

New set of energy laws adopted in the Federation of Bosnia and Herzegovina (FBiH)

16 August 2023

On 31 July 2023, the FBiH adopted a set of reform energy laws aimed at harmonising domestic energy legislation with the European Union and Energy Community acquis, i.e. the following:

- (i) Law on Electricity of the FBiH;
- (ii) Law on the Use of Renewable Energy Sources and Efficient Cogeneration;
- (iii) Law on Energy and Regulation of Energy Activities in the FBiH.

The Law on Electricity of the FBiH and the Law on Energy and Regulation of Energy Activities in the FBiH have been published in the Official Gazette of FBiH on 9 August 2023, and they enter into force on 17 August 2023. The publication of Law on the Use of Renewable Energy Sources and Efficient Cogeneration and its entry into force is also expected in the following weeks.

(i) Law on Electricity of the FBiH

The new Law on Electricity of the FBiH regulates, *inter alia*, energy policy and planning; electric power activity and license for performing said activity; the construction of power plants; the production, distribution, supply and trade of electricity; the rights and obligations of all participants in the market.

The law aims to improve the system of controls related to the construction of production facilities. The criteria for the construction of production facilities are prescribed by the law, including protection of the environment and securing a permanent control of the impact on the environment, the use of land and location, the protection of public health and security, energy efficiency, among others. Special emphasis is given to the protection of the environment, which is introduced as one of main principles of the law. Furthermore, the law specifically prohibits the construction of small-scale hydroelectric power plants with an installed capacity lower than 10 MW (with the exception of hydroelectric power plants on water infrastructure).

The law further simplifies administrative procedures for the construction and operation of renewable energy facilities, primarily solar power plants and wind power plants, by introducing:

- an exemption from the obligation to obtain an energy permit for renewable energy facilities (except hydroelectric power plants) with an installed capacity lower than 1 MW;
- an exemption from the obligation to obtain an act on compliance of project documentation with provisions of the Law on Electricity;

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- an exemption from the obligation to obtain a license for performing electricity production activities for facilities with an installed capacity lower than 1 MW;
- a simplified procedure for connecting to the grid;
- a system of certification of installers of solar power plants and wind power plants with an installed capacity of up to 23 kW. This simplifies the construction of solar and wind power plants by having certified persons selected by the investor to conduct activities related to the installation and commissioning of the facility. Thus, investors will have one contact point - a certified installer - who implements projects for them, without the need to involve multiple competent bodies.

Furthermore, the law introduces new categories of participants and activities in the electricity market such as:

- active customers – citizens are able to participate in the production, storing, sale of excess energy, or provide services related to consumption control and energy efficiency,
- aggregators – the activity of aggregation of distributed resources represents a commercial function of joint management of production, storing and consumption of electric energy of larger number of users of the grid with the aim of selling or providing services in the system.
- energy communities – citizens are able to participate in the market collectively by forming energy communities through which they are able to participate in the production, distribution and storing of electricity, as well as other activities,
- energy storage – represents new activity in the market enabling the storing of energy produced at times when there is an excess of electric energy within the electric power system, so it can be utilised later.

The law introduces the following innovations:

- New rights and mechanisms for the empowerment and protection of end customers of electricity. In accordance with European Union regulations, special emphasis is given to the role and rights of end customers which are able to actively participate in the market through the production, storing and provision of services within the system. The position and rights of end customers are improved in comparison to the current legal framework, adequate mechanisms for protection of rights and dispute resolution are secured with a clear role of the Regulatory Commission for Energy in the FBiH.
- A legal framework for introducing electromobility. The law defines conditions for installation of public and private charging stations for electric vehicles and providing charging services for electric vehicles. The grid operator is obligated to cooperate with the persons who install or manage publicly available charging stations; charging service providers are obligated to have market, easily comparable and non-discriminatory prices for electric vehicle charging services.
- A Regulation for electricity distribution quality, as well as mechanisms for securing safety of distribution, including price controls, in cases of extreme disorder within the market. The Government of the FBiH is now able to proclaim a state of endangered security of distribution due to an insufficient supply of electricity, an extreme rise in market prices or other circumstances, and in such cases, introduce measures such as a limitation of distribution, special conditions for the production, export or import of electricity, the manner and conditions for forming and controlling prices, an obligation of delivery only to specified users and special conditions for performing electric power activities. Simultaneously, there are adequate mechanisms built into the law which should mitigate the possible negative consequences of introducing said measures. For example, the Government of the FBiH is obligated to introduce only those measures that will have the least possible negative effect on the electricity market,

the duration of which cannot be longer than the duration of the circumstances for which they have been introduced. In addition, the law stipulates an obligation of the Government of the FBiH to determine the sources of compensation for damages that may have been caused to subjects that are implementing the aforementioned measures, as well as conditions for and the manner of distributing the funds.

(ii) Law on Use of Renewable Energy Sources and Efficient Cogeneration

The Law on Use of Renewable Energy Sources and Efficient Cogeneration aims to improve the legal framework in the renewable energy sector, define more precisely the rights, obligations and responsibilities of all participants in the new system of incentives and aims to improve the legal framework of the new system of incentives. According to the explanation of the proposal of the law, the current system of incentives through Feed in tariff (FIT) is considered as efficient but not an economically justified instrument to incentivise the production of electricity from renewable energy sources. In that sense, the law defines new mechanisms of incentives for small-scale and large-scale facilities - through Feed in tariff for small-scale facilities (FIT auctions) and Feed in premium for large-scale facilities (FIP auction). Both auctions are implemented by the Operator for Renewable Sources of Energy and Efficient Cogeneration.

FIT auctions are envisaged for small-scale facilities of up to a certain installed capacity (i.e. up to and including 150 kW for solar power plants, up to and including 250 kW for wind power plants, up to and including 500 kW for biomass and biogas power plants) every year, in accordance with technologic quotas, which will compete for a guaranteed purchase price. The main condition for participating in FIT auctions is possession of a construction permit or a certificate issued by a competent body that a construction permit is not required. The criteria for the selection of the most favourable bidder is the lowest offered guaranteed purchase price.

FIP auctions are envisaged for large-scale facilities over a certain installed capacity (i.e. over 150 kW for solar power plants, over 250 kW for wind power plants, over 500 kW for biomass and biogas power plants) at least once in two years and in accordance with available scale of auctions, which will compete for fixed premiums for delivered electricity. The main condition for participating in FIP auctions is possession of an urban permit/location permit or certificate that it is not required. The criteria for ranking offers is the lowest offered fixed premium added to the market price.

The law also introduces new categories of participants using renewable energy sources: (a) prosumers - enabling end users to produce electricity for their own needs; and (b) renewable energy communities - enabling citizens to unite and construct renewable energy facilities.

(iii) Law on Energy and Regulation of Energy Activities in the FBiH

The Law on Energy and Regulation of Energy Activities in the FBiH regulates the manner of determining and implementing energy policy and development planning, as well as the commitment to use renewable energy sources and achieving energy efficiency, and the organization and functioning of the regulatory body.

The new law systematically regulates issues of common importance for the use of multiple forms of energy in the sectors of electricity, natural gas, oil derivatives, thermal energy, renewable energy sources and energy efficiency in the FBiH. The goal is to improve strategic planning in the energy sector, create planning and implementation documents for the implementation of energy policy in the FBiH, and define conditions for performing activities in the energy sector and regulate the manner of performing said activities.

In addition, the law introduces mechanisms for the protection of endangered and protected energy customers, pursuant to EU Directive 2009/72/EC, and harmonisation with the legal acquis of the European Union (i.e. the requirements arising from BiH's international obligations).

Furthermore, the law improves the legal framework for the regulation of activities in the energy sector by, *inter alia*, better defining the position of the Regulatory Commission for Energy in the FBiH, as the regulatory body that regulates and supervises the electricity, natural gas, oil derivatives, and thermal energy markets, and by improving the legal framework for implementing regulatory supervision of subjects performing activities in the energy sector.

The law also improves the control of energy facilities – with regard to the procedure of issuing energy permits for facilities. The Federal Ministry of Energy, Mining and Industry is obligated to monitor compliance of proposed construction with the goals defined in the Energy Strategy and Action Plan. In other words, if the Parliament of the FBiH or the Government of the FBiH determines in its strategic documents that it is necessary to discourage, limit, or forbid the construction of certain kinds of production facilities, the Federal Ministry will have the necessary legal basis to deny the issuance of energy permits for said facilities.

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