

Czech Parliament discusses measures to cut renewable energy subsidies, focusing on solar power plants

New proposed amendments impose individual profitability checks and change the relevant timeline for their calculation

12 December 2024

A set of two measures aimed at reducing state subsidies for renewable energy sources has been approved by the lower house of Parliament in the Czech Republic on 11 December 2024. These changes, proposed through amendments to the Act on Promoted Sources (the "RES Act") and the Energy Act, specifically target solar power plants with a capacity of more than 30 kW that were connected in 2009 and 2010.

The new measures will focus on controlling subsidies by introducing individual checks on profitability (internal rate of return or IRR). Support will be reduced or withdrawn if the allowed profitability thresholds are exceeded.

The amendments also redefine the calculation of IRR to include the entire project lifetime, rather than being limited to the subsidised period. Finally, transactions with related entities that are not conducted on an arm's-length basis will be re-evaluated as if they were.

The planned effective date for these measures is 1 January 2025.

Operators of renewable energy installations will still be required to conduct self-assessments and report their figures to the market operator. The Ministry of Trade is expected to issue a decree outlining the reporting process, but as the RES Act amendments are not yet fully approved, this decree has not been published. It remains unclear whether the existing decree (No. 72/2022, Coll.) will be amended or replaced for this purpose.

Tax authorities will also play a role by providing the State Energy Inspection with information on related-party transactions, financial flows and other conditions relevant to IRR compliance checks.

EU context

The European Commission's State Aid decisions, particularly State Aid SA.40171 (2015/NN) and State Aid SA.35177 (2014/NN), have established the framework for legitimate expectations regarding renewable energy subsidies. These decisions emphasise that national regulations must align with EU-level state aid rules, providing critical context for the proposed amendments. These decisions are essential for shaping the legitimate expectations of receivers of state aid. The European Commission serves as the competent authority for establishing the framework for state aid in the renewable energy sector. National regulations merely implement the rules set forth by the European Commission.

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Rise to claims by solar investors expected

The Czech Solar Association, the largest professional organisation in this field, has strongly criticised these measures, warning of potential legal disputes under international agreements such as the Energy Charter Treaty (ECT) and the Switzerland–Czech Bilateral Investment Treaty (BIT). Similar issues arose during the financial crisis when the Czech Republic introduced a solar levy, leading to over 50 lawsuits, a constitutional complaint and seven international arbitration cases.

The Czech Republic successfully defended most of these claims. **Marie Talašová**, a counsel in our energy practice team, oversaw the State's defence in her capacity at the time as Head of the International Legal Services Department of the Ministry of Finance. After leaving the Ministry, she acted as an attorney for the Czech Modern Energy Union, advising on related issues, particularly with regard to legislation implementing conditions set forth by the EU.

What comes next?

The legislative process for these amendments continues. After passing the lower chamber, the draft law is sent to the Senate. If the Senate approves it or takes no action within 30 days, the draft will move to the President for signature. If the Senate rejects or amends the draft, it will be returned to the lower chamber for further discussion. The President has the authority to return the draft within 15 days with reasons for veto, but if no objections are raised, the law will be published in the Collection of Laws and become effective.

An expert team of dedicated energy lawyers from Wolf Theiss is closely monitoring these alterations as solar companies with investments in the Czech Republic are on alert over the subsidy cuts.

About Wolf Theiss

Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With 390 lawyers in 13 countries and a central European hub in Brussels, over 80% of the firm's work involves cross-border representation of international clients. Combining expertise in law and business, Wolf Theiss develops innovative solutions that integrate legal, financial and business know-how.

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