moreover, such Entities can carry out activities supplying electricity and trading without having to obtain a separate licence from ANRE provided that:

- they have a valid licence or similar authorisation for the respective activity issued by the competent authority of the respective Member State; and
- they declare on their own liability that they will observe the commercial and technical norms applicable in Romania for the respective activity.

Any other foreign legal entity may request the issuance of an authorisation or licence in Romania only if a secondary office is established in Romania for the entire validity period of the authorisation/licence.

2.2 Rights and obligations of the establishment authorisations or licences over third parties' property

The right of use over land for performing the necessary work related to the energy capacity building/relocating/dismantling or reengineering extends over the entire period required for the execution of the work. For exercising this right of use, the holder of the authorisation for building/relocating/dismantling or reengineering, as the case may be, which observes the applicable legal provisions, is allowed to:

- store materials, equipment, tools, installations on the land required for the execution of the work;
- uproot crops or plants, buildings or other existing improvements or only to limit them, as strictly required for the performance of the work for the authorised capacity, according to the law;
- remove materials, including catch water, according to the provisions of the legislation in force;
- install equipment and use it, put in place offices and site housing, with the prior agreement of the owner; and
- stop or limit the owner's activities, as strictly required for the performance of the work for the authorised capacity, observing the legal provisions in force.

The right of use described above ceases before the expiration of the term established for the performance of the work or before this term, on the date of the early completion of the work, or on the date of suspension and waiving of authorisations. Any of these situations must be notified to the owner immediately.

The right of use over the land to ensure the normal operation of the energy capacity covers the entire duration of the capacity's operation, and it may be exercised as often as necessary in order to ensure the normal operation of the capacity. In exercising this right, the licence holder may:

- store materials, equipment, tools, installations for maintenance, overhauling, repair and intervention works necessary for ensuring the normal operation of the capacity;
- install and operate equipment; and
- uproot or reduce crops, plants or other existing improvements and to limit the owner's activities, to the extent and strictly for the time required for the performance of maintenance, repair, overhauling or intervention works to ensure the normal operation of the capacity, observing the legislation in force.

The licence holder is bound to inform in writing the owner of the goods or the service provider of the activities to be affected by work to the energy capacities, except for breakdowns, when the owners are informed as soon as possible.

The licence holder is required to pay due compensation to the owners for the damages incurred, to release the land and return it to its initial state, as soon as possible.

The right of servitude of underground, surface or aerial access entails the right to access and perform works on the site where the energy capacities are placed, to intervene for reengineering, repairs, overhauling and breakdowns.

In order to avoid endangering persons, goods or certain activities that are taking place in the area where the establishment or reengineering work to the energy capacities are taking place, and overhauling or repair works to the operating capacity, the authorisation or licence holder has the right to limit or suspend, for the entire duration of the work, the activities performed adjacent to other persons. In this case, the affected persons shall be informed in writing, on the date when work begins and ends.

Upon termination of the exercise of the rights provided for by Article 12, second paragraph of the Energy Act[3], the establishment authorisation holder and the licence holder, respectively, must ensure the land is cleared and returned to its initial state.

The right of access to public utilities, provided by Article 12, second paragraph, letter e)[4], must be exercised by the authorisation or licence holder in good faith and reasonably, without prejudicing other persons' access to those public utilities.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

3.1.1 Application Procedure for Authorisations and Licences

The issuance of authorisations or licences in accordance with the Energy Act is currently done in accordance with a regulation approved by Order 12/2015.

In accordance with Order 12/2015, in order to be granted an authorisation and/or licence, the applicant must lodge with ANRE a request accompanied by specific information, data and documentation. All correspondence and documentation must be presented in the Romanian language.

Within a maximum term of sixty (60) days as of the request's registration date, but only provided the relevant fee was paid in advance, ANRE analyses if the documentation submitted by the applicant complies with the regulation and, if necessary, notifies the applicant of any further required amendments or supplements. In this latter case, the applicant must submit the required additional information within a maximum term of ninety (90) days from the moment that ANRE informs the applicant of such necessity.

In the event the applicant does not observe the ninety (90) day term or within six (6) months from when the initial request was lodged with ANRE, the application is considered automatically dismissed and ANRE will formally notify the applicant of such dismissal.

However, if the documentation is complete, ANRE will issue the decision to grant the authorisation/licence within a term of sixty (60) days as of the date the documentation submitted by the applicant is deemed to be compliant with the provisions of regulation.

The sixty (60) day term will be reduced to thirty (30) days for RES-Electricity production facilities or high efficiency cogeneration in relation to establishment authorisations and licences, provided certain conditions are met.

3 Limitations to the property right shall be set over the public or private land and goods belonging to other legal or natural persons and over the activities developed by legal or natural persons next to the energy capacity, in favour of the holders of establishment authorisations and licences, who benefit from (i) the right of use for performing works necessary for building, relocating, reengineering or dismantling the energy capacity subject to authorisation; (ii) the right of use for ensuring the normal operation of the capacity, subject to establishment authorisation, for the necessary overhauling, repairs and interventions; (iii) the servitude right of underground, surface or aerial access for installing/dismantling electrical networks or other equipment related to the energy capacity and for access to their location, according to the law; or (iv) the right to obtain the limitation or ceasing of activities that might endanger persons or goods; and (v) the right of access to public utilities.

4 The right of access to public utilities.

3.1.2 Conditions to Amend the Authorisations/Licences

Upon the request of authorisation/licence holders, ANRE can decide, in accordance with the legal provisions in force, to modify or amend an issued authorisation/licence.

Under the regulation, the following cases may trigger a modification of the authorisation/licence:

- changes in the statute of the authorisation/licence holder, determined by a change of its legal form, change of name, or change of registered office;
- updates of the specific conditions provided by the authorisations/licences are needed, new energetic capacities are included or excluded from the licence, modifications of some technical characteristics which lead to the modification of the installed capacity, territorial delimitations of the geographical area in which the respective activity is being carried out, or other situations;
- requests to extend the establishment authorisation validity term, in the event that the work is not completed before such expiration; or
- requests to extend the licence validity term, in the event the validity term is lower than the maximum validity terms provided in the regulation.[5]

In addition, ANRE can decide on its own initiative to modify or amend an issued authorisation/licence if the circumstances from the date the authorisation/licence was granted/amended changed. Examples for such changes include amendments of the legislative framework, or incidents which substantially affect the activities authorised/licensed or which lead to the impossibility to carry out the authorised/licensed activity.

3.1.3 Suspension or Revocation of the Authorisations/Licences

Failure of the authorisation/licence holder to comply with the requirements contained in the legal provisions or with the conditions associated with the authorisation/licences, entitles ANRE to take corrective action.

Failure to comply, which is not attributable to the authorisation/licence holder, entitles ANRE to:

- grant a maximum six (6) month compliance term, if the situation may be rectified, under the penalty of suspension of the authorisation/licence; or
- withdraw the authorisation/licence if the situation is irremediable.

Failure to comply, attributable with the authorisation/licence holder, entitles ANRE to:

- suspend the authorisation/licence for a determined period in order to rectify the situation if the situation is remediable; or
- withdraw the authorisation/licence if the created situation is irremediable.

The suspension and revocation of the authorisation/licence is approved by a decision of ANRE and produces effects from the date established by ANRE in such a decision. If the reasons which lead to the suspension of the authorisation/licence are remedied, ANRE will issue a decision in this respect.

Other situations triggering the suspension of the authorisation/licence include:

- upon justified request of the authorisation/licence holder, accepted by ANRE;
- another public entity has suspended the validity of one (1) of the approvals, permits, or endorsements based upon which the authorisation/licence was issued;

5 Ten (10) years for the electricity supply/trading activity and twenty-five (25) years for the rest of the activities that require a licence from ANRE.

- establishment of the energy capacities or some of their components endanger individuals, private property or the surrounding environment, confirmed by final court decision;
- during the inspection conducted by ANRE on a claim concerning the issuance of the authorisation/licence;
- for repeated[6] failure to execute its payment obligations as party responsible for balancing or for repeated failure to pay the cogeneration contribution; or
- in case the electricity suppliers repeatedly[7] fail to fulfil their obligations regarding GCs purchase.

Other situations triggering the withdrawal of the authorisation/licence include:

- upon justified request of the authorisation/licence holder, accepted by ANRE;
- extinguishment of rights, incapacity or bankruptcy of the authorisation/licence holder;
- upon termination of the concession or lease of the operated electricity plant, or upon its sale by the owner;
- a deed supporting the issuance of the authorisation/licence is repealed by its issuer or expires, creating an irremediable situation, leading to the impossibility of carrying out the authorised/licensed activity;
- loss of the legal ownership title over immovable assets where the electricity plants are established or loss of the legal title in connection with the operated electricity plant which leads to the impossibility of carrying out the licensed activity, confirmed by final court decision;
- upon favourable resolution of an appeal against the issuance of the authorisation/licence;
- upon evidence issued by a public authority, certifying that the establishment/operation of an energy capacity or its components endanger or severely damage individuals, property and/or the environment;
- for repeated failure to execute its payment obligations as party responsible for balancing, or for repeated failure to pay the cogeneration contribution; or
- if the electricity suppliers repeatedly[8] fail to fulfil their obligations regarding GCs purchase.

To carry out a licensed activity, ANRE requires each titleholder of a licence (including the Entities operating in Romania on the basis of a licence obtained from an EU Member State) to pay on an annual basis a contribution amounting to: (i) zero point zero eight percent (0.08%) of the turnover generated by the owner in 2014 from the activities subject to the respective licence; or (ii) a minimum of approximately EUR 550 (RON 2,500), if the percentage applied to the turnover is lower than this minimum. By exception, the contribution for a titleholder of a licence exclusively for commercial exploitation production facilities with a total installed power up to 1 MW, amounts to approximately EUR 55 (RON 250).

3.2 Designated/preferred legal form of investment vehicle

Romanian legislation does not require or recommend a particular type of investment vehicle in the renewable energy sector. In analysing current holders of such licences in Romania, we have observed that the limited liability structure ("*SRL*") is typically the most popular form of investment vehicle in this field.

6 At least two (2) unpaid invoices for receivables that are certain, liquid and due.
7 At least two (2) unpaid invoices for receivables that are certain, liquid and due.
8 It will be considered as repeatedly failing when at least two (2) unpaid invoices of a fixed amount are due.

4. Promotion System for the Production of RES-Electricity

To promote the production of RES-Electricity, Law 220/2008 provides for a quota obligation system (i.e. the obligation of certain entities to acquire and hold a specified number of GCs) coupled with tradable GCs. Through several amendments in 2010 and 2011[9], the definitions have been harmonised and completed in order to be consistent with those provided by Directive 2009/28/EC such as:

- "***annual mandatory quota of energy from renewable sources***," which benefits from the support scheme, meaning a given proportion of energy from renewable sources within the gross final consumption of energy to which the mandatory quota system will be applicable (except for energy produced in hydropower plants with installed power exceeding 10 MW);
- "***annual mandatory quota of green certificates to be acquired***", meaning the annual quota of green certificates that shall be acquired by the electricity suppliers;
- "***guarantee of origin***", meaning an electronic document which has the sole function of providing proof to a final customer that a given share or quantity of energy was produced from renewable sources;
- "***support scheme***", meaning any instrument, scheme or mechanism that promotes the use of energy from renewable sources by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or otherwise, the volume of such energy purchased. This includes, but is not restricted to, renewable energy obligation support schemes including those using green certificates, investment aid, tax exemptions or reductions, tax refunds and promotion schemes, including the obligation to purchase energy produced from renewable sources;
- "***isolated energy system***", meaning the local system of production, distribution and supply of electricity which is not connected to the national grid;
- "***accreditation***", meaning the activity of ANRE based on a regulation to grant an economic operator which has electricity facilities for RES-Electricity production the right to benefit from the RES Support Scheme. The accreditation can be requested directly, in one (1) stage or in two (2) stages (preliminary and final);
- "***priority access to the electricity grid for RES-Electricity***", meaning rules and technical and commercial conditions based upon which a certain category of RES-Electricity producers are granted at any time the possibility of uploading and selling the entire RES-Electricity produced at a given moment;
- "***guaranteed access to the electricity grid for RES-Electricity***", meaning rules, technical and commercial conditions based upon which the contracted and sold RES-Electricity benefiting from RES Support Scheme is guaranteed the upload to the electricity grid; and
- "***IRR***", meaning the indicator resulted from a cost – income analysis, which shows the internal rate of return of an investment project.

As far as the scheme's availability for the promotion of the use of energy from renewable sources is concerned, a period of seven (7) years is provided for electricity produced in wind power plants which have already been used in other countries, if such wind power plants are used in isolated energy systems or were put into operation in Romania before the enactment date of the RES Support Scheme.

9 According to Law 139/2010 and EO 88/2011, as approved with amendments by Law 139/2010.

As of 2016, for operational projects which obtained the accreditation as further described in Section 4.1 below, the number of GCs received by the producers is as follows, depending upon the renewable source that they use:

RES	TYPE OF POWER PLANT/GROUP	GC/MWH
1. Hydro (used in power plants with installed power ≤10 MW)	New (commissioned as of 1 January 2004)	2.3 GC
	Upgraded/refurbished	2 GC
	For each 2 MW for those powers plants which do not fall into the above categories	1 GC
2. Wind energy	New Second-hand	1.5 GC until 2017
		0.75 GC from 2018
3. Biomass (regardless of its aggregation form) Geothermal, Bioliquids, Biogas	(new) – from all types of bio waste	2 GC
	(new) – from energy crops	3 GC
	High efficiency cogeneration	3 GC
4. Gas from waste and waste water treatment	(new)	1 GC
	High efficiency cogeneration	2 GC
5. Solar Energy	(new)	3 GC

For projects during the testing period, the producer is entitled to one (1) GC per MWh produced and injected into the grid, subject to the preliminary accreditation obtained as described below.

4.1 Accreditation of electricity units for producing RES-Electricity

Producers who generate RES-Electricity must achieve an accreditation from ANRE in order to benefit from the RES Support Scheme.

The accreditation procedure is set forth in the regulation approved by Order 48/2014 as further amended ("**Accreditation Regulation**"). The Accreditation Regulation applies to:

- the applicants for the accreditation of groups/generating capacities for the RES Support Scheme, namely (i) the titleholders of a production licence for the commercial exploitation of electricity production facilities in groups/generating capacities for RES-Electricity production; (ii) economic entities which own groups/generating capacities for RES-Electricity production in the testing period; (iii) economic entities which own groups/generating capacities for RES-Electricity production using the electricity produced for their own consumption, other than their own technological consumption; and (iv) natural persons who own generating capacities for RES-Electricity with installed capacity under 100 KW which use RES eligible for the RES Support Scheme; and
- the network operators to whose grids the groups/generating capacities for RES Support Scheme connect.

Accreditation can be requested directly, in one (1) or two (2) stages, consisting of preliminary accreditation during the testing period and final accreditation. Such accreditation is approved by ANRE based upon a request registered by the applicant with ANRE, accompanied by the relevant accreditation documentation. As per the Guidelines from the European Commission on State Aid for Environmental Protection and Energy, adopted on 9 April 2014, applicants that hold electric units producing RES-Electricity with installed power over 250 MW can only apply after obtaining individual project approval from the European Commission in order to benefit from the RES Support Scheme. In addition, in some cases, accreditation can only be granted after the applicant obtains a licence for the commercial exploitation of the RES-Electricity production facility and only for a duration which cannot exceed the validity of the licence.

The 2015 amendments to the RES Support Scheme Law clarified the situation of those producers which received temporary accreditation, but which were not able to obtain the required individual approvals for reasons beyond their control namely:

- RES-Electricity producers with installed capacities in excess of 125 MW (i.e. the former threshold for individual state aid notifications) which, for reasons which are not imputable on them, did not receive the individual authorisation decision from the European Commission within twenty-four (24) months from accreditation, may apply for a new temporary accreditation for the RES-Electricity generated from the date of the temporary accreditation until the date such individual decision will be issued; and
- RES-Electricity producers with installed capacities between 125 and 250 MW, which did not benefit from the RES Support Scheme may be accredited by ANRE without having to obtain an individual decision of the European Commission.

4.1.1 Time frame for obtaining the accreditation from ANRE

The request for accreditation must be submitted to ANRE, accompanied by the necessary documentation. After the request is submitted, ANRE shall analyse it and, if necessary, request the applicant to supplement within thirty (30) days the information or documentation provided. If the applicant fails to submit the requested information and/or documentation within thirty (30) days from receipt of the additional requests, or within six (6) months from when the initial request was lodged with ANRE, the application is considered automatically dismissed and ANRE will formally notify the applicant of such dismissal.

If the documentation filed to obtain the accreditation is deemed complete, ANRE must issue the accreditation decision within thirty (30) days. ANRE shall inform both the applicant and the grid operator by sending a scanned copy of this decision to both.

4.1.2 Two stage accreditation

4.1.2.1 PRELIMINARY ACCREDITATION

Preliminary accreditation is requested during the testing period to which an additional thirty (30) day period can be added. An extension to preliminary accreditation may be requested only for justified reasons. For those Entities which, in accordance with the law, commercially exploit RES-Electricity production facilities, preliminary accreditation is granted for a period starting from the date the facilities start to produce and deliver electricity to SEN until a maximum of sixty (60) days from the hand-over protocol for putting the facilities into operation. In addition, for those facilities which have installed power over 1 MW, the validity period for the preliminary accreditation cannot exceed the validity period of the Establishment Authorisation. Besides the relevant documentation, the applicant must submit to ANRE: (i) the test schedule agreed with the operator of the grid to which it is connected and with the TSO if the request is made for dispatchable (*dispecerisabile*) units/groups; and (ii) the handover protocol on completion of work, signed also by the grid operator where the applicant will be connected.

4.1.2.2 FINAL ACCREDITATION

In order to obtain final accreditation, the applicant must submit to ANRE the following documentation:

- in case the information provided, when requesting the preliminary accreditation is unaltered, the applicant shall submit a statement on its own responsibility in this regard as well as the handover protocol for putting the facilities into operation; and
- if the information provided initially has changed, the applicant must submit to ANRE the updated documents/information, together with the handover protocol for putting the facilities into operation.

The information above must be provided only if such updated information and/or documents were not previously submitted to ANRE for the purpose of obtaining the licence for the commercial exploitation of the facilities.

Following accreditation, a RES-Electricity Producer must register with the TSO in order to receive the relevant number of GCs corresponding to the quantity of RES-Electricity notified to the TSO and effectively injected into the national electricity grid. The TSO has the obligation to issue the GCs on a monthly basis.

In order to participate in the GC market, RES-Electricity Producers and suppliers must: (i) register with the GC market; (ii) enter into a so-called "Participation Agreement" with OPCOM; and (iii) register this participation agreement with a GCs register.

4.2 Suspension of GCs

4.2.1 Envisaged RES–Electricity Technologies

In the period 1 July 2013 – 31 March 2017, the allocation of a certain number of GCs was temporarily suspended, as follows:

- one (1) GC for new hydro plants, with installed power under 10 MW;
- one (1) GC for wind farms; and
- two (2) GCs for photovoltaic plants.

No other technology qualifying for the RES Support Scheme is currently subject to such GC suspension.

The suspension applies only for those RES–Electricity projects accredited before 1 January 2014.

4.2.2 Recovery of suspended GCs

Suspended GCs shall be released for trading on a monthly basis, as follows:

- starting from 1 April 2017, for new hydro-power plants with installed power of a maximum of 10 MW and for solar power plants, in proportion to the average number of GCs suspended during the period 1 July 2013 -31 March 2017, subject to observing the total number of GCs suspended for this period; and
- starting from 1 January 2018, for wind power plants, in proportion to the average number of GCs suspended during the period 1 July 2013 – 31 March 2017, subject to observing the total number of GCs suspended for this period.

All GCs shall be released for trading according to the above procedure by 31 December 2020, at the latest.

The validity period of suspended GCs (currently set for twelve (12) months) shall commence upon the date of their release for trading by the TSO.

4.3 Pricing for the trade of green certificates

In accordance with the RES Support Scheme Law, the trading value of the GCs from 2008 to 2025 was set within a band of a minimum of EUR 27 and a maximum of EUR 55 per GC. From 2011, the said value of the GCs is to be indexed annually with the eurozone inflation rate recorded in the December of the previous year. For 2015, this value was between EUR 29.3971 and EUR 59.8856.

The failure of any electricity supplier to fulfil their quarterly or annual quota obligations requires the payment of an equivalent value of those GCs, which were not purchased at a premium of EUR 110 (indexed at EUR 119.7702 for 2015) for each un-purchased certificate.

4.4 General trading terms for the green certificates

According to the RES Support Scheme Law and to GC Market Regulation, the participants on the GC market[10] may trade GCs on two (2) different trading platforms: (i) the centralised green certificates market ("**GC Centralised Market**"); and (ii) the green certificates market for bilateral contracts ("**GC Bilateral Contracts Market**[11]"). Both trading platforms, which function in parallel with the electricity market, are regulated and supervised by OPCOM.

Both the GCs Centralised Market and the GC Bilateral Contracts Market are centralised markets administrated by OPCOM. As a consequence, trading of GCs may no longer be performed based upon GC sale purchase agreements concluded outside the centralised GC market administrated by OPCOM.

The existing rules are meant to create a centralised, standardised trading platform in order to develop the GC market as a competitive, transparent and non-discriminatory trading environment.

As opposed to the GC Bilateral Contracts Market, where the price of a GC is freely negotiated by the parties (within the mandatory trading value range), on the GC Centralised Market the certificates are traded at the closing price of the GC Centralised Market (*pretul de inchidere al pietei centralizate de certificate verzi*) determined on the basis of the respective offers to buy and to sell submitted on the GC Centralised Market in that respective month.

In accordance with the GC Market Regulation, a GC can be subject to successive trading and shall be registered in the account of the economic agent to which the GC is transferred and, finally, to the account of the economic agent, which will use the GC in order to prove the fulfilment of the GCs mandatory purchase quota. Transfer of GCs from the account of the seller to the account of the buyer will be performed by OPCOM, only after payment confirmation, and will be effective after the registration in the GC register.

4.5 National RES-Electricity targets and prohibition of RES-Electricity trading

RES Support Scheme Law establishes that until the national targets for RES-Electricity are achieved (i.e. thirty-three percent (33%) for 2010, thirty-five percent (35%) for 2015 and thirty-eight percent (38%) for 2020), the trading of RES-Electricity which benefits from the RES Support Scheme may be done only to cover the gross consumption of electricity in Romania. Please note that the above targets also take into account hydro-electricity produced by power plants with installed capacities above 10 MW that do not benefit from the RES Support Scheme Law.

Several official reports and data seem to indicate that the national RES-Electricity targets for 2020 were already achieved by 2014. However, from a practical perspective, any proposed trading of GCs in other countries is currently not possible due to the lack of legislation (bilateral treaties) between the EU countries that have implemented the GCs system to regulate such trading in Romania.

4.6 Monitoring, reporting and enforcement of the green certificates system

4.6.1 GC market

The GC market is regulated by GC Market Regulation. The goal of the regulation is to establish: (i) the way the GC market is organised and how it functions; (ii) the parties involved and their responsibility in the organisation and functioning of the GC market; (iii) the manner in which information regarding GC trading is handled; and (iv) the necessary information required for the functioning of the GC market.

10 RES-Electricity producers, RES-Electricity producers that use the electricity for their own consumption other than for technological purposes, RES-Electricity producers that use the electricity to power consumers connected directly to the RES-Electricity production facility and electricity suppliers that use the electricity for their own consumption or to power end-costumers.

11 Following the enactment of EO 57/2013, the trading of GCs based on GC sale purchase agreements concluded outside the centralised GC market administrated by OPCOM, is no longer possible.

According to GC Market Regulation, OPCOM is the administrator of the GC market and has the following prerogatives in this capacity:

- establishes and updates the GC registry ("**GC-R**") and the registry with the participants in the GC market ("**GC-P**");
- records in the GC-P the participants in the GC market based upon the convention for participation in the GC market;
- records in the GC-R the GC codes issued by the TSO for the RES-Electricity producers;
- manages, in a manner that is transparent, objective and non-discriminatory, the trading performed on the GC market;
- establishes the content of the convention for participation in the GC market and sends it to ANRE for approval;
- receives, validates and processes the sale – purchase offers in the GC market;
- establishes and makes public the number of GCs traded in each trading session on the GC market;
- makes public the closing price of each trading session on the GC Centralised Market;
- makes public, for each trading session, for the current trading year, aggregate information regarding the number of GCs issued by the TSO, the number of GCs traded on the GC Centralised Market, the number of GCs traded on the GC Bilateral Contracts Market, as well as the number of available GCs for trading;
- makes the transfer of traded GCs for both the GC Centralised Market and the GC Bilateral Contracts Market;
- receives initial offers for trading on the GC Bilateral Contracts Market;
- ensures the publicity of the public trading sessions and organises the trading session on the GC Bilateral Contracts Market;
- confirms to the GC market participants the GCs trading performed on the GC Bilateral Contracts Market;
- confirms the conformity of the GC sale purchase agreement with the GC sale purchase agreements published on OPCOM's Web site;
- establishes the payment rights and duties of the participants in the GC market;
- sends monthly reports to ANRE, until the last working day of the trading month for each trading session; and
- records in the GC-R the cancelled GCs.

GCs may be traded on the GC Centralised Market and on the GC Bilateral Contracts Market administered by OPCOM. Before entering the GC market, all participants must apply for registration with the GC market according to the procedure set forth by the law. GC Market Regulation, all transactions involving GCs and information related thereto are registered with the GC Register.

4.6.2 Fulfilment of the GCs Mandatory Quota

For the enforcement of the GC system, the Entities are required to comply with the obligation to acquire GCs on a quarterly basis and ANRE assesses the compliance within forty-five (45) days from the end of each quarter. Under the provisions of Law 220/2008, any Entity failing to fulfil its annual quota obligations must pay the equivalent value of GCs, which were not purchased at a premium of EUR 110 for each un-purchased certificate. The money obtained from imposing this sanction is credited to the Environmental Fund. The administration of the Environmental Fund issues invoices for the imposed fine amounts. These recovered penalty amounts are to be used to finance the realisation of RES-Electricity production facilities with an installed capacity up to 100 KW by natural persons.

In addition, as of 2015:

- failure to achieve at least ninety percent (90%) of the annual mandatory quota is sanctioned with fines amounting to the maximum value set for each GC multiplied by the number of GC not acquired, corresponding to a difference of 90% between the annual mandatory quota and the actual quota achieved for the respective quarter; and
- the failure to timely submit to ANRE the required information and/or accurate information is now sanctioned with higher fines ranging from RON 10,000 to RON 100,000. These new fines are applicable to Entities which are either individuals or legal persons. Furthermore, for two (2) or more breaches during a calendar year, the fines can increase to up to five percent (5%) of the turnover of the respective Entity.

4.6.3 Reduction of GCs

4.6.3.1 REDUCTION OF THE GCS IN CASE THE PRODUCER BENEFITS FROM STATE AID FUNDS

As per RES Support Scheme Law, the beneficiary of non-reimbursable state aid financing may face reduction of their GCs, if they have benefited from supplementary aid funds. The reduction applied will be performed so that the beneficiary will receive the same IRR that it would have had, had it not benefitted from any such state aid. This reduction will be imposed on existing RES-Electricity production facilities.

4.6.3.2 REDUCTION OF GCS CAUSED BY OVERCOMPENSATION

In order to mitigate the risk that the RES Support Scheme distorts competition on the Romanian energy market, IRR rates are provided for each RES-Electricity producing technology. If ANRE determines that a certain technology generates a higher IRR than those approved, it may initiate procedures to rebalance the factors that generated the higher IRRs. The measure to be taken is to reduce the number of GCs for those technologies that are generating IRRs higher than the approved quotations. In accordance with RES Support Scheme Law, measures for GC reduction caused by overcompensation are taken following a Government Decision.

In accordance with Law 23/2014, the market monitoring process was amended once again, as follows:

- monitoring will be done annually;
- ANRE will publish an analysis of overcompensation within ninety (90) days from the end of the analysed period;
- ANRE will propose adjustments to the number of GCs granted for overcompensated technologies;
- the Government is to approve such adjustments within sixty (60) days from ANRE's proposal; and
- the changes will apply from 1 January of the following year.

In accordance with the market analysis report for 2014, no additional overcompensation was identified and no changes to the scheme were proposed to be implemented from 1 January 2016.

4.7 Support scheme for cogeneration

Government Decision 219/2007 regarding the promotion of cogeneration based upon useful heat demand ("**GD 219/2007**") sets forth the outline for a bonus support scheme. Government Decision 864/2015 amended GD 219/2007 in 2015 in order to transpose the provisions of the Directive 2012/27/UE on energy efficiency. For the electricity produced from cogeneration units using renewable energy sources, producers applying for support shall choose between either the support scheme for the promotion of high-efficiency cogeneration based on available heat demand, pursuant to Government Decision No. 1.215/2009 or RES Support Scheme Law.

The support scheme was approved by the Commission's decision No. N437/2009 and aid may be granted over the period 2010-2023 without exceeding eleven (11) consecutive years.

4.8 Guarantees of origin for RES-Electricity

- According to the regulation approved by GD 1232/2011, the guarantees of origin are used by the electricity supplier, upon demand of the final consumer, in order to prove the correctness of the information contained in the electricity label.
- In order to obtain the guarantee of origin, producers must submit an application together with the relevant documentation to ANRE. ANRE then issues a guarantee of origin after analysing the submitted documents and verifying the fulfilment of the legal criteria.
- The period for which the RES-Electricity producers may request guarantees of origin is a month, a quarter, or a semester. The request for the issuance of the guarantees of origin must be lodged at least thirty (30) days after the period for which the requested issuance has lapsed.
- Under the provisions of GD 1232/2011, the guarantee of origin should be issued within ten (10) business days from the date of submitting all relevant documentation to ANRE. The guarantee of origin is valid for a one (1) year period from the electricity production date to which it refers.
- The guarantee of origin is issued in electronic form and refers to 1 MWh. Any fraction bigger than 0.5 MWh will be rounded up to 1 MWh and those below 0.5 MWh will not be taken into account.
- ANRE will issue the transfer of guarantees of origin upon the request of the guarantees of the origin holder. The transfer will be considered done on the date of registry in the sole registry for guarantees of origin.
- Regarding the issuance of the guarantee of origin for the RES-Electricity produced in a cogeneration system, a special procedure approved by Government Decision 1461/2008 ("**GD 1461/2008**") is applicable, which regulates the issuance of the guarantee of origin for the electricity produced from high efficiency cogeneration.
- Producers must submit to ANRE an application together with the relevant documentation and the proof of payment of the applicable fee. ANRE then verifies the fulfilment of the following criteria: (i) the information provided by the producer together with its application is complete and accurate; and (ii) the electricity is produced from high efficiency cogeneration.
- Under the provisions of GD 1461/2008, the guarantee of origin for the electricity produced from high efficiency cogeneration is issued for periods of time between one (1) month and one (1) calendar year.
- ANRE should issue the guarantee of origin within forty-five (45) days from the date of submission of all of the relevant documentation to ANRE. The guarantee of origin for the electricity produced from high efficiency cogeneration is valid for a one (1) year period from the date of its issuance.

5. Grid Connection

5.1 Access of RES-Electricity producers to the electricity network

Pursuant to Energy Act provisions, the network operator, i.e. the TSO or the Distribution System Operator ("**DSO**"), is obliged to grant access to the national grid, meaning the transmission network together with the distribution network, to any producer of electrical energy under strictly regulated terms and without any discrimination.

Depending upon certain technical characteristics of a RES-Electricity production facility, the producer must lodge an application for the issuance of the permit for connection to the national electricity grid, with either the TSO or the DSO.

Access to the national grid can only be restricted if this affects the safety of the national energy system. In addition, as per Law 220/2008, the TSO or the DSO, as the case may be, has an obligation to grant RES-Electricity producers access to the national grid with priority, to the extent that the safety of the national energy system is not affected thereby.

In line with the promotion of RES-Electricity, the competent authorities must establish technical and commercial rules for:

- guaranteed access to the electricity grid and priority dispatch of RES-Electricity and high efficiency cogeneration; and
- priority access to the electricity grid and priority dispatch of RES-Electricity and high efficiency cogeneration in generating facilities with installed power under 1 MW, if the safety of the national grid is not affected.

5.2 Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid

According to Order 59/2013, certain consolidation work may be necessary on the grid, in order to accommodate the injection of RES-Electricity. Such work must be performed by the grid operator with the obligation of the interconnection approval (*aviz tehnic de racordare*) beneficiary to bear part of the costs necessary for these works. These costs will be paid in accordance with the provisions of the connection agreement and will be included in the connection fee to be calculated based upon a methodology approved by ANRE.

Moreover, if work is required for the consolidation of the electricity grid, the grid operators must request the establishment of a guarantee that until 31 December 2014 was limited to a maximum of twenty percent (20%) of the value of the necessary consolidation work. After that date, the value of the guarantee is to be reviewed annually, based upon proposals from the grid operators to be supported by changes in the costs for the connection of new users.

If the distribution operator cannot complete the consolidation work before the date requested by the owner of the RES-Electricity production facility to power it up, the distribution operator must include in the interconnection approval the maximum power that can be injected into the grid until the consolidation works have been completed.

5.3 Special allowance/tolerance for intermittent generation in relation to balancing charges for unscheduled deviations

According to the Commercial Code for the Wholesale Electricity Market, each licence holder must undertake balancing responsibility[12] towards the TSO for every connection point of dispatchable energy production facilities[13] or dispatchable energy consumption units[14] by registering with the balancing market ("**BM**") or by transferring such responsibility to a party responsible for balancing[15] (*Parte Responsabila cu Echilibrarea*) ("**PRE**").

The BM is a centralised market, administrated by the TSO that collects the energy sale offers for balancing, transmitted by the participants to the BM and uses such energy for securing the stability of the national energy system. Participation in the BM is subject to prior registration and the process is completed once a convention for participation in the BM is executed.

The participants in the BM and/or the PRE must send, for each dispatchable unit, daily offers for balancing energy. The offer for the dispatchable units must contain the entire energy to be made available for balancing. This obligation is not applicable for energy producers trading energy produced by dispatchable energy production facilities during the testing period.

12 Responsibility of each licence holder towards the TSO to maintain the balance between the accomplished and contracted values of production, consumption or exchange of their own electrical energy.

13 A production facility which has been registered as a dispatchable unit in accordance with the Technical Code of Transport Electric Network. For RES projects, the threshold above which the energy production facilities are qualified as dispatchable is 5 MW.

14 Consumption place where the power consumption may be modified upon request of the TSO.

15 A licence holder who was registered by the TSO as PRE and may assume the balancing responsibility for other licence holders.

Electricity producers should bid on the BM for the entire additional energy production (i.e. exceeding the energy production notified by such producer to the TSO) in the event the energy actually generated will ramp up. In the event the energy producers ramp down their energy production, they should bid on the BM for the entire quantity of energy as notified to the TSO.

Each month, the TSO calculates the quantities of energy traded on the BM. The evaluation is performed separately for each: (i) dispatchable interval (i.e. one (1) hour period for which physical notes are transmitted on the BM); (ii) participant to the BM; and (iii) transaction concluded in the evaluation month. Based on this evaluation, the TSO computes a settlement note, which contains all values credited or taken from the settlement account of the BM participant.

The TSO will send the settlement notes to the BM participants no later than five (5) days from the beginning of the second (2nd) month after the evaluation month. For example, a settlement note issued in month "*a*" will contain the total value credited or taken from the balancing settlement account for the three (3) months prior to month "a" ("*a-3*"). The payment of the settlement note will be made within seven (7) financial days.

If a licence holder who operates dispatchable units or holds dispatchable consumption chooses not to register with the BM or to appoint a PRE, this licence holder must assume all responsibilities of a BM participant without being entitled to receive any payment on the BM.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all jurisdictions is the prohibition of incompatible state aid, which is contained both in the EC Treaty and in the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission's new Guidelines on State Aid for Environmental Protection and Energy, adopted on 9 April 2014, be considered as compatible with the common market.

Following the enactment of the Energy Act, the trading of electricity must be carried out on the competitive market, in a manner that is cumulatively transparent, public, centralised and non-discriminatory.

To this end, privately negotiated PPAs do not comply with the centralised principle of trading electricity and, currently, are forbidden as a means of trading electricity. This interdiction has generally affected those new investors who, as of the enactment date of the Energy Act (19 July 2012), did not have a commercial operation licence. PPAs can be concluded by holders of commercial operation licences, if they register to the OPCOM market for bilateral electricity contracts.

By exception, bilateral agreements can be concluded outside the centralised markets by (i) the RES-Electricity producers which own groups/power production facilities with installed powers which do not exceed 1 MW per RES-Electricity Producer and 2 MW for high efficiency cogeneration producers, provided such agreements are concluded only with the suppliers of end-customers, and (ii) RES-Electricity producers with installed powers from 1 MW to 3 MW per unit or from 2 MW to 3 MW for high efficiency cogeneration produced from biomass, benefiting from the RES Support Scheme and considered to be small and medium-sized enterprises according to Law No. 346/2004 regarding the establishment and development of small and medium-sized enterprises.

Trading on the organised frame of the bilateral electricity contracts can take place in the following modalities:

- Trading on the centralised market for bilateral agreements with double continuous negotiation (*Piaţa centralizată cu negociere dublă continuă a Contractelor Bilaterale de energie electrică*), PC – OTC. PC - OTC, was introduced by Order 49/2013, for the trading of standard electricity products characterised by certain elements concerning: (i) delivery options (timing and duration); (ii) the minimum hourly power; and (iii) use of EFET agreements. The duration of the delivery is fixed as follows: one (1) day or weekend only, one (1) week, one (1) month, one (1) quarter, or one (1) year. The PC – OTC market became functional on 16 May 2014 when the first trading session took place.

- Trading on the centralised market for bilateral agreements (PCCB) by way of: (i) extended auction (PCCB – LE); (ii) continuous negotiation (PCCB – NC); or (iii) processing agreements (PCCB – PC) which was recently introduced by Order 78/2014, became effective from 1 January 2015. Only registered participants can trade on the PCCB. All transactions are made on the basis of standard framework agreements approved by OPCOM. Only limited amendments regarding payment terms and method are allowed to the standard agreements.

All the PCCB market offers are standardised regarding the profile of the deliveries and no further subsequent changes in the hourly electricity quantities and prices are allowed. After the conclusion of each trading session, OPCOM publishes the results including the names of the parties.

Furthermore, as detailed in Section 4.4, the GC sale purchase agreement may only be concluded in a centralised manner on the GC market administrated by OPCOM. The prohibition applies to those GC sale purchase agreements concluded after 1 July 2013, the enactment date of EO 57/2013.

7. Carbon Credits

Romania has ratified the Kyoto Protocol, as an Annex 1 party with a commitment inscribed in Annex B, by means of Law No. 3/2001. Romania undertook a decision to reduce its emission of greenhouse gases ("**GHG**") by eight percent (8%) during 2008 – 2012 compared with the 1989 emission levels. The certificates trading scheme, as regulated by Governmental Decision No. 780/2006 as amended, stipulates the total number of GHG emission certificates and their distribution. By adopting the cap-and-trade gas emission trading scheme, the operators can choose to meet their allocation by (i) reducing emissions; (ii) reducing their emissions below their allowance and selling the excess allowance; or (iii) selling emissions above their allowance from other participants. In Order No. 297/2008 issued by the Ministry of Environment and Sustainable Development, Romania adopted JI Track I (JI Track II was adopted by Order No. 1122/2006), which created the legal framework for approval of the emissions reduction projects and carbon credit issuance.

Romania agreed to a second (2nd) commitment period for emissions reduction from 1 January 2013 to 31 December 2020.

WOLF THEISS

SERBIA

SERBIA

Main permits required for RES-Electricity generating facilities

Environmental permit	A Study on the Assessment of Effects of the Respective Power Plant on the Environment may be required in some cases; such a study is mandatory for the construction of an electrical energy or heat energy plant exceeding 50 MW. If the energy plant involves the use of water from rivers, lakes or underground rivers, or the release of water or other material into these, the construction permit will be issued only after the granting of Water Conditions and Water Approval, while the building use permit will be issued only after the granting of a Water Permit.
Building permit	When applicable, obtaining an energy permit is a precondition for receiving a construction permit. Depending on the capacity of the power plant, the construction permit is issued by the local municipality, or the Ministry of Construction, Transportation and Infrastructure, or the Autonomous Province of Vojvodina. After the completion of construction, a building use permit must be obtained.
Authorisations under Energy law/right (concession) to exploit natural resources	An energy permit is required for the construction of industrial plants that exploit natural resources or to conduct energy activities, except in PPP projects. Serbian legislation foresees a tender procedure for granting the right (concession) to exploit natural resources.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	The generation of electricity is subject to obtaining an Energy Licence from the Energy Agency. An Energy Licence for the generation of electricity can only be issued to a Serbian legal entity.
PROMOTION SCHEME	
Outline	The applicable Serbian promotion scheme consists of the state-owned company (EPS Snabdevanje d.o.o., "**EPS Snabdevanje**") entering into a twelve (12) year power purchase agreement with RES-Electricity generators, pursuant to which EPS Snabdevanje purchases electricity from the generators at incentivised feed-in tariffs, which are guaranteed during the term of the PPA.
Other financial incentives	A right of priority on the organised electricity market over other producers and certain subsidies, tax, customs and other privileges.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	No priority access to the electricity grid is given to RES-Electricity; however transmission or distribution system operators are obligated to give priority to the off-take of RES-Electricity, except where the safety of these systems may be compromised.
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The generators pay for grid connection and use. Capacity upgrades, improvements and expansion of the grid are generally paid for by the transmission system operator ("**EMS**").

Special allowance/tolerance for intermittent generation in relation to balancing charges	No
CARBON CREDITS	
Status	Serbia is a non-Annex I party to the Kyoto Protocol. The necessary legal framework has already been adopted into national law.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

- The Energy Law (Official Gazette of the Republic of Serbia No. 145/2014; "**Energy Law**") is the framework law governing the production of electricity and thermal energy, as well as the oil and gas sectors;
- The Energy Strategy of the Republic of Serbia (Official Gazette of the Republic of Serbia No. 101/2015; "**Energy Strategy**") sets out objectives to be met and areas of special interest or intervention until 2025, with projections until 2030;
- The National Action Plan for Using Renewable Energy Sources of the Republic of Serbia (Official Gazette of the Republic of Serbia No. 53/2013; "**National Plan**") sets out objectives regarding RES use for the period until 2020;
- The Energy Community Treaty, to which Serbia is a Contracting Party;
- The Decree on the Conditions and Procedure for Obtaining the Status of Privileged Producer of Electrical Energy (Official Gazette of the Republic of Serbia Nos. 8/2013 and 70/2014; "**Privileged Producers Decree**");
- The Decree on Incentive Measures for Privileged Producers of Electrical Energy (Official Gazette of the Republic of Serbia No. 8/2013; "**Incentives Decree**") – ceased to be in effect on 31 December 2015, a new decree is expected to be adopted in the first quarter of 2016;
- The Decree on the Manner for Calculation of the Incentive Fee and its Distribution (Official Gazette of the Republic of Serbia No. 8/2013);
- The Rulebook on Guarantees of Origin of Electricity Produced from Renewable Energy Sources (Official Gazette of the Republic of Serbia No. 24/2014);
- Rulebook on Energy Permit (Official Gazette of the Republic of Serbia No. 15/2015); and
- Rulebook on Licence for Performing Energy Activity and Certification (Official Gazette of the Republic of Serbia No. 87/2015).

The Energy Law, adopted on 29 December 2014, became enforceable on 30 December 2014, thereby repealing the former Law on Energy (Official Gazette of the Republic of Serbia Nos. 57/2011, 80/2011, 93/2012 and 124/2012). The Energy Law is largely in line with Directive 2003/54/EC concerning common rules for the internal market in electricity and Directive 2001/77/EC on the promotion of electricity produced from RES.

It should be noted that Serbia is party to the UNFCC (United Nations Framework Convention on Climate Change) and that it has ratified the Kyoto Protocol. On 26 January 2009, Serbia also became a founding member of the International Renewable Energy Agency ("**IRENA**"). In terms of the capacities for renewable energy in Serbia, the Serbian Energy Strategy states that the available potential of RES in Serbia is estimated to be 5.65 million tons of oil equivalent ("**toe**"), of which biomass constitutes 1.054 millions of toe (mostly as heating wood) and 909,000 of toe of hydro energy is already used. By joining the Energy Community Treaty, Serbia made a commitment to achieve a twenty-seven percent (27%) share of renewable energy in its gross energy consumption by 2020. However, there

has been some criticism of the planned dynamics for reaching the 2020 goals, meaning that certain adjustments may be necessary.

1.2 Current legislation and expected changes

The current Energy Law was adopted at the end of 2014, and provided for the implementation of all of the measures envisioned under the European Union's Third Energy Package[1] (which is also Serbia's commitment under the Energy Community Treaty). With respect to RES, the Energy Law introduced several novelties, of which we point out the following:

- the temporary status of privileged producer can be acquired by all RES producers who meet the required conditions, not only by RES producers who use wind or solar power (as prescribed under the old Energy Law);
- temporary privileged producer status may be granted for a period of one (1) year for RES producers using solar power and for a period of three (3) years for RES producers using other RES sources (under the old Energy Law, temporary privileged producer status could only have been granted for a maximum period of two (2) years to wind power producers, and for a maximum period of one (1) year to solar power producers);
- in order to enable the functioning of guarantees of origin, RES producers may now obtain RES producer status, which is determined by the Ministry of Mining and Energy;
- natural persons can obtain temporary and final privileged producer status as well as RES producer status, but only for a power plant with an installed capacity of up to 30 KW;
- a force majeure clause has been added, whereby if unpredictable circumstances occur during the term of temporary privileged producer status, this term may be extended for a period necessary to remedy such unpredictable circumstances;
- the RES producer can request from the guaranteed supplier[2] to enter into the PPA at the moment when it obtains the temporary status of privileged producer (under the previous Energy Law, the RES producer could request to enter only into a Preliminary PPA, upon obtaining the temporary status of privileged producer);
- a RES producer, who obtains the status of privileged producer, is obliged to sell the electricity exclusively to a guaranteed supplier; and
- RES producers are entitled to build the grid connection point themselves at their expense and on behalf of the transmission system operator, which is considered to be the investor of such connection point construction.

While most of the by-laws for the enforcement of the Energy Law have already been adopted (e.g. by-laws regulating the issuance of energy licences and energy permits), certain practical issues associated with the currently prescribed standard models of PPAs (i.e. the PPA model providing for the purchase of the entire energy from the privileged producer by the guaranteed supplier), are still expected to be resolved under a specific by-law. Such a by-law should regulate the standard PPA model and reflect the concept of a single PPA, which is envisaged under the Energy Law.

Although the Ministry of Energy, Development and Environmental Protection adopted a decision in June 2013 according to which this Ministry must prepare the environmental impact assessment in terms of the Energy Development Strategy of the Republic of Serbia until 2025, with projections through 2030, this environmental impact assessment is still pending.

1 The EU's Third Energy Package is a legislative package for an internal gas and electricity market in the European Union that was adopted by the European Parliament and the Council of the European Union in July 2009 and entered into force on 3 September 2009.

2 Under the new Energy Law, public supplier is renamed to "guaranteed supplier".

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

The principal documents and approvals required for the construction of an RES-Electricity plant in Serbia are as follows:

2.1.1 Environmental Law

The "*Analysis of Possible Effects on the Environment and Means for Environmental Protection*", which is required for the issuance of both the energy permit and the location conditions, is conducted in the course of producing a Study on Assessment of the Effects of the Respective Power Plant on the Environment ("**Assessment**"). Whether the Assessment is required depends on whether the project meets certain minimum technical thresholds[3]:

- an Assessment must be carried out (and approved) prior to the construction of an electrical energy or heat energy plant exceeding 50 MW;
- for a plant between 1 MW and 50 MW, the competent authority may request an Assessment, except in the case of a hydroelectric plant, where the lower limit is 2 MW, and a wind energy project, where the lower limit is 10 MW (total capacity of the wind farm); and
- for a plant below 1 MW, no Assessment may be requested, regardless of the source of energy (with the exception of nuclear energy).

If the energy plant involves the use of water from rivers, lakes, underground rivers or the release of water or other material into them, the construction permit will be issued only after Water Conditions and Water Approval has been granted, while the building use permit will be issued only after a Water Permit has been granted. Water Conditions and Water Approval are concerned with the construction and/or reconstruction of an energy plant, while a Water Permit determines the terms and conditions for the use and disposal of water and other material.

2.1.2 Construction Law

2.1.2.1 CONSTRUCTION PERMIT

According to the Construction Law[4], a construction permit (*građevinska dozvola*) is issued by:

- the local municipality – for energy plants below 10 MW capacity;
- the Ministry of Construction, Transportation and Infrastructure – for energy plants of 10 MW capacity or more; or
- the Autonomous Province of Vojvodina – energy plants of 10 MW or more, located entirely in the territory of the Autonomous Province.

A construction permit should be formally issued within five (5) days. In order to enable such efficiency in the issuance of a construction permit, in March 2015 the Government introduced the so-called "one-stop shop" system, and as of 1 January 2016 construction related permits are issued electronically. Obtaining an energy permit is a precondition for receiving a construction permit. To obtain a construction permit for the construction of a wind power plant, the approval of the Agency for Flight Control, confirming that the wind power plant does not endanger flight safety, is also required.

3 See, generally, the Decree Establishing a List of Projects for Which a Study on the Effects on the Environment is Mandatory and a List of Projects for Which Such a Study May be Required (Official Gazette of the Republic of Serbia No. 114/2008).

4 Law on Planning and Construction (Official Gazette of the Republic of Serbia Nos.72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 98/2013, 132/2014 and 145/2014).

2.1.2.2 BUILDING USE PERMIT

The building use permit (*upotrebna dozvola*) certifies that the plant, as constructed, is in full conformity with the construction permit and other technical requirements (issued by the same authority that issued the construction permit, within five (5) days of receipt of the Technical Inspection Commission's Report).

2.1.3 Energy Law

An energy permit is required for the construction of industrial plants that conduct energy activities. However, if an energy plant is constructed in accordance with the law regulating public private partnerships and concessions, no energy permit is required.

An energy permit is issued by the Ministry of Mining and Energy in accordance with the Energy Law. The energy permit may be issued to both domestic and foreign legal entities, natural persons and entrepreneurs, and should be issued within thirty (30) days of the date of application. An energy permit is issued for a period of three (3) years and may be renewed for a further maximum one (1) year period.

An energy permit is not transferrable.

The new by-law regulating the issuance of energy permits was adopted in February 2015 in order to align the procedure of issuance of energy permits with the Energy Law and with the amendments to the Construction Law that were all adopted in December 2014.

2.2 Process for obtaining the right (concession) to exploit natural resources

Pursuant to the Law on Public Private Partnerships and Concessions (Official Gazette of the Republic of Serbia No. 88/2011), a concession is granted for the purpose of enabling a concessionaire to use natural resources or public goods, or to conduct any activity of general interest and may be granted in the field of energy.

Serbian legislation foresees a tender procedure for granting the right (concession) to exploit natural resources.

The procedure may be initiated by: (i) the Government; (ii) an autonomous province or a municipality, if the subject of the concession is located within the territory of an autonomous province or a municipality; (iii) a public company, if so allowed under a special law; or (iv) an unsolicited proposal of an interested private entity.

As an alternative to the tender/concession procedure, there is also a possibility to receive an act granting the right to perform an activity of general interest from the Government, under Articles 3(2) and 7(2) of the Law on Public Undertakings (Official Gazette of the Republic of Serbia Nos. 119/2012, 116/2013 and 44/2014). There is no secondary legislation regulating this type of grant, and the procedure is not really set out in a transparent or foreseeable way. Such grants have not, to our knowledge, been made in the field of renewable energy production.

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

Pursuant to the Energy Law, the generation of electricity, including RES-Electricity, no longer qualifies as an activity of general interest[5]. However, the transmission and distribution of energy, including RES-Electricity, remain activities of general interest within the meaning of the Law on Public Undertakings[6].

In order to engage in energy activities, including energy generation, one must obtain the relevant Energy Licence. An Energy Licence may only be issued to a Serbian legal entity or entrepreneur except for the energy activity of wholesale trade with electricity, for which an Energy Licence can be issued to a foreign legal entity. The authority in charge of issuing Energy Licences is the Energy Agency. An Energy Licence is issued within thirty (30) days of the date on which it was requested (subject to fulfilment of all legal and technical requirements). The general term of validity of the Energy Licence is ten (10) years[7], whereby the term of Energy Licences granted for electricity generation, combined generation of electric and heat energy or production of heat energy is thirty (30) years. The term of the Energy Licence may be extended upon the request of the holder. An Energy Licence is, *inter alia*, not required for electricity plants or heating plants with a capacity of up to 1 MW and for electricity generation for personal needs.

In order to start generating energy, the holder of an Energy Licence must be connected to the grid upon approval by the grid operator.

3.2 Designated/preferred legal form of investment vehicle

An Energy Licence may only be issued to a Serbian legal entity or entrepreneur registered for a specific energy activity for which the issuance of the licence is sought, except for the energy activity of wholesale trade with electricity, for which an Energy Licence can be issued to a foreign legal entity. Otherwise, there is no specific designated/preferred legal form. Thus, for obtaining an Energy Licence for performing the energy activity of electricity generation, including RES-Electricity, a subsidiary of a foreign legal entity should be established under Serbian law.

3.3 Anticipated time frame for the issue of licences/authorisations

It is not possible to give an accurate estimate of the total amount of time required to obtain all the necessary licences and authorisations.

5 Please note that the Energy Law and the Law on Public Undertakings are not consistent when it comes to regulating the generation of electricity. Namely, under the Energy Law, the generation of electricity does not qualify as an activity of general interest, unlike in the Law on Public Undertakings, which identifies electricity generation as an activity of general interest. Since the Energy Law is the "*lex specialis*" compared to the Law on Public Undertakings, it should be considered that electricity generation does not qualify as an activity of general interest.

6 In order to be able to perform an activity of general interest, one must: (i) be awarded a concession for the performance of such an activity of general interest; or (ii) be entrusted by the Government of the Republic of Serbia with the performance of such an activity, and in both cases obtain an Energy Licence (*energetska licenca*).

7 The ten (10) year Energy Licence is issued for performance of the following energy activities provided under the Energy Law: transmission of electricity and management of the transmission system; distribution of electricity and management of the distribution system; distribution of electricity and management of the closed distribution system; supply of electricity; wholesale supply of electricity; management of the organised electricity market; natural gas transport and transport system management; natural gas storage and storage management; natural gas distribution and distribution system management; natural gas supply; public supply with natural gas; oil derivatives production; oil transport via oil pipelines; oil derivatives transport via oil derivatives pipelines; oil, oil derivatives and biofuel storage; trade of oil, oil derivatives, biofuels and compressed natural gas; sale of fuel for vehicles by supply stations; filling containers for compressed liquefied petroleum gas and liquefied natural gas; motor and other oil sale at supply stations for vehicles; sale of fuels for boats; distribution of heating energy; supply of heating energy; production of biofuels; production of bio liquids; mixing of biofuels with fuels of petrol origin.

4. Promotion System for the Production of RES-Electricity

4.1 Applicability of promotion scheme

The Energy Law distinguishes between regular producers of energy, producers from renewable energy sources ("**RES producers**"), producers with the temporary status of a privileged producer and the so-called "Privileged Producers of Energy" ("**Privileged Producers**"). It states that the RES producers, producers with temporary status of a privileged producer and Privileged Producers shall have additional rights and benefits compared to regular producers.

Pursuant to the Privileged Producers Decree[8], the following commercial entities and entrepreneurs may acquire the status of Privileged Producer if they produce energy in the following types of electricity plants:

- hydropower plants of installed power up to 30 MW;
- hydropower plants on existing infrastructure with installed power up to 30 MW;
- power plant using biomass;
- power plant using biogas;
- power plant using biogas of animal origin;
- gas from municipal waste and sewage gas;
- power plants using wind power;
- solar power plants;
- geothermal power plants;
- power plants using waste;
- cogeneration power plants using coal, if they meet certain percentage of efficiency per annum; and
- cogeneration power plants using natural gas or waste technological gases with organic fractions, if they have a total annual percentage of efficiency above eighty-five percent (85%).

Privileged Producer status cannot be granted for a pumped storage hydropower plant (*reverzibilna hidroelektrana*).

According to the Energy Law, an electricity producer (legal entity, entrepreneur, as well as natural persons but for the latter only for one power plant with an installed capacity up to 30 KW) can obtain the so-called "temporary status of a privileged producer" if: (i) it has obtained a construction permit; (ii) it has obtained a financial security instrument for power plants with an installed capacity greater than 100 KW; and (iii) based on the technical documentation, it is clear that the temporary status of a privileged producer can be granted for the respective power plant. According to the Energy Law, the temporary status of a privileged producer can be granted for a maximum period of three (3) years and for a maximum period of one (1) year to those producers that use solar power.

If the electricity producer who obtained the temporary status of a privileged producer does not obtain the Privileged Producer status within the period for which it has been granted the temporary status of privileged producer, the temporary status can be extended for a maximum period of one (1) year under the condition that proof that the power plant has been built is submitted.

8 Please note that a new decree regulating the obtaining of temporary status as a privileged producer, status as a privileged producer and status as a RES producer, is in preparation and although it was expected to be adopted by the end of 2015, this is still pending. According to information informally obtained from the Ministry of Mining and Energy, a new decree should be adopted in the first quarter of 2016.

Pursuant to the Privileged Producers Decree, the total maximum installed power of solar power plants in relation to which one may acquire the status of a temporary privileged producer and/or status of the Privileged Producer, is limited to 10 MW for the entire territory of Serbia in the following manner: (i) 2 MW for power plants using solar power on units of separate power up to 30 KW; (ii) 2 MW for power plants using solar power on units of separate power from 30 KW to 500 KW; and (iii) 6 MW for power plants using solar power on the ground.

With respect to wind power plants: (i) the total maximum installed power is limited for the entire territory of Serbia to 500 MW for acquiring the temporary status of a privileged producer; and (ii) the total maximum installed power is limited for the entire territory of Serbia to 300 MW until the end of 2015, and to a maximum of 500 MW by the end of 2020 for acquiring the status of a Privileged Producer.

In addition, with respect to power plants using wind power and solar power, the temporary status of privileged producer and the status of the Privileged Producer may be acquired depending on whether free capacity of installed power is available and the extent to which it is available. The Ministry of Mining and Energy must determine the available free capacity at least once a year and publish such information in the Official Gazette of the Republic of Serbia. Free capacity is allocated on a "first come first served" basis, depending on when the request to acquire the status of a temporary privileged producer or a Privileged Producer was submitted.

If a producer produces electricity in a power plant that contains different units, Privileged Producer status will only apply to those units that fulfil the criteria of the Privileged Producers Decree. Likewise, if a producer has several power plants, it must apply for privileged status for each plant separately.

In order to meet the criteria of the Privileged Producers Decree, the calorific value of the used renewable energy source must constitute a certain percentage of the total annual calorific value of primary energy/fuel consumed. The percentages are different depending upon the source of energy. In the case of biomass, the percentage is set at eighty percent (80%) of the total annual calorific value of consumed fuel; in the case of biogas, biogas of animal origin, gas from municipal waste and gas from facilities for the treatment of communal waste waters, geothermal power plants and plants that use waste, the percentage is set at ninety percent (90%).

The status of the Privileged Producer is granted by the Ministry of Mining and Energy upon application by the interested party containing all the required documents and proof that are specified in the Privileged Producers Decree. Under the Energy Law, a producer who obtains the status of Privileged Producer is obligated to sell the electricity exclusively to a guaranteed supplier.

In addition, according to the Energy Law, RES producers can obtain the "status of a RES producer", which is granted by the Ministry of Mining and Energy. However, a producer cannot have at the same time the RES producer status and Privileged Producers status for the same power plant.

The Ministry of Mining and Energy keeps the public Registry that includes information on electricity producers who have Privileged Producer status, temporary status of a privileged producer, a status of RES producer, and producers who no longer have one of the mentioned statuses.

4.2 General description of promotion scheme

The applicable Serbian promotion scheme consists of certain incentives that are provided for in the Energy Law and in the applicable by-laws.

The Incentives Decree, which was in force from 2 February 2013 until 31 December 2015[9], provided for the following incentives to privileged producers:

(i) the twelve (12) year incentivised period for all power plants that became operative within less than twelve (12) months before signing the PPA with the public supplier, or the twelve (12) year incentivised period reduced for the difference between the year when the PPA was concluded and the year when the power plant became operative;

(ii) the feed-in tariffs as set below in Section 4.3;

(iii) the right of an energy producer who has previously acquired the status of temporary privileged producer to sell the total amount of produced energy to public suppliers, during the incentivised period, at the feed-in tariff that was valid at the time when that producer acquired the status of temporary privileged producer;

(iv) the amount of energy produced during the incentivised period at the feed-in tariff that was valid at the moment when the status of the temporary privileged producers was acquired[10];

(v) assumption of balancing responsibility and balancing charges by the public supplier during the incentivised period;

(vi) free monthly notification to the public supplier and to the Privileged Producer by the competent system operator of the amount of energy produced in the facility of the Privileged Producer during the incentivised period; and

(vii) the right of the Privileged Producer to conclude the PPA with the public supplier, after the expiry of the incentivised period, for the sale of the total amount of produced energy under market conditions on the electricity market in Serbia.

Pursuant to the Energy Law, a producer who acquired the status of temporary privileged producer is entitled to incentive measures by entering the PPA with a guaranteed supplier under the condition subsequent that that producer obtains the Privileged Producer status in accordance with the prescribed rules. The guaranteed supplier is obliged to enter into a PPA upon the request of a producer who acquired the status of temporary privileged producer, and within thirty (30) days from such request.

Additionally, a producer who acquired the status of temporary privileged producer and afterwards obtained the Privileged Producer status, is entitled only to incentive measures that were in force on the day when the producer applied to obtain the status of temporary privileged producer.

The right to use the above incentives under point (vii) is provided to a Privileged Producer that entered the PPA for the total energy produced after the incentivised period has expired. In July 2013, the Ministry of Mining and Energy adopted a Rulebook on Determining the Standard Models of Agreement and Preliminary Agreement on the Purchase of the Total Amount of Produced Electricity[11] prescribing thereby the standard forms of a PPA. The said Rulebook

9 Please note that a new decree regulating incentives, including the feed-in tariffs, is in preparation and although it was expected to be adopted by the end of 2015 this is still pending. According to information informally obtained from the Ministry of Mining and Energy, the new decree should be adopted in the first quarter of 2016.

10 According to unofficial information by the Ministry of Mining and Energy, this incentive is not applicable in practice, as it is unclearly defined.

11 Official Gazette of the Republic of Serbia Nos. 62/2013 and 10/2014.

provides for three types of PPA templates: (i) a template PPA for energy facilities with a capacity of less than 5 MW; (ii) a template for those with a capacity from 5 MW to 50 MW; and (iii) a template for those with a capacity of more than 50 MW. Even though the Energy Law, which introduced the concept of a single PPA, was adopted in December 2014, a new by-law regulating the template PPA is still in preparation and although it was expected to be adopted by the end of 2015, this is still pending. According to information informally obtained from the Ministry of Mining and Energy, the new decree should be adopted in the first quarter of 2016.

4.3 Procedure for determining feed-in-tariff

The Incentives Decree, which ceased to be in effect on 31 December 2015, provided for the following feed-in tariffs to Privileged Producers (prescribed in Eurocents per kilowatt hour) who sell their electricity to the public supplier[12] (i.e. the guaranteed supplier per terminology used in the Energy Law):

TYPE OF PLANT/ENERGY SOURCE	INSTALLED POWER (MW)	FEED-IN TARIFF (EURO CENTS/KWH)[13]
Hydroelectric	up to 0.2 MW 0.2 MW to 0.5 MW 0.5 MW to 1 MW 1 MW to 10 MW 10 MW to 30 MW	12.40 *13.727* 10.41 *10.747* 7.38
Hydroelectric using existing infrastructure	up to 30 MW	5.9
Biomass	up to 1 MW 1 MW to 10 MW over 10 MW	13.26 *13.82* 8.22
Biogas	up to 0.2 MW 0.2 MW to 1 MW	15.66 *16.498*
Biogas from animal origin waste	over 1 MW	12.31 12.31
Gas from municipal waste and gas from facilities for treatment of communal waste waters		6.91
Wind energy		9.2
Solar energy	on objects up to 0.03 MW on object from 0.03 to 0.5 MW on the ground	20.66 *20.941* 16.25
Geothermal	up to 1 MW 1 MW to 5 MW over 5 MW	9.67 *10.358* 6.92
Waste		8.57
Combined renewable and coal plants	up to 10 MW	8.04
Combined renewable and coal plants	up to 10 MW	8.89

12 Please note that in June 2013, the state-owned company EPS Snabdevanje d.o.o. was selected to act as the public supplier. Pursuant to the new Energy Law adopted at the end of 2014, the current public supplier (i.e. EPS Snabdevanje d.o.o.) must continue supplying households and small buyers with electricity at regulated prices, entering into PPAs and performing obligations towards electricity producers with the status of Privileged Producer or with temporary status of a privileged producer, with all the rights and obligations of a guaranteed supplier until a guaranteed supplier is appointed in accordance with the Energy Law. Thus, EPS Snabdevanje d.o.o. acts as a general supplier.

13 The figures in italics indicate that there is a variable deduction from the feed-in tariff that is adjusted in accordance with the price of fossil fuels.

If the criteria for privileged status and feed-in tariffs are met, the guaranteed supplier is obliged to conclude the PPA with the Privileged Producer, if the Privileged Producer so requests.

4.4 Other financial incentives for RES-Electricity

Under the Energy Law, Privileged Producers also have the right of priority on the organised electricity market over other producers, and enjoy certain subsidies, tax, customs and other privileges.

4.5 Support scheme for cogeneration

Currently, there is no support scheme aimed specifically at cogeneration. Cogeneration is covered by the general Privileged Producers Decree and was also covered by the Incentives Decree, with a guaranteed feed-in tariff for coal fire cogeneration plants and natural gas fired cogeneration plants (see the table in Section 4.3).

4.6 Guarantees of origin for RES-Electricity

Pursuant to Article 20 of the Energy Community Treaty, Serbia has undertaken an implementation plan for the EU *acquis communautaire* that envisages, *inter alia*, the introduction of a system of guarantees of origin for RES-Electricity. The date committed to was 1 July 2009. Accordingly, this system of guarantees of origin for RES-Electricity has already been introduced in Serbia through the previous Energy Law, whereby a by-law regulating the procedure of issuance of guarantees of origin and the Registry of Guarantees of Origin has been adopted and became applicable as of 1 January 2015.

A guarantee of origin is issued by the operator of a transmission system (i.e. currently EMS in Serbia) upon the request of a producer of electricity from RES for the standardised quantity of produced energy of 1 MWh. The guarantee of origin is not issued more than once in the given period for the same quantity of produced energy. The validity period of the guarantee of origin is one (1) year from the last day of the production period for which it was issued and it ceases to be in effect after being used, withdrawn or after the lapse of one (1) year calculated from the last day of the production period for which the guarantee of origin was issued. The guarantee of origin is transferable. However, the system of guarantees of origin has not yet been implemented in practice by EMS due to technical issues.

Although the Energy Law provides that guarantees of origin issued in a foreign country are valid in Serbia under condition of reciprocity, it is still unclear how such reciprocity would be proven or enforced.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

Access to the grid is granted by the grid operator EMS (*Elektromreža Srbije* - Electricity Networks of Serbia), which acts as the transmission system operator for Serbia. Thus far, there is no rule giving general priority access to green energy producers. However, the Energy Law provides that Privileged Producers should have priority access for the off-take of all of their produced RES-Electricity into a transmission or distribution system, except where the safety of these systems may be compromised. Access is granted on a non-discriminatory basis, subject to technical possibilities, by EMS. Refusal to grant access may be appealed to the Energy Agency.

5.2 Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid

The generators pay for grid connection and use. Capacity upgrades, improvements and expansion of the grid are generally paid by EMS, which is funded by fees from the generators and the budget of the Republic of Serbia. There are, however, significant capacity upgrade projects funded by the EU, especially in the south of Serbia. According to the EMS's Web page, the Republic of Serbia, namely EMS as the national transmission system's operator, commenced activities relating to the construction of the Trans Balkan Corridor which is a strategic and development project with national and regional importance and which should protect the long-term national energy security of the Republic of Serbia. The project includes the replacement of the dilapidated lower voltage (220KV) with a higher capacity system as well as the planned investment into new interconnections making such a system a strategic intersection point of the region. This project also affects the fulfilment of Serbia's commitment to have twenty-seven percent (27%) of the total energy produced from RES, as the project will cover the area with the largest expected implementation of RES projects in Serbia.

With respect to high-voltage projects and grid connection, the current Energy Law introduced an obligation of EMS to establish and publish on its Web page a transparent procedure for the connection of facilities to the transmission grid.

The Energy Law also provides for rights and obligations of EMS and the producer regarding the construction of the connection to the transmission grid. Moreover, under the Energy Law, it is prescribed that EMS may not deny the connection of a facility on the basis of any future limitations in the existing transmission grid capacities, such as congestion in distant parts of the transmission network. In addition, EMS may not deny the connection of a facility on the basis of any additional costs due to an increase in the capacity of the transmission grid elements in the vicinity of the connection point.

5.3 Special allowance/tolerance for intermittent generation in relation to balancing charges for unscheduled deviations

We are not aware of any special allowances/tolerance for intermittent generation. Balancing costs are envisaged for wind energy production under the Incentives Decree. Under the Incentives Decree, the buyer of RES-Electricity bears the cost of balancing and is then compensated through the further resale of electricity.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all the jurisdictions is the prohibition of incompatible state aid, which is contained both in the EC Treaty and in the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission's new Guidelines on State Aid for Environmental Protection and Energy, adopted on 7 April 2014, be considered as compatible with the common market.

There are no apparent "practical" limitations either. Article 21 of the Central European Free Trade Agreement ("**CEFTA**"), prohibiting state aid that affects trade between CEFTA Member States, became effective on 1 May 2010. In order to meet this obligation, Serbia has adopted a Law on the Control of State Aid (Official Gazette of the Republic of Serbia No. 51/2009), which became effective on 1 January 2010. Under that law, essentially similar rules to those found in EC state aid law (Article 87 of the EC Treaty and Article 107 of the Treaty on the Functioning of the EU post Lisbon) will be applied. In addition, Article 73 of the Stabilisation and Association Agreement between Serbia, the EC and its Member States ("**Agreement**") provides a prohibition on state aid, which will come into force one (1) year after the effective date of the Agreement. For five (5) years after the effectiveness of the Agreement, state aid granted by Serbia will be assessed under the same criteria as state aid granted in the poorer regions of the EU (Article 87(3)(a) EC/Article 107 of the Treaty on the Functioning of the EU, post Lisbon). It is not known at this point when the Agreement will come into force, as its ratification by the EC Member States is pending. At present, Article 18(1)(c) of the Energy Community Treaty prohibits state aid which distorts or threatens to distort competition by favouring certain

undertakings or certain energy resources, insofar as this may affect trade in network energy among the Parties to the Treaty.

Pursuant to the Energy Law, a producer who has acquired the status of a temporary privileged producer is entitled to incentive measures by entering the PPA with a guaranteed supplier (EPS Snabdevanje d.o.o.) provided that the producer obtains Privileged Producer status in accordance with the prescribed rules. The guaranteed supplier is obligated to enter into a PPA upon the request of a producer who acquired the status of temporary privileged producer, within thirty (30) days from the date of such a request.

Apart from the standard contractual elements, the PPA must also include elements prescribed by the Energy Law. The new PPA by-law is in preparation and is expected to be adopted in the first quarter of 2016. This new PPA by-law is required because the current by-law prescribing the standard models of PPA was adopted under the previous Energy Law and is therefore not compliant with the Energy Law. The issues of the PPA content are important, especially for the large-scale projects such as wind farms, because the PPA content prescribed under the current by-law is not "bankable" for the financiers and poses a number of uncertainties for the investors.

7. Carbon Credits

Although Serbia (through its legal predecessor, the Federal Republic of Yugoslavia) acceded to the UN Framework Convention on Climate Change in 1997, it ratified the Kyoto Protocol in 2007, and the relevant law (Law Confirming the Kyoto Protocol to the Framework Convention of the United Nations on Climate Change, Official Gazette of the Republic of Serbia (International Agreements) Nos. 88/2007 and 38/2009) came into force on 2 October 2007, while Serbia only became bound by the Protocol on 17 January 2008 (three (3) months after depositing the instruments of ratification at the UN).

Serbia is a non-Annex I country, which means that Serbia is not among the group of industrialised countries bound by emissions targets (Annex I countries) and, by extension, it is also not on the smaller list of developed countries who pay for the costs of developing countries (Annex II countries). Accordingly, Serbia had no greenhouse gas reduction target under the Kyoto Protocol in the period 2008-2012.

Serbia's Designated National Authority for the Implementation of the Kyoto Clean Development Mechanism ("**DNA**") was established in November 2008. The DNA receives proposals from interested parties and issues letters of support and letters of approval as regards the compatibility of a project with the CDM. Participation in the DNA is voluntary.

WOLF THEISS

SLOVAK REPUBLIC

SLOVAK REPUBLIC

Main permits required for RES-Electricity generating facilities

Environmental permit	For some types of power plants, e.g. hydro power plants with more than 50 MW of capacity and all wind power plants, an Environmental Impact Assessment ("**EIA**") procedure is required.
Building permit	Procedure involves the issuance of a zoning permit, a construction permit (valid for a period of two (2) years during which construction must be started) and an occupancy permit.
Authorisations under Energy law/right (concession) to exploit natural resources	Prior confirmation of the Ministry of Economy that the investment plan complies with the national long-term energy policy, for which a pre-requisite is the affirmation of the transmission operator that the power generating facility shall not pose a risk to the stability of the transmission network. Approval is not required for a facility the capacity of which does not exceed 1 MW. However, an exemption applies to solar energy generators as of 1 May 2010. The approval is required for the construction of any solar plants, save for facilities installed on buildings with a total output of less than 100 KW. For hydro power plants a licence for specific use of water also has to be obtained.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	Generation licence issued by the Regulator.
PROMOTION SCHEME	
Outline	▪ Priority connection to the regional distribution network; ▪ priority access to the transmission system and priority transmission, distribution and supply of electricity; ▪ mandatory off-take of the electricity by the regional distributor to which the RES installation is connected, at the market price; ▪ electricity price supplement – difference between the feed-in tariff and the market price; and ▪ assumption of liability for the deviation from injection schedules submitted by the producer. Fixed feed-in tariffs are determined every year by the Regulator and are applicable for fifteen (15) years. Amending legislation adopted in late 2010, and which took effect in 2011, brought restrictions to the promotion scheme with respect to solar energy generators (ground facilities), depriving them of the deviation assumption and the supplement altogether, unless the solar facility has a capacity of less than 100 KW and is installed on roof tops or facades of buildings. Further amendments in early 2013 and effective from the middle of 2013, decreased this output eligibility of the solar generator from 100 KW to 30 KW.

	In late 2013 further changes were adopted effective from 1 January 2014, decreasing the overall installed capacity from 10 MW to 5 MW in order to be eligible for the promotion in the form of a supplement.
Other financial incentives	Special loans (one percent (1%) interest) available from Environmental Fund.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	Yes
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The costs of connection and costs of the extension of the distribution system are borne by the electricity producer (ninety-eight percent (98%)) and the distribution system operator, with effect from 1 January 2014.
Special allowance/tolerance for intermittent generation in relation to balancing charges	Regional distribution system operator is responsible for any deviation caused by the coverage of losses in the distribution system and its own electricity consumption. The distribution system operator may transfer the responsibility for covering the deviation to another entity. Until 31 March 2011, RES-Electricity producers with less than 4 MW of installed capacity were entitled to the incentive that the distribution system operator assumes the liability for deviations from injection schedules. Legislation effective as of 1 April 2011 restricted the promotion by granting the deviation assumption only for facilities with less than 1 MW of the installed capacity. However, as of 1 July 2013 solar energy generators enjoy the deviation assumption only if their capacity does not reach 30 KW.
CARBON CREDITS	
Status	The Slovak Republic ratified the Kyoto Protocol, as a UNFCCC Annex 1 party. The necessary legal framework has already been adopted into national law.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

- Act on Energy (No. 251/2012 Coll.) ("**Energy Act**") governs: (i) the conditions for conducting business in the energy sector; (ii) access to the market and rights and obligations of market participants in the energy sector; (iii) the measures providing for safe energy and gas supply and operation of the internal energy and gas market; (iv) the rights, legitimate interests and obligations of those affected by market participants in the energy sector; (v) state administration in the energy sector; and (vi) state supervision of business in the energy sector.
- Act on regulation in network industries (No. 250/2012 Coll.) ("**Act on Regulation in Network Industries**") governs: (i) regulation in network industries; (ii) a Regulatory Office for Network Industries ("**Regulator**"); (iii) conditions for the exercise of regulated activities and the rights and responsibilities of regulated entities; (iv) the rules for operation of the market in electricity and gas; and (v) sanctions for violation of obligations under the Act on Regulation in Network Industries.
- Government Ordinance concerning the power trading market (Government of Slovak Republic No. 317/2007 Coll.) ("**Power Ordinance**") establishes rules for the power trading market concerning access and connection to the grid, supply, distribution and transfers of electricity and the provision of support and system services.
- Act on the promotion of renewable energy sources and high efficiency cogeneration and on amendments to certain acts (No. 309/2009 Coll.) ("**RES Promotion Act**") governs: (i) the means and conditions for promotion of the generation of electricity from renewable energy sources, high efficiency cogeneration and generation of electricity from biomethane; (ii) rights and obligations of producers of electricity from renewable energy sources, cogeneration, high efficiency cogeneration and from biomethane; (iii) rights and obligations of other electricity and gas market participants; and (iv) rights and obligations of a legal person or natural person, who puts motor fuels and other energetic products for vehicular traffic purposes onto the market.

- Decree No. 24/2013 Coll., issued by the Regulatory Office for Network Industries on rules for function of the power market with gas and electricity ("**Decree**"). The Decree was issued by the Regulator (due to shift of competences under the Act on Regulation in Network Industries from the government to the Regulator). Similarly as under the Power Ordinance, the Decree contains and sets out rules for the functioning of the domestic market for electricity and for gas, including, but not limited to access and connection to the grid, cross border changes of electricity, distribution and transfer of electricity, supply of electricity, etc.

Directive 2001/77/EC (the Directive on Electricity Production from Renewable Energy Sources) has been implemented in the Slovak Republic through the Slovak Energy Act, the Slovak RES Promotion Act and the Slovak Power Ordinance.

Directive 2009/125/EC (the Directive on energy efficiency) has been implemented in the Slovak Republic through the Act on Energy Efficiency.

1.2 Latest changes

In May 2012, the Slovak government adopted two main legislative acts governing the energy law in Slovakia: (i) the Energy Act; and (ii) the Act on Regulation of Network Industries. These acts were adopted by the National Council of the Slovak Republic and came into force on 1 September 2012. Their principal aim was the implementation of the latest EU directives and regulations, above all the Third Energy Package ("**TEP**"). In particular, both Directive 2009/72 of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC and Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC which aims at achieving an internal energy market in Europe were implemented by these two Acts.

In relation to the RES regulatory framework, (particularly the RES Promotion Act), the implementation of the Third Energy Package did not result in significant changes. The only change was the mandatory installation of flow metering devices for electricity metering to solar energy generators.

In January 2013, the RES promotion Act was amended with effect from 1 March 2013 (certain provisions were effective as of 1 July 2013). According to current legislation, only those solar energy generators operating facilities up to 30 KW (instead of the former 100 KW) of capacity, which are located on roof tops or facades of buildings, will be eligible for the promotion in a form of supplement (see Section 4.3.3). Furthermore, only those solar energy generators operating facilities up to 30 KW (instead of the current 100 KW) shall be eligible for promotion in the form of deviation assumption (see Section 4.3.4).

Promotion in the form of supplement and off-take of the electricity shall not apply to the equipment of the energy producers using as an energy source hydro power, with overall capacity above 5 MW.

Energy producers using solar energy as a source of power shall identify each photovoltaic panel with information about its power.

The promotion scheme does not apply to facilities built without a licence or which are operated in contradiction to the RES Promotion Act. Furthermore, entitlement to the promotion will cease if the generator of the electricity is penalised in accordance with the RES Promotion Act twice during the fifteen (15) year promotion period.

In November 2013, the RES Promotion Act was amended by Act No. 382/2013 Coll. The purported rationale behind this legislation was to ensure more effective functioning of support of RES-Electricity. Furthermore, according to the report to this amendment, the RES Promotion Act initiated construction of new electricity production facilities with guaranteed buyout prices for fifteen (15) years. Costs for this support were subsequently transferred to prices for electricity used by consumers which caused a rise in electricity prices. In November 2014 the RES Promotion Act was amended by Act No. 321/2014 Coll. Among other changes, the guarantee of origin of electricity produced by

high-efficiency cogeneration was put into a separate provision and some conditions connected with this guarantee were made more specific. The most significant change implemented by these last amendments to the RES Promotion Act has been the reduction of the installed capacity (from 10 to 5 MW) in order to be eligible for certain means of promotion. Moreover, the amendment from 2013 simplified the procedure for the connection for home-installed RES devices with maximum installed capacity of up to 10 KW. The amendment also revised the supplement amounts paid in case of reconstruction or modernisation of the electricity plant.

Finally, the Regulator adopted regulation 221/2013 Coll. which sets out price regulation in the electro-energy sector. This regulation was amended by regulation 143/2015 Coll., in July 2015 and by regulation 226/2015 Coll., in October 2015.

In October 2014, the National Council approved an act on energetic effectiveness, No. 321/2014 Coll. ("**Act on Energy Efficiency**"), which replaced the former Act No. 476/2008 Coll. This latter act represents a partial transposition of EU Directive No. 2012/2007/EU on energy efficiency. As the name implies, the Act on Energy Efficiency (i) regulates and sets out a precise framework for the rational and efficient use of energy; (ii) the requirements for energy efficiency in the conversion, transfer, transmission, distribution and consumption of energy; (iii) regulates the monitoring and promotion of energy efficiency; and (iv) establishes obligations for individuals, entrepreneurs, legal entities and government authorities in relation to efficient energy use. Its aim is to increase the efficiency in use of energy at every level in the energy production, distribution and consumption chain, in particular in the area of final consumption of energy (where the largest amount of energy may be saved, particularly in buildings and industry). It also amended those acts mentioned above (i.e. the Energy Act, the Act on Regulation in Network Industries and the RES Promotion Act) with respect to energetic effectiveness. Regarding the RES Promotion Act, the Act on Energy Efficiency contains a new section dealing with the guarantee of origin of electricity produced from high-efficiency cogeneration.

On 8 December 2014, the Regulator issued guidance on the fulfilment of obligations under the RES Promotion Act, in particular regarding the obligations of electricity producers under Section 4 (2) letter c) of the RES Promotion Act. Under this provision, electricity producers must notify the Regulator and the operator of the regional distribution network that it has applied for a promotion in the form of an off-take of electricity and an electricity price supplement, as well as about the anticipated amounts related thereto, as of 15 August for the subsequent calendar year. The guidance specifies the methods for the delivery of such notification. The obligation is considered as fulfilled if such notification is delivered in person to the Regulator, in electronic form, via facsimile transmission or if deposited with the Post Office for registered delivery by no later than 15 August of a particular calendar year.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

2.1.1 Environmental Law

An Environmental Impact Assessment ("**EIA**") procedure is required for construction of the following types of energy plants:

- plants producing more than 50 MW of electricity using hydro power;
- all plants for the production of wind energy;
- plants producing more than 50 MW of electricity from geothermal energy;
- any other plants producing more than 50 MW of electricity; and
- underground and above ground electricity transmission lines of more than 220 KV and longer than fifteen (15) km are only subject to the survey procedure.

Other plants (e.g. plants producing between 5 MW and 50 MW of electricity from hydro power, plants producing between 5 MW and 50 MW of electricity from geothermal energy, other types of plants producing between 5 MW and 50 MW of electricity, the transmission lines for electricity between 110 KV and 220 KV of voltage and between five (5) km and fifteen (15) km long) are subject to less formal scrutiny by the respective authority, which (after receiving the statements of involved authorities and persons) will directly decide whether or not the submitted project shall be subject to the full EIA procedure.

2.1.2 Building Law

2.1.2.1 ZONING PERMIT

The zoning permit approves the localisation of the building on the designated plot of land and confirms its compliance with the zoning requirements under urban plans.

To obtain a zoning permit, the developer must submit a number of statements of approval from different authorities, bodies and public utilities, such as telecommunications and energy suppliers. Once the developer has collected the statements, the application can be filed. The authority should decide within thirty (30) days after the beginning of proceedings whether the zoning permit should be issued. In particularly complicated cases, the decision should be made within sixty (60) days. In case the nature of the matter does not allow the issuance of the zoning permit within this sixty (60) day period, this can be extended as necessary. In case the applicant is asked to complete the submission (e.g. by providing additional documents), the above-mentioned term is suspended, thereby leading to an extension of the said time period. Frequently, the authority will ask the applicant for additional paperwork, resulting in an extension of the decision period.

If the project conforms to all regulations, the planning permit is issued. The planning permit is valid for a period of two (2) years, unless the building authority establishes a longer expiry date. However, it does not lose its validity if during this period an application for a construction permit has been made or if the land has started to be used for the defined purpose.

2.1.2.2 CONSTRUCTION PERMIT

The construction permit will be issued following the construction proceedings, within which the respective authorities issue their statements concerning the building. The participants to the construction proceedings may also submit their objections concerning the building. The authority should make its decision within thirty (30) days after the beginning of proceedings. In particularly complicated cases, the construction permit should be issued within sixty (60) days. In case the nature of the matter does not allow the issuance of the construction permit within this sixty (60) day period, this can be extended as necessary. In case the applicant is asked to complete the submission, the above-mentioned term is suspended, which results in an extension of the decision period. The construction permit is valid for two (2) years, during which period construction must be commenced. The administrative proceedings may even be prolonged if the participants to the proceedings (e.g. owners of neighbouring land lots) file an appeal against the issued construction permit. Such appeal may be submitted within a period of fifteen (15) days.

2.1.2.3 OCCUPANCY PERMIT

After completion of construction but prior to occupation of the building, the applicant must receive an occupancy permit, which certifies that the building complies with the planning and construction permits and approves its use/operation for the designated purposes. This document also stipulates the purposes for which a building may be used and is used to register the building in the cadastral records.

2.1.3 Energy Law

A power generating facility may only be built in Slovakia with the prior approval of the Ministry of Economy, which examines the compliance of the applicant's investment plan with the nation's long-term energy policy. If the project

complies with the energy policy, the Ministry issues a certificate approving the construction of the power plant ("**Certificate**"). Approval is not required for a facility with a capacity which does not exceed 1 MW. However, an exemption applies to solar energy generators. As of 1 May 2010, such Certificate is required for the construction of any solar plants, save for facilities installed on buildings with a total output of less than 100 KW. The Certificate is a prerequisite for the issuance of a building permit.

An important pre-requisite for the issuance of the Certificate is the affirmation of the transmission system operator ("**SEPS**") that the power generating facility does not pose a risk to the stability of the transmission network. In this respect, SEPS adopted rules for the issuance of statements approving new solar projects ("**Statements**"), in order to prevent uncontrolled increase of their numbers. The rules provide, among other provisions that the affirmative Statement may be issued only to those applicants having an individual installed capacity between 1 MW and 4 MW, subject to a maximum of 120 MW of aggregate installed capacity. Pursuant to the announcement of SEPS dated 11 December 2009, the maximum limit of 120 MW of aggregate installed capacity was reached as of 3 December 2009. Therefore, no other affirmative Statements will be issued to new applicants in respect of solar energy. SEPS has also indicated that it will adopt regulations regarding solar projects and, in all likelihood, will issue new affirmative Statements only after acquiring sufficient practical experience with the operation of the relevant solar energy generators (which were built until the end of 2011). To date, SEPS have confirmed that they are not issuing new affirmative statements and are still re-evaluating their position.

2.2 Process for obtaining the right (concession) to exploit natural resources

The Act No. 25/2006 Coll. on Public Procurement as amended ("**Act on Public Procurement**") primarily regulates the award of public contracts regarding construction works, the supply of goods and the rendering of services. Furthermore, the Act on Public Procurement also regulates the granting of the so-called "concessions." However, these concessions are limited to construction works. They do not encompass the rendering of services. The specific feature of these concessions is that the concessionaire bears the commercial risk related to the construction works (e.g. the right to construct a motorway or a parking place). In November 2015, the Slovak Government adopted Act No. 343/2015 Coll. on public procurement, as amended ("**New Act on Public Procurement**"). It will come into force on 18 April 2016 and shall replace the Act on Public Procurement. The New Act on Public Procurement implements the Directive 2014/25/EU of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors. There is no Slovak legislation requiring participation in a prior tender procedure in order to be granted the right (concession) to exploit natural resources. Therefore, the award of the concession does not require a mandatory public tender.

The construction and operation of RES facilities may in theory be subject to public procurement, if the project is to be realised through public financing or in the form of a Public Private Partnership ("**PPP**") project. However, we are not aware of any case in practice in which the construction and operation of a RES-Electricity facility has been realised as a PPP project or through public financing. Nonetheless, potential may be seen in the cooperation between private investors and municipalities, particularly with respect to more stable RES-Electricity facilities such as biomass combustion.

With regard to the right to exploit natural resources, any interested private entity may submit an unsolicited proposal to the Ministry of Economy. Thereafter, the Ministry of Economy shall issue a certificate demonstrating compliance of the investment plan with the Slovak long-term energy policy. The long-term energy policy is not subject to public review. It is a strategic document elaborated by the Ministry of Economy and approved by the Government of the Slovak Republic. The last energy policy was approved by a resolution of the Government of the Slovak Republic on 11 January 2006. It is valid for a period of twenty-five (25) years and is expected to be updated every five (5) years by the Ministry of Economy. A new energy policy was approved by the National Council of the Slovak Republic in November 2014, which defines the objectives and priorities for the energy sector by 2035 with a view to 2050 ("**Energy Policy**"). According to the Energy Policy, after 2020 RES-Electricity will no longer be supported by higher purchase prices. Slovakia prioritises those types of renewable energy sources which do not show fluctuations in production and with purchase prices nearest to market prices. The new legislation should therefore create pressure to reduce costs associated with RES-Electricity promotion schemes and, in the case of biomass, its more effective use. Promo-

tion should focus particularly on high-efficiency cogeneration of electricity and heat with electric power up to 5 MW. Slovakia should pay particular attention to biomass and small hydro power plants in terms of RES-Electricity sources. The Energy Policy further focuses on protection of consumers, enhancing quality standards, energy audits, ensuring greater independence of the Regulator and its major responsibilities.

The Energy Policy also provides for major new plans in the Slovak gas sector. The largest and most important projects in the gas sector include the pipeline to Poland and Hungary. The pipeline to Hungary commenced operation in July 2015. According to market analysts, the gas pipeline project which has cost more than EUR 160 million has not yet attracted attention from traders and accordingly, has not been fully utilised in line with its capacities. Nevertheless, market analysts have stated that the north-south gas pipeline shall be considered in a wider context and as a means to substantially increase energy independence for the whole region. In 2019, Slovakia should have a gas pipeline connected with Poland as well.

The modernised crude oil pipeline Adria connecting the Slovak Republic and Hungary is ready for use. If necessary, Slovakia will be able to import crude oil through it from ports on the Adriatic Sea. The pipeline was opened on the premises of Transpetrol's booster pump station at Tupá in the Nitra region in February 2015. The Adria pipeline reconstruction project has increased the potential transportation capacity to Slovakia from 3.5 million tonnes of oil per year to 6 million. The Hungarian part of the pipeline, with two existing booster pump stations having been reconstructed, has seen its capacity increased from 10 million tonnes of oil per year to 14 million.

The Energy Policy also includes a project for a pipeline connection between Bratislava and Schwechat, Austria. The Energy Policy is published on the Web site of the Slovak Ministry of Economy.

Furthermore, in the case of hydro power plants, a licence for the specific use of water has to be obtained, since the potential for hydro energy is in the ownership of the Slovak Republic.

3. Licence to generate RES-Electricity

3.1 Outline of the licensing process

According to Section 7 of the Energy Act, the issuance of a licence is subject to the following conditions:

A legal person to whom a licence is granted must:

- have a registered office in the defined territory (the subsidiary of a foreign entity shall be sufficient in this respect, provided that it has its registered office within the defined territory);
- meet the technical preconditions for performing the activities for which the licence is requested;
- designate a competent representative;
- have a management/direction body whose members do not have a criminal record;
- meet the technical preconditions for performing the activities for which a licence is requested. This does not apply where the applicant has already received a Certificate, or where the applicant requests a licence to supply electricity (i.e. electricity trading licence); and
- demonstrate their professional qualification to conduct business in the energy sector with a certificate of professional qualification issued by the official technical inspection or another authorised issuer.

According to Section 8 (1) of the Energy Act, a licence to generate RES-Electricity will be issued on the basis of a written application in which the applicant states: (i) the activity; (ii) the territory or part thereof in which the requested activity is to be performed; and (iii) the period for which the licence is requested.

3.2 Designated/preferred legal form of investment vehicle

There is no legally designated form of investment vehicle.

A licence to generate RES-Electricity may be issued to a natural person and also to a legal person (including incorporated legal persons prior to their registration with the Commercial Register).

The most common and often recommended legal form is a limited liability company. The minimum registered capital is EUR 5,000 and the maximum number of shareholders is limited to fifty (50). Another option, although more complicated and more costly, is a joint stock company, having a minimum capital of EUR 25,000 and an unlimited number of shareholders.

3.3 Anticipated time frame for the issue of licences/authorisations

The issuing authority for the electricity production licence is the Regulator. The licence shall be issued within thirty (30) days of the beginning of the proceedings before the Regulator. In particularly complicated cases, the licence may be issued within sixty (60) days. In case the nature of the matter does not allow the issuance of the licence within the sixty (60) day period, this can be extended as necessary. In case the applicant is asked to complete the submission by submitting additional paperwork, the above-mentioned term is suspended, which results in an extension of the decision period.

4. Promotion System for the Production of RES-Electricity

The RES Promotion Act introduced an incentive scheme for the production of green electricity, which came into effect on 1 January 2010. Production of electricity from RES and electricity from high efficiency cogeneration is promoted by:

- a priority connection to the regional distribution network;
- priority access to the transmission system and priority transmission, distribution and supply of electricity (any or all referred to as "**priority access**");
- mandatory off-take of the electricity by the regional distributor to which the RES installation is connected, at the market price ("**off-take price**");
- electricity price supplement ("**supplement**"), which is the difference between the feed-in tariff and the market price; and
- assumption of liability for the deviation from injection schedules submitted by the producer ("**deviation assumption**").

4.1 Applicability of promotion scheme

The feed-in-tariff system is based upon the establishment of fixed feed-in prices for RES-Electricity. These fixed prices are granted upon submission of a guarantee of origin of generated electricity issued by the Regulator.

The fixed prices for electricity apply for all types of RES-Electricity. These prices are set up every year by the Regulator and the applicability of such prices is fifteen (15) years.

4.2 General description of promotion scheme

The current RES-Electricity promotion incentive scheme is based upon the feed-in tariff principles. The feed-in tariff is paid by the local distributor to the RES-Electricity producers in the form of the off-take price and the supplement, regardless of whether the producer is connected to its distribution grid or not. However, the RES Promotion Act effective as of 1 April 2011 reduced the promotion scheme with respect to solar energy generators and further limitation was introduced in July 2013. Prior to July 2013, those solar energy generators operating facilities below 100 KW of capacity and installed on the roof top or facade of buildings were entitled to benefit from the feed-in tariff. As of 1 July 2013, only those solar energy generators operating facilities up to 30 KW of capacity and installed on the roof top or facade of buildings are entitled to benefit from the feed-in tariff.[1]

4.3 General description of promotion scheme

4.3.1 Priority Access

Priority access shall be granted to any RES-Electricity producer, regardless of the installed capacity, subject only to the preservation of the security, reliability and stability of the grid connection.

4.3.2 Mandatory off-take

The right to the off-take of the electricity generated at a price equal to the sum of the off-take price and the supplement pertain to those installations whose capacity is up to 125 MW (or up to 200 MW of high efficiency cogeneration installations if the RES share in gross inputs is greater than thirty percent (30%), or the energetic share of the gases created as a side product in metallurgical processes).

The off-take price is the price of electricity-for-losses approved or determined by the Regulator and represents an arithmetical average of the prices of electricity used for covering the losses of electricity occurring in the distribution grid.

4.3.3 Supplement

The supplement represents a difference between the RES-Electricity feed-in tariff and the off-take price (which is the market price) and is payable by the operator of the distribution grid: (i) to which the installation of the eligible RES-Electricity producer is connected; or (ii) which is covering the location where the RES-Electricity installation is situated. According to the Amendment of the RES Promotion Act effective as of 1 April 2011, only those solar energy generators operating facilities below 100 KW of capacity, which are located on the roof top or facade of buildings which are fixed to the ground and registered in the real estate cadastre, are entitled to enjoy the Supplement. As of 1 July 2013, only those solar energy generators operating facilities up to 30 KW of capacity and installed on the roof top or facade of buildings will be entitled to benefit from the feed-in tariff.

The right to the supplement applies only to:

- all RES-Electricity produced by the RES-Electricity installations (or high efficiency cogeneration installations) with a total capacity not exceeding 10 MW, except for wind power plants and also, as of 1 April 2011, solar power plants;
- all RES-Electricity produced by wind power plants, with a total capacity not exceeding 15 MW;
- solar power plants with a capacity below 100 KW, located on the roof top or facade of a building;
- in case the installation exceeds 10 MW (or 15 MW in the case of wind power plants), the supplement shall be granted only to the RES-Electricity, pro rata to 10 MW (15 MW for wind-power plants) with respect to the total installed capacity. The reason for this limitation is that the government wants to support more dispersed production of RES-Electricity by smaller power plants. However, since there is no official interpretation of what is meant by an "installation which exceeds 10 MW," the method of circumventing this limitation has not yet been fully explored. It

1 The RES Promotion Act was amended in January 2013, entering into force on 1 March 2013. However, certain changes connected with promotion scheme entered into force on 1 July 2013.

may be that the facilities would need to be legally (i.e. owned by different special purpose vehicles, and permits and authorisations applied for in separate proceedings) and technically (two grid connections) split into two or more smaller facilities;

- all electricity produced by high efficiency cogeneration installations with a capacity of greater than 10 MW, provided that the technological consumption of heat does not exceed forty percent (40%) of the usable heat production (as of 1 March 2013 the condition that the technological consumption of heat does not exceed forty percent (40%) of the usable heat production was omitted and shall not apply); or
- all electricity produced by cogeneration in installations with a capacity of over 10 MW, provided that the RES share in the gross fuel inputs is greater than twenty percent (20%) and the technological consumption of heat does not exceed forty percent (40%) of the usable heat output.

Subject to the limitations mentioned above, the supplement shall be payable by the regional distributor for the total RES-Electricity produced by relevant installations or high efficiency cogeneration installations (apart from the electricity consumed by the production process itself), even when the RES-Electricity producer does not apply for the mandatory off-take.

Since 1 January 2014, new rules for granting the supplement as a way of promotion have applied.

The right to the supplement applies only to:

- all RES-Electricity produced by the RES-Electricity installations (or high efficiency cogeneration installations) with a total capacity not exceeding 5 MW (including), except for solar power plants and wind power plants;
- all RES-Electricity produced by wind power plants, with a total capacity not exceeding 15 MW;
- in case the installation exceeds 5 MW (or 15 MW in the case of wind power plants), the supplement shall be granted only to the RES-Electricity, pro rata to 5 MW (15 MW for wind-power plants) with respect to the total installed capacity[2];
- all electricity produced by high efficiency cogeneration installations with a capacity of greater than 5 MW, provided that the technological consumption of heat does not exceed forty percent (40%) of the usable heat production;
- all RES-Electricity produced by cogeneration with the installed capacity exceeding 5 MW, if the share of RES in the fuels exceeds twenty percent (20%) and the share of heat produced for the technological purposes represents up to forty percent (40%) of all usable heat;
- all RES-Electricity produced in an installation for high efficiency cogeneration with the installed capacity exceeding 10 MW, if the share of RES in the fuels exceeds thirty percent (30%) and the share of heat produced for the technological purposes represents up to forty percent (40%) of all usable heat;
- all RES-electricity produced by cogeneration in installations with a capacity of over 5 MW, provided that the RES share in the gross fuel inputs is greater than thirty percent (30%) and the technological consumption of heat does not exceed forty percent (40%) of the usable heat output; and
- all electricity produced by high efficiency cogeneration installations with a capacity of greater than 5 MW, provided that the share of fuel gases which are being created as a by-product during the metallurgy production process in the fuel does not exceed forty percent (40%).

2 The reason for this limitation is that the government wants to support more dispersed production of RES-Electricity by smaller power plants. However, since there is no official interpretation of what is meant by an “installation which exceeds 5 MW” the method of circumventing this limitation has not yet been fully explored. It may be that the facilities would need to be legally (i.e. owned by different entities with separate permits and authorisations) and technically (two grid connections) split into two or more smaller facilities.

4.3.4 Deviation Assumption

An incentive in the form of the assumption of liability by the regional distributor for deviations from the injection schedules submitted by the producer is applicable only to those RES-Electricity producers with an installed capacity below 1 MW. Since July 2013, solar energy generators have enjoyed the deviation assumption only if their capacity did not reach 30 KW.

4.4 Revision and/or indexation of the feed-in tariffs

The mandatory off-take for the off-take price, the right to the supplement and the deviation assumption shall be applicable for fifteen (15) years from the year the installation was put into operation, or fifteen (15) years from the year of modernisation or reconstruction of the technological part of an existing installation.

In case of installations with less than 500 KW capacity, the mandatory off-take of the RES-Electricity at the off-take price and the deviation assumption shall be granted for the lifetime of such installations.

The price of electricity generated from RES in a facility which entered into operation from 1 January 2014 is specified by direct determination of fixed price in Euros for MW hour as follows:

For hydro power

- 111.27 EUR/MWh for installations with less than 100 KW capacity;
- 109.17 EUR/MWh for installations with 100 KW – 200 KW capacity;
- 106.84 EUR/MWh for installations with 200 KW – 500 KW capacity;
- 105.15 EUR/MWh for installations with 500 KW – 1 MW capacity; and
- 97.98 EUR/MWh for installations with 1 MKW – 5 MW capacity.

For solar power

- 98.94 EUR/MWh for installations with less than 30 KW capacity located on the roof top or facade of buildings.

For wind energy

- 70.30 EUR/MWh.

For geothermal energy

- 155.13 EUR/MWh.

For combustion by the combined production of targeted cultivated biomass

- 92.09 EUR/MWh.

For combustion by the combined production of other waste biomass

- 100.63 EUR/MWh.

For combustion by the combined production of cereal straw

- 126.10 EUR/MWh.

For combustion by the combined production of the bioliquid

- 94.36 EUR/MWh.

For combustion of biomass or biologically decomposable waste with fossil fuel by combined production

- 100.49 EUR/MWh.

For combustion of fermented biomass (for facilities above 1 MW)

- 118.88 EUR/MWh.

For combustion of landfill gas and gas from sewerage plants

- 70.34 EUR/MWh.

From combustion of bio-methane obtained from biogas produced by anaerobic fermentative technology with total output of the facility at a maximum of 1 MW

- 107.53 EUR/MWh.

For those RES-Electricity production facilities which entered into operation since 1 January 2015, the tariffs are specified by direct determination of a fixed price in Euros for MW per hour as follows:

For hydro power

- 111.27 EUR/MWh for installations with less than 100 KW capacity;
- 109.17 EUR/MWh for installations with 100 KW – 200 KW capacity;
- 106.84 EUR/MWh for installations with 200 KW – 500 KW capacity;
- 105.15 EUR/MWh for installations with 500 KW – 1 MW capacity; and
- 97.98 EUR/MWh for installations with 1 MKW – 5 MW capacity.

For solar power

- 88.89 EUR/MWh for installations with less than 30 KW capacity located on the roof top or facade of buildings.

For wind energy

- 62.49 EUR/MWh.

For geothermal energy

- 155.13 EUR/MWh.

For combustion by the combined production of targeted cultivated biomass

- 92.09 EUR/MWh.

For combustion by the combined production of other waste biomass

- 96.90 EUR/MWh.

For combustion by the combined production of cereal straw

- 107.21 EUR/MWh.

For combustion by the combined production of the bio-liquid

- 91.79 EUR/MWh.

For combustion of biomass or biologically decomposable waste with fossil fuel by combined production

- 100.49 EUR/MWh.

For combustion of landfill gas and gas from sewerage plants

- 70.34 EUR/MWh.

From combustion of biogas produced by anaerobic fermentative technology with total output of the facility at a maximum of 1 MW

- 107.53 EUR/MWh.

From combustion of biogas produced by anaerobic fermentative technology with total output of the facility at a maximum of 250 KW

- 120.49 EUR/MWh.

From combustion of biogas produced by anaerobic fermentative technology with total output of the facility at above 250 KW but up to maximum 500 KW

- 110.00 EUR/MWh.

From combustion of biogas produced by anaerobic fermentative technology with total output of the facility at above 500 KW but up to maximum 750 KW

- 102.95 EUR/MWh.

From combustion of biogas produced by anaerobic fermentative technology with total output of the facility at above 750 KW

- 100.23 EUR/MWh.

From combustion of gas produced by thermochemical gasification/carburation of biomass in the gasification generator

- 99.21 EUR/MWh.

From combustion of fermentative mixtures produced by anaerobic fermentation of biologically dissolvable waste

- 95.50 EUR/MWh.

For those RES-Electricity production facilities which shall enter into operation from 1 January 2016, the tariffs are specified by direct determination of a fixed price in EUR for MW per hour as follows:

For hydro power

- 111.27 EUR/MWh for installations with less than 100 KW capacity;
- 109.17 EUR/MWh for installations with 100 KW – 200 KW capacity;
- 106.84 EUR/MWh for installations with 200 KW – 500 KW capacity;

- 105.15 EUR/MWh for installations with 500 KW – 1 MW capacity; and
- 97.98 EUR/MWh for installations with 1 MKW – 5 MW capacity.

For solar power

- 88.89 EUR/MWh for installations with less than 30 KW capacity located on the roof top or facade of buildings.

For wind energy

- 62.49 EUR/MWh.

For geothermal energy

- 155.13 EUR/MWh.

For combustion by the combined production of targeted cultivated biomass

- 92.09 EUR/MWh.

For combustion by the combined production of other waste biomass

- 96.90 EUR/MWh.

For combustion by the combined production of cereal straw

- 107.21 EUR/MWh.

For combustion by the combined production of the bio-liquid

- 91.79 EUR/MWh.

For combustion of biomass or biologically decomposable waste with fossil fuel by combined production

- 100.49 EUR/MWh.

For combustion of landfill gas and gas from sewerage plants

- 70.34 EUR/MWh.

From combustion of biogas produced by anaerobic fermentative technology with total output of the facility at a maximum of 1 MW

- 107.53 EUR/MWh.

From combustion of biogas produced by anaerobic fermentative technology with total output of the facility at a maximum of 250 KW

- 120.49 EUR/MWh.

From combustion of biogas produced by anaerobic fermentative technology with total output of the facility at above 250 KW but up to maximum 500 KW

- 110.00 EUR/MWh.

From combustion of biogas produced by anaerobic fermentative technology with total output of the facility at above 500 KW but up to maximum 750 KW

- 102.95 EUR/MWh.

From combustion of biogas produced by anaerobic fermentative technology with total output of the facility at above 750 KW

- 100.23 EUR/MWh.

From combustion of gas produced by thermochemical gasification/carburation of biomass in the gasification generator

- 99.21 EUR/MWh.

From combustion of fermentative mixtures produced by anaerobic fermentation of biologically dissolvable waste

- 95.50 EUR/MWh.

The feed-in tariff applicable to the calculation of the supplement shall remain the same as was applicable in the year when the RES-Electricity installation was put into operation.

The Regulator may however increase the feed-in tariff in accordance with the core inflation index and the specific technology applied.

The RES Promotion Act enables the Regulator to gradually reduce the feed-in tariff which cannot be lower than ninety percent (90%) of the feed-in tariff applicable in the immediately preceding period. The length of the regulated periods shall be determined by the Regulator but cannot exceed three (3) years. The newly determined reduced feed-in-tariffs shall only apply to those projects put into operation after the new feed-in-tariff came into force.

However, provisions of the Amendment of the RES Promotion Act effective as of 1 February 2011 stipulate that the stepwise reduction of the feed-in tariff shall not be applicable to solar energy facilities and wind energy facilities.

4.5 Other conditions

As a general rule, a RES-Electricity producer with a capacity of less than 10 MW[3], which applied for the mandatory off-take and for the supplement with the regional distributor, is obligated to supply produced RES-Electricity only to such regional distributor as long as the cumulative incentives mentioned above are provided, except any electricity supplied to the transmission system operator for the purposes of regulating the electricity system.

The costs incurred by the distributor in relation to the off-take price and the supplement shall be reflected in the tariff regulation of the Regulator (thus externalising the costs towards consumers).

The costs of the connection to the grid shall be borne by the RES-Electricity producer and the distributor. The cost sharing ratio is yet to be determined by the Regulator.

4.6 Other financial incentives for RES-Electricity

The use of renewable energy in the Slovak Republic is promoted by means of special loans. The Environmental Fund offers the possibility to producers of RES-Electricity to obtain loans with a one percent (1%) rate of interest. The maximum amount of the loan is not set. Such loans are granted for periods from five (5) to fifteen (15) years. The applicant has to provide a guarantee in the amount of at least one hundred and thirty percent (130%) of the value of the loan. Furthermore, the applicant has to prove that it will procure at least five percent (5%) of the value of the project from other resources. RES-Electricity can be promoted also by means of European structural funds.

3 As of 1 January 2014 it is 5 MW.

There are no special requirements as regards volume, capacity, location or technology of the electricity generating facility. Every application for granting of a loan is evaluated separately with the emphasis on the contribution of the project to the protection of environment and the financial stability of the applicant. The application for the grant of a loan has to be accompanied by complete project and financial documentation.

4.7 Support scheme for cogeneration

The incentive scheme introduced by the RES Promotion Act also includes the promotion of high efficiency cogeneration, thereby also implementing Directive 2004/8/EC on the promotion of cogeneration. The incentive scheme is identical with the promotion of RES-Electricity.

The Regulator set the feed-in tariffs for electricity produced by high efficiency cogeneration for 2012, among others for: (i) combined cycle gas turbine with heat recovery 83.06 EUR/MWh; (ii) internal combustion engines (gas) 89.70 EUR/MWh; (iii) fuel oil 87.66 EUR/MWh; and (iv) Organic Rankine cycles 123.24 EUR/MWh.

As of 1 January 2014, the following feed-in tariffs for electricity produced by high efficiency cogeneration shall apply:

For (i) combined cycle gas turbine with heat recovery 72.89 EUR/MWh; (ii) internal combustion engines (gas) 82.53 EUR/MWh; (iii) fuel oil 78.89 EUR/MWh; (iv) Air and methane compound 74.39 EUR/MWh; and (v) catalytically processed waste 10.69 EUR/MW/h.

The price of electricity produced by high efficiency cogeneration in a facility which entered into operation starting from 1 January 2015 is based on direct determination of a fixed price in EUR per MW hour as follows:

For (i) combined cycle gas turbine 74.75 EUR/MWh; (ii) combustion turbine with heat recovery 72.89 EUR/MWh; (iii) combustion engines with fuel a) gas 82.53 EUR/MWh; b) fuel oil 78.89 EUR/MWh; c) Air and methane compound 74.39 EUR/MWh; d) catalytically processed waste 99.82 EUR/MW/h; e) thermic fractioning of waste and its products 98.40 EUR/MWh; (iv) back pressure steam turbine or condensation steam turbine with heat off take with fuel a) gas 80.97 EUR/MWh; b) fuel oil 78.96 EUR/MWh; c) brow coal 80.37 EUR/MWh; d) black coal with overall installed capacity for electricity production up to maximum 50 MW 74.84 EUR/MWh; e) black coal with overall installed capacity for electricity production above 50 MW 71.83 EUR/MWh; f) communal waste 77.60 EUR/MWh; g) gas produced by thermic gasification of waste in gasification generator or by thermic fractioning of waste 89.05 EUR/MWh; (v) combustion of usable gases created in steel-mills during production of steel which are usable for energy purposes 80.02 EUR/MWh; and in Rankine organic cycles 98.31 EUR/MWh.

The price of electricity produced by high efficiency cogeneration in a facility which entered into operation starting from 1 January 2016 is based on direct determination of a fixed price in EUR per MW hour as follows:

For (i) combined cycle gas turbine 74.75 EUR/MWh; (ii) combustion turbine with heat recovery 74.69 EUR/MWh; (iii) combustion engines with fuel a) gas 80.26 EUR/MWh; b) fuel oil 78.89 EUR/MWh; c) air and methane compound 74.39 EUR/MWh; d) catalytically processed waste 99.82 EUR/MW/h; e) thermic fractioning of waste and its products 98.40 EUR/MWh; (iv) back pressure steam turbine or condensation steam turbine with heat off take with fuel a) gas 79.76 EUR/MWh; b) fuel oil 78.96 EUR/MWh; c) brow coal 80.37 EUR/MWh; d) black coal with overall installed capacity for electricity production up to maximum 50 MW 74.84 EUR/MWh; e) black coal with overall installed capacity for electricity production above 50 MW 71.83 EUR/MWh; f) communal waste 77.60 EUR/MWh; g) gas produced by thermic gasification of waste in gasification generator or by thermic fractioning of waste 89.05 EUR/MWh; (v) combustion of usable gases created in steel-mills during production of steel which are usable for energy purposes 80.02 EUR/MWh; and in Rankine organic cycles 98.31 EUR/MWh.

4.8 Guarantees of origin for RES-Electricity

According to Section 7 and 7 (a) of the RES Promotion Act, the Regulator issues the guarantee of origin to the entity generating electricity from renewable sources upon a written application. The application must contain the following information, in particular:

- period over which the guarantee extends;
- specification of the generator;
- specification of the facility;
- specification of the renewable energy source from which the energy is produced;
- state aid from the state budget in percentage;
- specification of the costs for energy generation;
- plan for generation of electricity; and
- timing of planned outage.

Guarantees of origin issued in other Member States of the European Union on the basis of mechanisms that ensure the reliability and accuracy of issued guarantees will be recognised and considered issued in accordance with the RES Promotion Act. If the regulator does not accept a guarantee issued in another EU Member State, it must notify the Ministry of Economy, citing the grounds why the guarantee was not recognised and the Ministry must pass this information on to the European Commission.

The following requirements have to be met for the purpose of issuing a guarantee of origin for a future period:

- electricity will be generated from a renewable source;
- submission of the data regarding the real energy generation; and
- the energy produced from the renewable sources stands with the expected possibilities of the facility.

The guarantee of origin should be issued within thirty (30) days of meeting the above-mentioned conditions.

Guarantees of origin issued in other Member States of the European Union on the basis of mechanisms that ensure the reliability and accuracy of issued guarantees will be recognised and considered issued in accordance with the RES Promotion Act. If the regulator does not accept a guarantee issued in another EU Member State, it shall notify the Ministry of Economy, citing the grounds why the guarantee was not recognised and the Ministry shall pass this information to the European Commission.

The Act on Energy Efficiency introduced a new section dealing with guarantees of origin of electricity produced from high-efficiency cogeneration. This new section contains certain special procedures which apply for a guarantee of this specific kind of RES-Electricity. The guarantee is issued by the Regulator.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

Access to the grid is allowed by the transmission system operator or by the distribution system operator upon conclusion of a contract on connection to the system, provided that the technical and business conditions for access and connection to the system are met. The general legal provisions governing the connection of the electricity generators are set by Section 5 (2) and (3) of the RES Promotion Act. According to these provisions, after the payment of the price for connection to the distribution system, the distribution system operator is obliged to ensure priority connection of the facility of the electricity producer to the distribution system, provided that such facility complies with the technical requirements and the business terms and conditions for connection to the system, so that the safety, reliability and stability of the system operation is preserved. The facility of the electricity producer shall be connected to the distribution system if the distribution system is technically capable of such connection and is the closest to the electricity generating facility, and if a different system falls short of providing a better location for connection from the technical and economic point of view.

The connection to the grid can be refused only upon lack of capacity of the grid.

The application for connection shall contain the complete technical documentation, which is used by the transmission system operator to decide how and where the connection will be realised and the necessary voltage level for a connection.

The RES-Electricity producers are, under the RES Promotion Act, entitled to priority connection to the regional distribution network.

As regards connection of instable RES-Electricity Producers, according to the technical conditions of the transmission system operator, the following specific conditions have to be fulfilled:

- in the frequency band between 49.5 Hz and 50.5 Hz the instable RES-Electricity producer has to supply the agreed active power without any limitation;
- if the frequency falls under 49.5 Hz, the instable RES-Electricity producer shall increase it, if possible; and
- if the frequency exceeds 50.5 Hz, the instable RES-Electricity producer shall decrease it, if possible.

The instable RES-Electricity producer has to be able to operate in case its active power is in the range of frequency between 47.5 Hz and 51.5 Hz and if the range of the voltage of the grid is between +/- five percent (5%) (for 400 KV systems) and +/- ten percent (10%) (for 220 KV systems).

The deviation of the frequency between 47.5 Hz and 51.5 Hz cannot be considered as a reason for disconnection of the instable RES-Electricity producer. However, if the above-mentioned frequency limits are exceeded, the instable RES-Electricity producer has to be disconnected immediately.

5.2 Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid

Pursuant to Section 5 (5) of the RES Promotion Act, the costs of connection to and extension of the distribution system shall be borne by the electricity producer and the distribution system operator. Pursuant to regulation 221/2013 of the Regulator, the electricity generator shall be obliged to pay ninety-eight percent (98%) of the grid connection price with respect to distribution networks of 110 KV. The price stays the same though even if it relates to a distribution network from 1 KV to 110 KV.

5.3 Special allowance/tolerance for intermittent generation in relation to balancing charges for unscheduled deviations

As regards the general legal provisions, according to Section 5 (6) (c) of the RES-Electricity Promotion Act, the regional distribution system operator is responsible for any deviation (i.e. the deviation occurring in a given period is the difference between the amount of electricity agreed and the amount of electricity actually delivered) caused by the coverage of losses in the distribution system and its own electricity consumption. The distribution system operator may transfer the deviation to another entity. According to Section 5 (8) of the RES Promotion Act, costs incurred due to the deviation in connection with the electricity off-take represent eligible costs of the regional distribution system operator for the purposes of the calculation of the regulated price for access to the distribution system and for electricity distribution.

The specific obligations to be fulfilled in relation to the connection of the instable RES-Electricity producers are stated in Section 5.1 above.

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all the jurisdictions is the prohibition of incompatible state aid, which is contained both in the Treaty on the Functioning of the European Union and in the Energy Community Treaty. However, support for the production of RES-Electricity will, subject to satisfying the applicable conditions set out in the Commission's new Guidelines on State Aid for Environmental Protection and Energy, adopted on 7 April 2014, be considered as compatible with the common market.

There are no legal limitations applying to Power Purchase Agreements ("**PPAs**") under Slovak law.

The only other legal limitation applicable to PPAs is the fixed sum for which the electricity generated from renewable sources has to be purchased. The prices are established every year by the Regulator.

7. Carbon Credits

The Slovak Republic signed the Kyoto Protocol as a UNFCCC (Annex 1 party) on 26 February 1999 and it was ratified by the President of the Slovak Republic on 14 May 2002. The Slovak Republic promotes the installation of RES-Electricity on the basis of the Joint Implementation mechanism.

The regulatory framework regarding the allocation and sale of carbon credits in the Slovak Republic was established by the Act No. 572/2004 Coll. on trading of emissions allowances. This act governs the emission quota trading and also the trading of Certified Emission Reductions ("**CERs**") and Emission Reduction Units ("**ERUs**"). This Act however is no longer in force and was replaced by Act No. 414/2012 Coll. on trading of emissions allowances.

All project activities under the Kyoto Protocol regime in which Slovak investors or Slovak receivers participate shall be approved by the Slovak Ministry of Environment. The projects realised under the special legal acts are not considered projects under the Act on Trading of Emissions Allowances.

CERs and ERUs are not issued for project activities which

- are executed in sectors and for those gases whose use was prohibited from 1 May 2013 in accordance with measures adopted in connection with Regulation of the EU Commission No. 550/2011;

- are performed in nuclear facilities;
- are performed in connection to the land use, change of land use and the forestry sector; and
- will indirectly decrease or limit the emission level of the installations under the Act on emission quota trading which produce greenhouse gases.

CERs and ERUs can be transferred between the participants of the trading schemes seated in the countries listed in Annex I of the UNFCCC. A special income tax on the emission quotas, which was levied by the Government starting from 1 January 2011 (and focusing on those quotas which would be sold or otherwise unconsumed by the mandatory participants), was repealed and is no longer applicable as of 30 June 2012.

The mandatory and voluntary participants of the trading scheme may use the CERs and ERUs for the coverage of their emissions of greenhouse gases up to the rate of the percentage value of the assigned emissions allowances to the respective installation. The Ministry will issue one emissions allowance for one CER or one ERU.

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Main permits required for RES-Electricity generating facilities

Environmental permit	Required: Environmental Impact Assessment ("**EIA**") (in most instances) and environmental protection consent from the Ministry of Environment and Spatial Planning. The building permit can be obtained only after the environmental protection consent has been issued and becomes final. In certain cases, an environmental protection permit is also required.
Building permit	Required: Construction permit and use permit.
Energy permit	For power stations with more than 1 MW capacity, an energy permit issued by the ministry in charge of energy must be obtained before the location plan can be prepared and the building permit is issued.
Authorisation under Energy law/ right (concession) to exploit natural resources	Mandatory tender procedure for granting the concession to exploit natural resources in cases of hydro power plants with an installed capacity of 10 MW or more (if less than 10 MW, a concession is not required and a water permit shall be obtained). An energy permit issued by the Ministry of Economy is required for the construction of electricity-generating installations with a capacity of greater than 1 MW.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	Not required.
PROMOTION SCHEME	
Outline	Two types of support: (i) guaranteed purchase of electricity by the Centre for RES/CHP support at regulated feed-in tariffs (generally applicable to facilities with less than 1 MW rated capacity); and (ii) financial support for operation, i.e. the difference between the reference costs of electricity production and the reference market price (this support is applicable to facilities with more than 1 MW rated capacity). RES-Electricity installations can benefit from one of these schemes for up to fifteen (15) years. The guaranteed purchase price will be calculated on a case-by-case basis according to information from the Energy Agency.
Other financial incentives	No significant investment incentives.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	The network operator must not reject the connection of the RES-Electricity installation to the electricity grid due to the fact that the connection would cause the network operator disproportionate costs.
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the electricity grid	In the case of RES-Electricity, the owner or the investor bears the cost of connection. The costs of upgrades and network adjustments are borne by network operators.
Special allowance/tolerance for intermittent generation in relation to balancing charges	No special allowance/tolerance.

CARBON CREDITS	
Status	Slovenia ratified the Kyoto Protocol as a UNFCCC Annex 1 Party. The necessary legal framework has not yet been fully established.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

The energy sector is regulated by the Energy Act[1], adopted in 2014 and slightly amended in 2015, which transposes several EC Directives into the Slovenian legal system, including Directive 2001/77/EC on the promotion of electricity produced from renewable energy sources on the internal electricity market (now replaced by Directive 2009/28/EC). The Energy Act regulates the conditions for the supply of safe and reliable energy services in accordance with market principles and the principles of sustainable development by taking into account the effective use of energy, rational use of renewable energy sources and conditions for environmental protection.

Slovenia has also adopted regulations and government decisions concerning guarantees of origin and establishing a mechanism for setting fees for electricity from domestic primary energy sources, as well as for setting tariffs that encourage the production of electricity from cogeneration and renewable sources. In 2009, a revised support scheme for electricity generated from renewable sources and in cogeneration was established.

The following are the most important rules and regulations:

- Rules on the operation of Centre for RES/CHP support;
- Regulation on the rules for drafting forecasts of the position on the electricity market of units generating electricity from renewable energy sources and high-efficiency cogeneration;
- Regulation on support for electricity generated from renewable energy sources;
- Regulation on support for electricity generated from high-efficiency cogeneration of heat and electricity;
- Legal Act on support for the production of electricity from renewable energy sources and high-efficiency cogeneration;
- Regulation on the method of determining and calculating the contribution for ensuring support for the production of electricity from high-efficiency cogeneration and renewable energy sources;
- Regulation on determining the quantity of electricity generated from high-efficiency cogeneration of heat and electricity and on determining the efficiency of the energy conversion of biomass;
- Regulation on issuing declarations for the generation units and guarantees of electricity origin;
- Regulation on measurements to be performed in production units which receive guarantees of origin and support for electricity produced;
- Rules on the types of data provided by performers of energy sector activities;
- Regulation on energy savings requirements;
- Rules on the balancing of the electricity market; and
- Regulation on self-supply of electricity with renewable energy sources.

1 The "**Energy Act**" (*Energetski zakon* ("**EZ-1**"), Official Gazette of the Republic of Slovenia Nos.17/2014 and 81/2015).

On the basis of the new Energy Act, some of these regulations are still subject to amendments in 2016.

In 2004, the Slovenian Parliament adopted the Resolution on the National Energy Programme, setting goals and mechanisms for the transition into reliable, competitive and environmentally friendly energy supply services. In addition, in 2008 the Slovenian government adopted a national energy efficiency action plan for the period 2008 – 2016.

In July 2010, the Action Plan for renewable energy 2010 – 2020 ("**AN OVE**") was adopted in accordance with the requirement of Directive 2009/28/EC on the promotion of the use of energy from renewable sources. The goal of the AN OVE is to evaluate and determine the necessary quantities of renewable energy use in each relevant energy sector (i.e. heating and cooling, electricity, transport) and to propose measures which will enable these quantity targets for renewable energy use to be met in the future.

All principal EC Directives relating to renewable energy sources have been implemented into the Slovenian legal system via the Slovenian Energy Act.

1.2 Expected changes

Significant changes occurred in 2009 with the adoption of several rules and regulations establishing a revised support scheme for RES-Electricity generated from renewable sources and for electricity produced in high efficiency installations cogenerating heat and power.

The Energy Act was amended in 2010 and remedied certain inconsistencies existing in the legislation with regard to, *inter alia*, construction of energy infrastructure, energy permits, efficient consumption of energy and use of renewable sources of energy.

In March 2014, the new Energy Act ("**EZ-1**") came into force. EZ-1 substantially amended the previous law, more than 100 provisions having been amended. There are changes to the support scheme. Most notably, the support shall be granted in a public tender procedure. However, due to a lack of resources, no such tender was published for the year 2015. Before a tender for the year 2016 can be published, approval of the European Commission is required due to substantial changes to the support scheme introduced by EZ-1. Furthermore, a new regulation on support of the RES-Electricity will have to be adopted in order to further specify how the feed-in tariffs shall be calculated. The agreements for the sale of RES-Electricity shall be (deemed as) open contracts.

In addition, EZ-1 introduces a large number of network charges to be borne by the network users.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

The steps involved in securing a right to produce and sell electricity from renewable energy sources in Slovenia include obtaining: (i) the right to build (e.g. title to land, rights of use or any other right which enables building); (ii) an energy permit; (iii) environmental consent and an environmental protection permit; (iv) a building permit, including technical permits and consents; (v) a use permit; (vi) a declaration and guarantee of origin; and (vii) a consent for connection to the grid. In some cases, a concession must also be obtained, as described in detail in section 2.2 hereunder.

2.1.1 Environmental Law

2.1.1.1 ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") AND ENVIRONMENTAL PROTECTION CONSENT

Before an activity that is likely to have a significant impact on the environment may commence, an EIA of such activity has to be carried out in most instances and environmental protection consent must be obtained from the Ministry of Environment and Spatial Planning ("**MESP**").

An EIA includes the identification, description and assessment of the long-term, short-term, direct or indirect impacts of the planned construction on human beings, land, water, air, biological diversity and valuable natural features, climate and landscape, as well as on the buildings and cultural heritage, and their interrelationships.

MESP must make the following documents available for public inspection and comment: (i) the application for environmental protection consent; (ii) the environmental impact report; and (iii) its proposed decision on the application for environmental protection consent.

Other ministries and organisations that are responsible for particular environmental protection matters, or for the protection or use of natural assets or the protection of cultural heritage, must also give their opinion/consent to the acceptability of the planned construction, where relevant.

MESP must render its decision on the environmental protection consent within three (3) months of receiving the complete application, taking into account the opinions of the ministries and organisations mentioned above. The deadline for the issuance of the decision is suspended during the period of public consultation (thirty (30) days) and during any period agreed with another EU Member State in which the planned activity could have a substantial environmental impact.

In environmental protection consent, MESP must define the conditions to be observed by the entity responsible for the planned activity in order to prevent, reduce or eliminate adverse environmental impacts.

The building permit can be obtained only after environmental protection consent has been issued and becomes final.

2.1.1.2 ENVIRONMENTAL PROTECTION PERMIT

Generally, an investor must obtain an environmental protection permit for the operation of an installation where an activity that might cause large-scale environmental pollution will be carried out prior to the commencement of such construction. Additionally, the investor must obtain an environmental protection permit for the operation of any other installation if so prescribed by the regulations on: (i) emissions of pollutants into the air, water or soil; (ii) activities that have a negative impact on the environment; or (iii) waste management.

The building permit can be issued only after the environmental protection permit becomes final.

Several conditions and requirements need to be met in order to obtain an environmental protection permit, including, *inter alia*, measures for the prevention of pollution, recovery of waste and efficient energy use.

The environmental protection permit stipulates all the measures and conditions for fulfilling the general and specific environmental protection requirements prescribed for the operation of the installation or plant.

MESP has to reach a decision on the issuance of the environmental protection permit within six (6) months of receiving the complete application (in some cases, the stipulated time period is three (3) months).

The application for the permit and draft decision on the environmental protection permit must be made available to the public, and the public must be given an opportunity to express their opinions and comments thereon for a period of thirty (30) days.

The investor must apply for an amendment of the environmental protection permit if there is a planned change in the operation of the installation that might have an impact on the environment. Upon application, MESP conducts the assessment as to whether an amendment is required and also whether an EIA and environmental protection consent are required.

The environmental protection permit is issued for a period of ten (10) years from the date of operation of the installation and may be extended if the established conditions are fulfilled at the time of its expiration.

The environmental protection permit's validity ceases: (i) upon expiry of the period for which it was granted; (ii) upon its withdrawal; or (iii) upon termination of the installation or the investor.

2.1.2 Building law

2.1.2.1 CONSTRUCTION PERMIT

A building permit is generally needed in order to build an industrial plant. However, a small plant built within an existing installation may not require a permit.

A building permit is issued by the administrative unit competent for the area where the plant will be built. The permit must be issued within thirty (30) days of filing a completed application if it is issued on the basis of a shortened procedure. Otherwise, it must be issued within sixty (60) days. The fee depends on the value of the investment. In the process of obtaining a building permit, several approvals and authorisations are required, depending on the type and location of the installation.

2.1.2.2 USE PERMIT

The investor must apply for a use permit with the administrative body that issued the building permit and must show that the building work has been conducted in compliance with the building permit and that the project has been completed.

Once the competent administrative body establishes that the application for a use permit fulfils all of the stipulated conditions, it authorises the commission for technical inspection to examine the compliance of the construction with the building permit, building regulations and other regulations. The use permit is issued by the competent administrative body.

2.1.3 Energy Law

An energy permit for production capacities must be obtained before the plan can be prepared and before the building permit is issued for facilities rated for the production of electricity in a capacity exceeding 1 MW, connected to the public electricity power network.

An energy permit must also be obtained for any reconstruction of the above-mentioned facilities if the reconstruction changes energy parameters of the facilities and is of such extent that it requires a subsequent building permit.

The energy permit is issued by the ministry in charge of energy ("**ME**"). The ME must issue the permit within one (1) month of receipt of the complete application (in case a special preliminary procedure is needed – two (2) months).

An energy permit contains, *inter alia*, the following information:

- location and area to which the energy permit relates;
- type of building, fuel or facility to which the energy permit relates;
- the manner of, and conditions for, performing energy-related activities in the building or facility;
- conditions regarding the building and facility after expiration of its operation;
- conditions related to the use of public assets or public infrastructure; and
- obligations of the proprietor of the energy permit related to the supply of information to the ME.

The ME also manages the public registry of energy permits.

If the facilities for production of electricity for which energy permits have been issued are insufficient to ensure reliable electricity supply, a public tender may be conducted in order to encourage the construction of additional electricity production infrastructure or to carry out measures for energy savings.

Such a public tender has to be published in the Official Gazette of the Republic of Slovenia and the Official Gazette of the European Union, and the tender has to remain open to applicants for at least six (6) months. The selection procedure is conducted in accordance with the legislation on Public Private Partnership in instances where a Public Private Partnership will be established between the investor and the Republic of Slovenia.

2.2 Process for obtaining the right (concession) to exploit natural resources

The legislation of Slovenia foresees a tender procedure for granting a right to exploit natural resources (a concession right). According to the Environmental Protection Act, the state or a municipality shall grant a concession for the management, use or exploitation of a natural asset only on the basis of a public tender, unless stipulated otherwise by law. The competence of the state or a municipality depends on whether the natural asset is owned or managed by the state or that municipality. The concession to exploit natural resources shall be granted to a private entity qualified to exercise the concession only on the basis of a prior tender procedure and only if the conditions for environmental protection are fulfilled. The basis for granting the concession is the deed of concession in the form of a government or municipality regulation. Detailed rules with regard to the tender procedure are set forth in the Public Utilities Act.

The concession to exploit water assets for the production of electricity in a hydro power plant with an installed capacity of 10 MW or more shall be granted only on the basis of a prior tender procedure according to the Water Act (a concession is not required for hydro power plants with installed capacity of less than 10 MW – for these, a water permit must be obtained). As an exception, no tender procedure is required for the extension of the concession period or for the enlargement of the concession's scope with regard to an existing concessionaire. However, this exception applies only if the original conditions have not changed and if the concessionaire has fulfilled them.

The legal basis for the exercise of a water concession is the concession contract. It details the purpose, methods and conditions for the water concession. The concession may be amended either by amending the deed of concession or by amending the concession contract.

Hence, the legislation of Slovenia foresees a mandatory tender procedure for granting the concession to exploit natural resources. However, under the Water Act the tender procedure may also be triggered by an unsolicited proposal of an interested private entity. In this respect, the unsolicited proposal shall contain all elements required for defining the content of the deed of concession, and in particular its subject, scope, type and the concession term. Consequently, the government shall notify the private entity, within three (3) months upon receipt of the unsolicited proposal, of whether it will initiate a procedure to adopt the deed of concession, which shall (if adopted) serve as a basis for the public tender for granting the concession.

3. Licence to Generate RES-Electricity

The new Energy Act (EZ-1) abolishes the licensing requirements, *inter alia*, for the generation of RES-Electricity.

3.1 Designated/preferred legal form of investment vehicle

There is no designated/preferred legal form of investment vehicle in the renewable energy sector.

4. Promotion System for the Production of RES-Electricity

The promotion of RES-Electricity in Slovenia takes the form of direct support to the operators of RES Electricity producers by means of contracting at certain feed-in tariffs. This support can be obtained for net produced electricity on the basis of a valid guarantee of origin. The support shall be granted on the basis of a decision issued by the Agency for Energy in administrative proceedings (on the basis of the outcome of the tender procedure – see below). The amount of support is defined by the Slovenian Government on a yearly basis and the individual support for plants producing RES Electricity can be given for up to fifteen (15) years.

According to EZ-1, the support shall be granted on the basis of a public tender procedure, which shall be published each year until 1 October and shall be open until at least 1 November or until the expected increase of funds is fulfilled.

Currently, it is still the Regulation on Support of the RES-Electricity ("**Regulation on Support**"), which was adopted in May 2009 (and which has been subsequently amended several times, the last such amendment being in November 2012), which prescribes more detailed provisions on the promotion system for the production of RES-Electricity. The Regulation on Support is applicable until a new regulation on the basis of EZ-1 has been adopted. However, it only applies to those production facilities that were connected to the grid system before 22 September 2014. For production facilities that were connected to the grid system after 22 September 2014, no support is being granted due to the fact that no public tender can be published until the revised support scheme has been approved by the European Commission. Furthermore, a new regulation on support of RES-Electricity will have to be adopted in order to further specify how the feed-in tariffs shall be calculated for each respective selected tenderer.

4.1 Applicability of promotion scheme

The government determines the amount and duration of the respective support as well as the conditions and manner of acquisition, taking into account the following criteria:

- size and technology of the facility producing RES-Electricity, taking into account support that has already been obtained;
- sustainable nature of production;
- positive effects when the set objectives are attained;
- conditions and restrictions for support of new production facilities from the standpoint of scope of granted funds, necessary for operation of the support scheme;
- conformity with the goals of environmental, spatial planning, agricultural and other policies; and
- the size of the company and its market share.

The promotion system/support is granted by the Agency for Energy and applies to those facilities producing RES-Electricity. Furthermore, the support system also applies to energy produced in cogeneration with high efficiency. The ME shall prescribe the method of determination, whereby cogeneration qualifies as high utilisation.

Such support can be given to a new facility producing RES-Electricity for up to fifteen (15) years, and to a new facility producing energy in cogeneration with high efficiency for up to ten (10) years. The starting date of the feed-in tariff depends on the date of issuance of the use permit for the respective facility. If no use permit is required, the date of actual connection to the grid is relevant.

As a matter of statutory obligation, the Centre for RES/CHP support (*Center za podpore*) is obligated to conclude a contract on the basis of set feed-in tariffs within thirty (30) days as of the date the support awarding decision of the Agency for Energy is final. The contract must be based on the data from the respective award decision. The set form of the contract is included as an annex to the Rules on the operation of the Centre for RES/CHP support.

Each end consumer of electricity must pay a special contribution to provide support to the production of RES-Electricity and energy produced in cogeneration with high efficiency.

Under the previous Energy Act ("**EZ**"), the feed-in tariffs were set out on the basis of reference costs and determined in Schedule II of the Regulation on Support. According to information from the Energy Agency, under the new system the feed-in tariffs will be calculated on a case-by-case basis, which still remains to be determined by the new government regulation.

4.2 General description of promotion scheme

If the costs of producing RES-Electricity are higher than the electricity market price for electricity, the RES-Electricity production facility might be eligible for support under the support scheme. The Agency for Energy, upon application by the facility owner/operator, makes a decision on eligibility for support.

For RES-electricity producers whose production facilities were connected to the grid system by 22 September 2014, the Agency for Energy issued a decision on eligibility for support under those provisions which were in force prior to the enactment of EZ-1.

According to the EZ-1, there are two (2) types of support: (i) guaranteed purchase of electricity (feed-in tariff), generally applicable to facilities with less than 1 MW rated capacity; and (ii) financial support for operation (this support is applicable to facilities with more than 1 MW rated capacity).

With regard to (i) above, the Centre for RES/CHP support (organised within the company "BORZEN," which is the operator of the organised electrical power market) enters into a contract with the energy producer for the purchase of electricity.

Should a facility not meet conditions for the guaranteed purchase of electricity (due to its high rated capacity) it may apply for financial support for operation at any time during its lifetime. Additionally, a facility which would be eligible for the guaranteed purchase of electricity (due to its low rated capacity) may instead opt for financial support for operation and, subsequently, sell electricity directly on the market. The promotion scheme applies to new, "relatively new" (i.e. facilities less than fifteen (15) years old) and refurbished facilities. For new facilities, the support is provided for a period of fifteen (15) years. In the case of "relatively new" facilities, the age of facilities influences the period of eligibility for support (actual age is deducted from the stipulated period of support for new facilities – fifteen (15) years). In the case of refurbished facilities, support may be granted for those whose costs exceed fifty percent (50%) of the investment costs for a new comparable unit. Support shall be provided for a period of fifteen (15) years after the refurbishment.

The choice of the type of support (should a facility be eligible to choose) must be notified to the Agency for Energy with the application for support.

4.3 Determination of feed-in tariffs in cases when production facilities were connected to the grid system BEFORE 22 September 2014

The guaranteed purchase price is determined in Schedule II of the Regulation on Support, for each RES, in accordance with the facility size. It consists of a fixed part and a variable part. The fixed part of the guaranteed purchase price corresponds to the fixed part of the reference cost of electricity production of the respective RES. The variable part of the guaranteed purchase price corresponds to the variable part of the reference cost of electricity production, if determined, and is aligned annually (or more regularly) after the reference prices of fuel have been published.

The variable part of the guaranteed purchase price is equal to the variable part of the reference cost of electricity production, if determined, and is aligned annually (or more regularly) after the reference prices of fuel have been published. The reference cost of electricity production is generally aligned/indexed on the basis of the estimation of reference market prices of energy.

The fixed part of the guaranteed purchase price is set for the whole period of the support contract.

4.4 Determination of feed-in tariffs in cases when production facilities were connected to the grid system AFTER 22 September 2014

For those production facilities that were connected to the grid system after 22 September 2014, no support is being granted due to the fact that no public tender can be published until the revised support scheme has been approved by the European Commission. Furthermore, a new regulation on support of RES-Electricity will have to be adopted in order to further specify how the feed-in tariffs shall be calculated for each respective selected tenderer. According to information from the Energy Agency, under the new system the feed-in tariffs will be calculated on a case-by-case basis, as still remains to be determined by the new government regulation.

4.5 Other financial incentives for RES-Electricity

There are no significant investment incentives for RES-Electricity producers apart from the promotional framework under EZ-1.

4.6 Support scheme for cogeneration

A support scheme – feed-in tariff (preferential prices) – is available, as defined in EZ-1 for energy produced in cogeneration systems with a high utilisation rate that does not exceed 20 MW of rated electric power for the facility. This support can be given for up to ten (10) years. For production facilities that were connected to the grid system before 22 September 2014, the Agency for Energy issued a decision on support, following which a contract for a period of up to ten (10) years was concluded (newly, the supports shall be granted with a public tender (see Section 4 above)). This contract could be terminated in one of three cases: (i) when the declaration for cogeneration is withdrawn; (ii) if the decision of the agency on support is revoked (this will happen where the conditions under the EZ are no longer met); or (iii) where there has been a change in the market price of electricity and the receiver of the support is not willing to conclude an annex to the contract, in which the new prices are agreed.

The preferential prices for the electricity produced in highly efficient cogeneration systems were determined in a separate government regulation to the one on RES-Electricity. Moreover, this regulation (i.e. Regulation on support for electricity generated from high-efficiency cogeneration of heat and electricity) was adopted on the basis of the old Energy Act (EZ). Therefore, a new regulation will have to be adopted to further specify how the feed-in tariffs shall be calculated. According to information from the Energy Agency, under the new system the feed-in tariffs will be calculated on a case-by-case basis as still remains to be determined by the new government regulation.

4.7 Guarantees of origin for RES-Electricity

This guarantee can be issued by the Agency for Energy on the basis of a valid declaration for the production facility proving that the applicable facility, at the time when the declaration was issued, fulfilled the conditions and requirements determined for the production of energy from RES or for high efficiency cogeneration.

EZ-1 prescribes, *inter alia,* the following mandatory elements of the guarantee of origin for renewable energy:

- data regarding the source of the energy and start and end of its production;
- identity, location, type and capability of the production facility; and
- data on support obtained for the production facility.

The Energy Act prescribes the following additional mandatory elements of the guarantee of origin for energy produced in a cogeneration system:

- heat and power capability of the production facility;
- the lowest calorific value of fuel from which the electric power was generated, the amount of heat produced together with electric energy and detailed specifications on the dates and places of generation;
- detailed specifications on the produced quantity of electric energy;
- detailed specifications of the primary energy savings; and
- rated electric and thermal efficiency of the cogeneration unit.

Additional elements of the guarantee of origin are prescribed by the Regulation on issuing declarations for the generation units and guarantees of electricity origin.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

In accordance with EZ-1 and implementing regulations, the electricity network operators (i.e. operators of the distribution and transmission grid; the company Eles – Elektro Slovenija, d.o.o., as the operator of the transmission grid, and the company SODO d.o.o., as the operator of the distribution grid) may not reject the request for connection of a facility that produces energy from renewable energy or a high utilisation cogeneration facility for the reason that the connection would cause the electricity network operator disproportionate costs.

Therefore, in substance, the EZ-1 grants some form of preferential access to the grid system for RES-Electricity or electricity produced with high utilisation cogeneration.

The system operators of the distribution and transmission grid must, every two (2) years, provide a report to the ME regarding the connection of such plants to the electricity network in accordance with EZ-1.

5.2 Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid

The network user and/or generator must pay the costs associated with connection to the electricity power network (i.e. costs for making a connection and the average costs for the respective customer group depending on the power ordered). Currently, these costs are determined by the Agency for Energy on the basis of the “Legal Act on the

methodology determining the regulatory framework and network charge for the electricity distribution system" and special rules for the division of costs for upgrading the grids, which apply to all network users and/or generators that benefit from such an upgrade. The funds collected in this way are then used by the grid system operator to build and upgrade existing networks.

In the case of RES-Electricity or high utilisation cogeneration, the owner or the investor bears the costs of connection. The costs for upgrades and network adjustments are generally borne by the distribution and transmission system operators (these costs also apply to studies and different analyses).

6. Constraints to PPAs and Support to RES-Electricity

One major limitation that cuts across all the jurisdictions is the prohibition of incompatible state aid, which is contained both in the EC Treaty and in the Energy Community Treaty. However, support for the production of RES-Electricity from renewable energy sources will, subject to satisfying the applicable conditions set out in the Commission's new Guidelines on State Aid for Environmental Protection and Energy, adopted on 9 April 2014, be considered as compatible with the common market.

In Slovenia, on the basis of such an agreement, the Centre for RES/CHP support may, notwithstanding the market prices for electric energy, buy all net produced electric energy for the prices defined beforehand or provide other financial support.

Most recently, according to EZ-1, all contracts for guaranteed purchase are deemed as open contracts.

The Regulation on Support provides that in such agreements the quantity of the electric energy which will be purchased by the Centre for RES/CHP support or for which other support will be granted must be defined. Furthermore, it must be stated that the support for extra quantity will be provided by the Centre for RES/CHP support only in the case of sufficient financial means. Contracts on guaranteed purchase are defined in more detail in the Rules on the operation of the Centre for RES/CHP support.

The Regulation on Support, in Annex II, determines the prices for guaranteed purchase. These prices should be equal to reference costs for individual production technology (defined in Annex I to the Regulation) and size class (see Sections 4.2, 4.3 and 4.4).

As a practical limitation, the usual competition law regulations relating to the dominant position of the seller/purchaser must be taken into consideration.

In compliance with EZ-1, it is, *inter alia*, necessary to notify BORZEN of every closed contract for the purchase of electricity in order for BORZEN to maintain a record.

EZ-1 states that electricity undertakings shall keep separate accounting records in accordance with accounting standards; their notes to the accounts shall show separate accounts for transmission and distribution activities, as required for the activities in question carried out by separate undertakings. Electricity undertaking that is also engaged in activities other than transmission or distribution shall keep separate accounting records for activities not related to transmission or distribution; the notes to the accounts shall accordingly show separate accounts in accordance with the first paragraph of this Article.

In addition, if the buyer of electricity is subject to Slovenian public procurement law, applicable publication and notification requirements must also be observed.

7. Carbon Credits

Slovenia is a UNFCCC Annex 1 party to the Kyoto Protocol with the Act Ratifying the Kyoto Protocol to the United Nations Framework Convention on Climate Change (*Zakon o ratifikaciji Kjotskega protokola k Okvirni konvenciji Združenih narodov o spremembi podnebja*).

According to information provided by MESP, the necessary framework for the enforcement of the Clean Development Mechanism and Joint Implementation has not yet been fully established.

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Main permits required for RES-Electricity generating facilities

Environmental permit	An environmental permit is provided by the relevant state or local body following the environmental assessment of the project (if required). The exploitation of natural resources, such as water (for hydro power), requires a permit for special water usage.
Building permit	A permit for the performance of construction works is required for certain types of large and complex facilities.
Authorisation under Energy law	Required: Positive determination of an energy saving examination issued by a local Department of the State Agency on Energy Efficiency and Energy Saving.
Right (concession) to exploit natural resources	Ukrainian law does not require participation in a prior tender procedure in order to be granted the right to exploit natural resources.
LICENCE TO GENERATE RES-ELECTRICITY	
Outline	A generation licence is required, except for renewable energy power generation facilities with less than 10 MW of installed capacity, or for household solar or wind energy power generation facilities with an installed capacity of less than 30 KW.
PROMOTION SCHEME	
Outline	Green tariff combined with mandatory off-take (except for energy produced by a hydro power plant with an installed capacity exceeding 10 MW).
Other financial incentives	Certain state subsidies are envisaged for companies implementing energy saving projects, including those that involve renewable energy utilisation.
GRID CONNECTION	
Priority access to the electricity grid given to RES-Electricity	No
Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of grid	The costs of grid connection are borne partially by the power transmission companies and by the generators requiring access to the power transmission network. In practice, generators requiring access to the power transmission network bear all the costs for the grid connection. The transmission company is responsible for its upgrades, improvements and expansion of the grid. Both the power transmission companies and the generator may participate in financing these measures.
Special allowance/tolerance for intermittent generation in relation to balancing charges	No
CARBON CREDITS	
Status	Ukraine ratified the Kyoto Protocol but has not ratified the Doha Amendment thereto. The necessary legal framework for carbon emissions trading has been partially adopted into national law. It is envisaged that an internal emissions trading scheme will become available in Ukraine in the near future.

1. Overview of Legal and Regulatory Framework

1.1 Main laws and regulations

- The Law on the Power Industry (No. 575/97-BP, adopted 16 October 1997) ("**Power Industry Act**") is the principal legislative act in the power industry. It governs the relationships between the participants of the Ukrainian energy market (i.e. power generating companies, suppliers, distributors, consumers, and state regulatory authorities), electricity pricing, licensing and liabilities.
- The Law on the Principles of the Energy Market in Ukraine (No. 663-VII, adopted 24 October 2013) ("**Market Law**"), which became partially effective in 2014, establishes a legal framework for the transition of the national energy market model from a sole purchaser to a bilateral, day-ahead and balancing energy market model. The Market Law will become fully effective by 1 July 2017.
- The Law on Alternative Energy Sources (No. 555–IV, adopted 20 February 2003) ("**Alternative Energy Act**") defines alternative energy sources (renewable energy sources, including solar radiation, wind energy, geothermal energy, wave power, tidal power, hydro power, energy from biomass, landfill gas and gas of sewage treatment plants, biogas, and secondary energy resources, including blast furnace gas, coke gas, methane from decontamination of coal deposits and landfills) and seeks to promote these energy sources by granting financial incentives and encouraging the generation and consumption of energy produced from such alternative energy sources. The necessary mechanisms for implementing such incentives have not yet been established in practice.
- The Law on Energy Conservation (No. 74/94 BP, adopted 1 July 1994) ("**Energy Conservation Act**") sets a state policy regarding energy conservation based on effective energy use and enhancement of regulatory measures aimed at stimulating energy conservation.
- The Cabinet of Ministers of Ukraine and the National Commission of State Energy and Utilities Regulation ("**NCSEUR**") have also issued numerous bylaws implementing the laws noted above.

One of the important tasks for Ukraine as a country contemplating joining the EU is to bring its legal system into compliance with EU legal standards so as to permit it to join the EU should further stages of cooperation with the EU be reached. Harmonisation of the Ukrainian legal system with EU legislation is being carried out primarily by amending existing legislation and adopting new laws.

1.2 Expected changes

Legislative changes are expected in 2016 on the following: (i) grid connection; (ii) rules of green tariff approval; (iii) energy market rules; and (iv) incentives for energy projects using household waste.

Market Law is expected to become effective in 2017.

The process of harmonisation of Ukraine's energy legislation with EU regulations, which Ukraine is obliged to carry out due to its membership in the Energy Community and ratification of the Association Agreement between the European Union and the European Atomic Energy Community and Ukraine, is in progress and will continue for at least the next several years. The relevant efforts were evaluated by the Energy Community. In particular, the Annual Implementation Report (for the year 2015) of the Energy Community confirmed that Ukraine has partially transposed the Third Energy Package into the national legal framework.

The Doha Amendment to the Kyoto Protocol, as well as the Paris Agreement approved at the United Nations Conference on Climate Change (held in Paris in 2015), have not yet been ratified by Ukraine. Upon their ratification, further changes and developments in the law concerning emission reduction units are expected.

Taking into account the number of regulatory changes in Ukrainian law which took place in 2015, it is expected that there will be delays when it comes to the actual application of these new legal provisions. The relevant state authorities will also need time to issue explanations and interpretations to market players. Amendments to the newly adopted regulations are also possible in the near future.

2. General Regulatory Framework

2.1 Outline of the permitting procedures for RES-Electricity generating facilities

Currently, there is no special permitting procedure for industrial plants which would apply specifically to facilities generating renewable energy, except for the energy from blast furnaces or coke gases, or from those hydro power plants with an installed capacity exceeding 10 MW ("**RES-Electricity Facilities**"). Consequently, the general permitting procedure for the construction and operation of electricity generation facilities is applicable to RES-Electricity Facilities. However, particularities arising out of specific licensing and technical construction requirements need to be considered.

Generally, the installation and/or construction of RES-Electricity Facilities may require numerous approvals from local councils and state bodies (depending on the type of constructed facility).

2.1.1 Environmental Law

An Environment Permit is provided by the relevant state or local body following the environmental assessment of the project (if such an assessment is mandatory). An environmental assessment is required in the following instances: (i) if the facilities that are contemplated for construction or already in operation are hazardous or potentially hazardous for the environment (including if according to law the facilities are specifically designated as "hazardous" or related to hazardous activities[1]); (ii) upon the legitimate request of the state or local authorities; or (iii) when such environmental assessment is in line with state ecological interests[2]. The list of ultra-hazardous objects and activities includes, *inter alia*, waste processing facilities, all types of hydro power stations and facilities producing energy from organic fuel.

The environmental assessment is to be performed by relevant state experts within forty-five (45) calendar days of the submission of the relevant documentation to the authority, or within one hundred and twenty (120) calendar days in extraordinary circumstances. Instead of state experts, the environmental assessment may, if the applicant chooses, be carried out by specialised organisations, which are legal entities authorised to perform environmental assessments. These specialised organisations must perform the environmental assessment within ninety (90) days[3]. However, the results of environmental assessments performed by such specialist organisations are not binding and may be taken into account at later project stages. The documents required to conduct the environmental assessment include, *inter alia*, a standard application for the performance of the assessment.

Furthermore, the use of natural resources is usually subject to the prior receipt of special permits issued by authorised state bodies (e.g. the special permit for use of water for hydro power plants).

1 Resolution of the Cabinet of Ministers of Ukraine "On Approval of List of Ecologically Ultra-Hazardous Activities and Objects" No. 808 dated 28 August 2013.

2 Article 34 of the Law of Ukraine "On Environmental Assessment" No. 45/95-BP dated 9 February 1995.

3 Article 38 of the Law of Ukraine "On Environmental Assessment" No. 45/95-BP dated 9 February 1995.

2.1.2 Building Law

In certain cases, in order to commence the construction of RES Facilities, a permit for the performance of construction works is required ("**Construction Permit**"). The Law on Regulation of Urban Construction Activities, No. 3038-VI dated 17 February 2011, introduced five (5) categories of construction complexity. The assignment of a certain complexity category to a construction structure will result in the application of certain construction permit procedures. For instance, in order to start the construction of a structure designated in the categories one (1) through three (3), it is sufficient to simply register a declaration on the commencement of construction works with the appropriate branch of the State Architecture and Construction Inspectorate. In contrast, if a structure qualifies for categories four (4) or five (5), a permit for the performance of construction works must be obtained from the appropriate branch of the State Architecture and Construction Inspectorate.

The attribution of a construction structure to a specific complexity category may be quite a complicated process, performed on the basis of a certain methodology[4]. However, there is currently limited practice in place with respect to the attribution of RES-Electricity Facilities to a particular complexity category, which can result in uncertainty about whether or not the receipt of a permit for the performance of construction works will be mandatory. An examination of the construction project documentation of a RES-Electricity Facility by authorised experts should clarify the issue.

2.1.3 Energy Law

The State Agency on Energy Efficiency and Energy Saving of Ukraine is responsible for issuing a positive or negative conclusion on energy efficiency following an assessment of an applicant's standard application for the performance of an energy saving assessment of the construction project documentation[5]. The assessment is to be completed within forty-five (45) days[6]. The positive conclusion of the State Agency on Energy Efficiency and Energy Saving is valid for three (3) years and is part of construction permit procedure for a RES Facility.

2.2 Process for the obtaining of the right (concession) to exploit natural resources

There is no requirement under Ukrainian law to participate in a prior tender procedure in order to be granted the right to exploit natural resources (such as water). Hence, under Ukrainian legislation, an unsolicited proposal will not trigger a public tender.

However, the exploitation of water for hydro power plants is subject to the receipt of a permit for special water usage. The procedure for the receipt of such a permit is set forth in the Resolution of the Cabinet of Ministers of Ukraine "On Approval of Procedure of Submission and Issuance of Permits for Special Water Usage and Amendment of Resolution of the Cabinet of Ministers of Ukraine" No. 459 dated 10 August 1992.

4 Resolution of the Cabinet of Ministers of Ukraine "On the Approval of the Procedure of Allocation of Complexity Categories to Construction Objects" No. 557 dated 27 April 2011.

5 Article 23 of the Energy Conservation Act.

6 Section 2.6.7 of the Instruction on Procedure for Submission of Documentation and Performance of State Energy Saving Assessment for Implementation of Section 4 of the Regulation of the Cabinet of Ministers of Ukraine dated 15 July 1998, No. 1094, approved by the Order of State Energy Saving Committee No. 15 dated 9 March 1999

3. Licence to Generate RES-Electricity

3.1 Outline of the licensing process

The generation of electricity, including from renewable energy sources, is subject to licensing under the Power Industry Act. Licensing is not required for power generators with an installed capacity of less than 10 MW or for household solar or wind RES Facilities with an installed capacity of less than 30 KW.

To obtain a licence for the generation of electricity from renewable energy sources, a Ukrainian business (a legal entity or a private entrepreneur) must file with the NCSEUR a set of documents containing, *inter alia*,:

- an application (in the form approved by the NCSEUR);
- a document confirming the payment of a licence fee; and
- a description of the activities subject to licensing.

The NCSEUR is to make a decision on whether to issue or refuse a licence within thirty (30) days of receipt of a complete application file. The exact term of validity of the licence is defined by the NCSEUR. Such a term must not be less than three (3) years in any event[7].

While conducting activities related to the generation of power, licensees are required to strictly comply with the terms of the licensing rules issued by the NCSEUR.

3.2 Designated/preferred legal form of investment vehicle

There is no requirement regarding a specific legal form of investment in the renewable energy sector. Investors may choose from the legal forms of companies available under Ukrainian corporate law, including: (i) general partnership; (ii) limited partnership; (iii) added liability company; (iv) limited liability company; and (v) joint-stock company.

The most frequently used and preferred corporate form for conducting business activities in Ukraine is a limited liability company. Joint-stock companies are rarely used as investment vehicles.

3.3 Anticipated time frame for the issue of licences/authorisations

The license issuing authority is the NCSEUR, which is also the body responsible for the implementation of state energy policy. The NCSEUR acts on the basis of the Regulation on National Commission of State Energy and Utilities Regulation, approved by the Decree of the President of Ukraine No. 715/2014 of 10 September 2014.

Generally, the time frame for issuing licences is thirty (30) days after filing the application and required documents with the NCSEUR.

7 Article 2.9 of the NCSER Regulation “On Approval of Rules of Issuance of Licences for Certain Types of Commercial Activities by NCSER” No. 1305 dated 6 October 1999.

4. Promotion System for the Production of RES-Electricity

Several forms of promotion are available in Ukraine (except for hydro power plants with an installed capacity exceeding 10 MW), including the so-called green tariff (an equivalent to a feed-in tariff) combined with mandatory off-take, complemented by tax incentives.

4.1 Applicability of promotion scheme

The green tariff will be applied until 1 January 2030 to businesses (including legal entities and individual entrepreneurs) generating energy from renewable sources and to individuals (households) generating wind or solar energy. For the period of the validity of the green tariff, the State guarantees that legislation will provide for the obligations of: (i) off-take, at the price of the green tariff, of all the energy generated by RES-Electricity Facilities that has not been consumed by the relevant RES-Electricity Facilities or sold on a contractual basis to consumers or energy suppliers; and (ii) payment for such electricity in full, when due, and by monetary funds[8].

Furthermore, the amount of the green tariff is increased if a certain percentage of materials or fixed assets that are of Ukrainian origin ("**Local Content**") are used in the process of constructing a RES-Electricity Facility. In addition, an increased amount of green tariff is established for those RES-Electricity Facilities (or parts thereof) put into operation by 31 December 2024. The increased green tariff is valid until 1 January 2030. This increased amount does not apply to household RES-Electricity Facilities.

Elements of Local Content are calculated based upon a fixed share and are applicable to parts of equipment. The procedure for the calculation of the Local Content in the cost of construction is determined by the NCSEUR. Certificates confirming the Ukrainian origin of the Local Content are issued by the Ukrainian Chamber of Commerce. The NCSEUR not only determines the procedure for the calculation of the Local Content, but also verifies compliance with such a calculation procedure.

The green tariff is increased by five percent (5%) if the Local Content of the RES-Electricity Facilities is at least thirty percent (30%). The green tariff is increased by ten percent (10%) if the Local Content is at least fifty percent (50%).

A gradual decrease of the green tariff is anticipated for RES-Electricity Facilities depending on the date on which they are put into operation (please see table in Paragraph 4.3 below).

4.2 General description of promotion scheme

The green tariff is a special tariff for the purchase of RES-Electricity, excluding electrical power from blast furnaces, coke gas or generated by hydro power plants with an installed capacity exceeding 10 MW. The latest changes to the law extended the types of RES qualifying for the green tariff to solar and wind household RES-Electricity Facilities (with an installed capacity of up to 30 KW) and geothermal sources. The green tariff is not applicable to the RES-Electricity consumed by the relevant generating facility, thus it will not be possible for a RES-Electricity Facility to sell all its electricity at the rate of the green tariff and to buy it at a cheaper regular rate for its own consumption.

RES-Electricity may be sold to consumers based on direct contracts. It should be noted that the supply of energy to consumers is subject to licensing, thus an additional licence (licence of energy supplier) should be obtained by a RES-Electricity Facility in order to be able to sell energy directly to consumers, if such an objective exists. The law also contemplates that the RES-Electricity Facility at its request can be provided with an electronic document (of a set form), which confirms the origin of the purchased energy ("**Origin Guarantee**").

8 Meaning that set-offs, sometimes used for settlement among the energy companies, shall not be applicable.

Another and currently more practical option for RES-Electricity Facilities is to sell the generated RES-Electricity on the wholesale market. The Wholesale Energy Market[9] ("**WEM**") is obliged to purchase at the rate of the green tariff the volumes of RES-Electricity generated by RES-Electricity Facilities that were not sold on a contractual basis directly to consumers or energy supply companies supplying electricity to consumers under regulated tariffs. The procedure of the mandatory off-take will be amended when the new energy market models contemplated by the Market Act come into effect in 2017.

The generated power may also be sold to energy supply companies. In particular, the energy supply companies supplying electricity to consumers under regulated tariffs must buy electricity generated (in excess of their monthly consumption) by solar household RES-Electricity Facilities at the green tariff rate.

4.3 Procedure for determining feed-in tariff

The green tariff is determined by the NCSEUR for the electrical power generated by RES-Electricity Facilities as of the date the relevant facility is put into operation (unless another date is specified by law).

Importantly, not only the whole facility, but also any commissioned constituent part of the RES-Electricity Facility, will be entitled to receive the green tariff, provided that the Local Content requirements are met. The rate of the green tariff for such constituent parts of the RES-Electricity Facility will be calculated based on the date they were put into operation. In addition, the green tariff is set separately by the NCSEUR for: (i) each RES-Electricity Facility, namely for every power plant of the RES-Electricity Facility; and (ii) for each source type of renewable energy used for generation of RES-Electricity.

The rate of the green tariff for RES-Electricity Facilities generating power from wind, solar radiation, water, geothermal sources, biogas or biomass is calculated by multiplication of:

THE COEFFICIENT (for the specific type of RES)	X	the rate of the retail rate for consumers of the second voltage class as of 1 January 2009 (the minimum rate)

9 WEM is the only existing wholesale energy market in Ukraine allowing both the purchase of electrical power generated by power plants and its wholesale.

The coefficient is set as follows:

TYPE OF RES	INSTALLED CAPACITY/LOCATION	COEFFICIENT FOR RES-ELECTRICITY FACILITIES (OR PARTS THEREOF) COMMISSIONED			
		FROM 1.1.2016 UNTIL 31.12.2016	FROM 1.1.2017 UNTIL 31.12.2019	FROM 1.1.2020 UNTIL 31.12.2024	FROM 1.1.2025 UNTIL 31.12.2029
Wind energy	of a wind turbine: below 600 KW	1.08	1.08	0.96	0.84
	of a wind turbine: 600 KW – up to 2 MW	1,26	1,26	1.12	0.98
	of a wind turbine: over 2 MW	1.89	1.89	1.68	1.47
	Households, installed capacity up to 30 KW	2.16	2.16	1.94	1.73
Hydro power	Micro: up to 200 KW	3.24	3.24	2.92	2.59
	Mini: 200 KW – up to 1 MW	2.59	2.59	2.33	2.07
	Small: 1 MW – 10 MW	1.94	1.94	1.75	1.55
Biomass	No limitations	2.30	2.30	2.07	1.84
Biogas	No limitations	2.30	2.30	2.07	1.84
Geothermal sources	No limitations	2.79	2.79	2.51	2.23
Solar radiation	Terrestrial plant	2.97	2.79	2.51	2.23
	Front or roof solar modules	3.20	3.04	2.74	2.43
	Households, installed capacity up to 30 KW	3.53	3.36	3.02	2.69

The minimum rate of the green tariff is determined based on the Euro/Hryvnya exchange rate established by the National Bank of Ukraine on 1 January 2009 (on that date EUR 100 was the equivalent of UAH 1,085.546).

4.4 Revision and/or indexation of the feed-in tariffs

The green tariff rate is adjusted by the NCSEUR each time that the Euro/Hryvnya exchange rate (determined by the National Bank of Ukraine) changes. However the green tariff rate will not be less than the minimal fixed rate defined above. The green tariff rate is adjusted by the NCSEUR on a monthly basis.

The updated green tariff rate is published in printed media and online on the NCSEUR Web site[10].

4.5 Other financial incentives for RES-Electricity

4.5.1 Subsidies

According to the State Economic Programme for Energy Efficiency and Development of Energy Production from Renewable and Alternative Energy Sources for the Years 2010 – 2016, the State attempts to stimulate industrial

10 Web address: **http://www.nerc.gov.ua**.

enterprises to implement energy efficient technologies, equipment, facilities, etc. by way of subsidising part of a particular energy efficient project, including the reduction of the cost of the loans raised to finance the energy saving projects. This subsidy is granted on a competitive basis and within the amounts provided in the state budget for the applicable year.

4.5.2 Tax incentives

The Tax Code of Ukraine and the Customs Code of Ukraine provide for import VAT and import duty exemption for imports of certain equipment related to production or the use of renewable energy. Specifically, pursuant to the law, the import of: (i) certain equipment that works with renewable energy; (ii) materials, raw materials, equipment and components required for the production of RES-Electricity; (iii) materials, equipment, components required for the production of equipment that operates with the use of renewable energy; and (iv) energy saving equipment, are all exempt from VAT and import duties, provided that they are used by taxpayers for their own production purposes and no domestic alternatives are available in Ukraine. The list of such equipment and materials must be provided by the Cabinet of Ministers of Ukraine. The relevant bylaw has been recently cancelled and the new one has not been adopted yet, therefore this provision is not practically applicable at the moment.

In addition, wholesale energy suppliers may benefit from an exemption from excise tax on the supplies of RES-Electricity.

4.6 Support scheme for cogeneration

Support applicable to cogeneration is the same as for the RES-Electricity Facilities (green tariff with mandatory offtake), provided that conventional sources are not used by a cogenerating facility.

4.7 Guarantees of origin for RES-Electricity

There is no requirement to guarantee the origin of the electrical power if the RES-Electricity Facility sells the electrical power to the WEM. If the electrical power is sold by the RES-Electricity Facility directly to the consumer, an Origin Guarantee[11] can be provided to the consumer.

The Origin Guarantee is issued to a RES-Electricity Facility by the State Agency on Energy Efficiency and Energy Saving for a period of twelve (12) months on a free of charge basis.

5. Grid Connection

5.1 Access of RES-Electricity to the electricity network

The connection of RES-Electricity Facilities to the electricity grid can be performed by companies holding licences for the transmission of electricity ("**Transmission Companies**").

The current legal framework does not provide for any priorities of grid connection for RES-Electricity producers. Under the Power Industry Act, the Transmission Companies are obliged to provide access to the grid of their networks to all electrical power generating facilities and they are not entitled to refuse RES-Electricity Facilities access to the grid (however, exceptions are possible).

11 Obtained by a RES-Electricity Facility under Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure of Issue, Use and Termination of Guarantee of Origin of Electricity for Facilities Generating Electricity from Alternative Sources" No. 771 dated 24 July 2013.

There are two types of power networks in Ukraine: (i) transmission networks[12]; and (ii) local power networks[13]. The connection of RES-Electricity Facilities to local power networks is regulated by special statute (for RES-Electricity Facilities with an installed capacity below 10 MW). A special procedure for connection to power networks was adopted for wind farms constructed in Crimea and Mykolaviska Oblast. This procedure is not binding for the rest of the territory of Ukraine, but may serve as a model. Apart from these exceptions, the connection of RES-Electricity Facilities to the transmission network is governed by generally applicable rules.

Connection to the electricity grid is done on the basis of a connection agreement entered into by the Transmission Company and the RES-Electricity Facility. In certain cases, a three-party agreement may be concluded by the Transmission Company, a local power network and a RES-Electricity Facility.

Connection to the electricity grid is subject to compliance with the technical conditions of the Transmission Company. A Transmission Company may refuse conclusion of the connection agreement with a RES-Electricity Facility if the RES-Electricity Facility fails to fulfil the requirements of the technical conditions or if the connection to the grid may lead to violation of statutory regulations.

In practice, connection to the transmission power network is done by the national power company, “Ukrenergo”. Connection to the local power network is done by the local Transmission Companies.

5.2 Liability and responsibility for grid connection and/or capacity upgrades, improvements or expansion of the grid

Transmission Companies, using their own networks, are to project the expenses for the connection of RES-Electricity Facilities in their investment programmes (used for calculation of their electricity transmission tariffs). The NCSEUR is then to take into account expenses of a Transmission Company for the connection of the RES-Electricity Facilities to the grid in the process of approval of their investment programmes.

Recent changes to the Power Industry Act contemplate that RES-Electricity Facilities bear the costs (i) for preparation of project documentation for a grid connection; and (ii) for the grid connection[14].

Transmission Companies are responsible for upgrades, improvements and expansion of their own or leased networks. Expansion of the grid is established in the investment programme of the transmission company. Costs for the financing of such measures are included in the transmission tariff, or are borne by credit funds or connection fees. Expansion of the transmission network’ grid is subject to approval by the NCSEUR and other state authorities and is performed upon obtaining the approval from the wholesale supplier of energy, “Energorynok”.

5.3 Special allowance/tolerance for intermittent generation in relation to balancing charges for unscheduled deviations

The special allowance/tolerance for intermittent generation of energy in case of unscheduled deviations is not provided for by Ukrainian law.

12 A transmission network (above 220 KW) designed to transmit electrical power from a power generating company to connection points of a local power network.

13 A medium and low voltage connected network designed to transmit electrical power from a transmission network to a consumer.

14 The procedure of financing of the grid connection is set forth in the Resolution of NCSER “On Approval of the Procedure on Financing for Services of Electricity Facilities Connection to Grid” No. 1467 dated 21 November 2013.

6. Constraints to PPAs and Support to RES-Electricity

Due to the fact that Ukraine is not a Member State of the EU, limitations of the EC Treaty are not reflected or implemented in Ukrainian law. However, Ukraine joined the Energy Community and has acceded to some of the agreements of the Energy Community. Additionally, Ukraine is in the process of harmonising its energy legislation with a number of EU regulations, including the Directive on Internal Market in Electricity. Therefore, some limitations on state aid may be adopted in Ukraine in the near future.

Ukrainian law does not set forth any specific requirements as regards PPAs for RES-Electricity. However, there is a general requirement for all PPAs to conform with legislation related to the power industry sector. In particular, PPAs must comply with the Terms and Rules for the Conducting of Business Activities on Power Generation and the Agreement between Members of the Wholesale Electricity Market ("**WEM**") of Ukraine. Additionally, the duration of the PPA is not limited by law. Importantly, the green tariff is not fixed in PPAs (it is rather referred to), whereas the fixed rate of the green tariff is set and adjusted in accordance with the relevant legislation.

RES-Electricity may be supplied by RES-Electricity Facilities directly to consumers, energy supply companies or to the WEM. To supply RES-Electricity directly to consumers, in addition to the electricity generation licence (where applicable), a RES-Electricity Facility must also obtain the energy supply licence.

7. Carbon Credits

Intergovernmental Emissions Trading and the Joint Implementation Mechanism have been used in Ukraine within the framework of incentive mechanisms under the Kyoto Protocol to the UN Framework Convention on Climate Change. The internal emissions trading scheme has not been put in place in Ukraine so far.

The framework for obtaining carbon credits under the Joint Implementation Mechanism is governed by several legislative acts. A prerequisite for obtaining carbon credits is the realisation of a Joint Implementation Project ("**Project**") by an individual or a legal entity owning a facility ("**Owner**") causing anthropogenic emissions of greenhouse gases.

In order to proceed with a Project, an Owner must compile a set of documents consisting of, *inter alia*, (i) a comprehensive draft proposal regarding the reduction of anthropogenic emissions of greenhouse gases, which must be approved by the Ministry of Ecology and Natural Resources of Ukraine; and (ii) technical documentation with respect to the Project which should also be approved by the Ministry of Ecology and Natural Resources of Ukraine.

Upon successful completion of the Project, the Ministry of Ecology and Natural Resources of Ukraine opens an account for the Owner with the National Electronic Register of Anthropogenic Emissions and Absorption of Greenhouse Gases and transfers a certain amount of carbon credits to such an account.

However, as Ukraine has not ratified the Doha Amendment, there are uncertainties as to the prospects of applications of the above mechanism in the second commitment period.

Ukraine also undertook a number of environmental commitments under the Association Agreement with the European Union, which became provisionally effective in November 2014. The Association agreement[15], *inter alia*, provides for a gradual transposition into Ukrainian law of EU legislative provisions[16] concerning the establishment and functioning of the internal emissions trading system ("**ETS**"). The commencement of operation of the first stage of the ETS is scheduled for the end of 2016.

15 Art. 365 of Title V.

16 e.g Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

At the United Nations Conference on Climate Change (held in Paris in December 2015), Ukraine adopted the Paris Agreement (which is still to be executed and ratified) and pledged that by 2030 the volume of its greenhouse gas emissions would not exceed sixty percent (60%) of their 1990 level.

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