

01_The New Bulgarian Renewable Energy Sources Act_january_2012_KG

Over the recent years, Bulgaria has witnessed huge interest in the investment in renewable energy sources (RES) thanks to the favourable arrangements under the repealed RES Act and the incentives envisaged there for this type of investment.

The combined capacity of the projects launched has totalled 10,000 MW which, in the opinion of experts in the energy sector, exceeds the capacity of the energy system by more than 100 percent. This situation has led to the adoption of a new RES Act¹ that has fundamentally changed the climate for investing in green energy in Bulgaria.

Until recently, the already repealed Renewable and Alternative Energy Sources and Biofuels Act [1] provided incentives for investing in RES that ensured favourable investment conditions for all RES projects in Bulgaria. That law guaranteed the mandatory connection of all electricity producers using RES to the electric grid, envisaging appropriate points of connection and short time limits for the connection to be undertaken by distribution companies.

Furthermore, the provisions of the repealed law laid down favourable arrangements for costs sharing in the construction of connection facilities, according to which the largest share was apportioned to the distribution company that was actually the owner of such facilities.

Finally, the previous law provided for a period of time in which electricity generated from RES had to be purchased at preferential prices. The price was set on an annual basis by the National Energy Regulator (SEWRC). Besides, the law envisaged a mechanism for the calculation of the preferential price, which guaranteed that the price would not be reduced or affected by economic changes in the country. Those provisions created legal certainty in the sector and security for the investors, which was necessary in view of the project financing by the relevant credit institutions. All incentives under the repealed law were provided on the basis of the commitment of the Republic of Bulgaria under Directive 2006/108/EC[2]and Directive 2001/77/EU[3]aimed at attaining a share of 11 % of the electricity generated from RES in the total electricity consumption of the country.

Directive 2001/77/EC has recently been repealed by Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and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, which sets new mandatory national overall targets.

Pursuant to the new Directive, the Republic of Bulgaria has to reach production of energy from renewable sources in the amount of 16 % of the total final energy consumption in the country by 2020. This new target implies the adoption of new mechanisms to promote investment in RES since, according to the latest statistics, Bulgaria has reached only 4.65 % of the mandatory levels included in the national target[4]. Nevertheless, the new piece of legislation adopted for the attainment of the objectives set out in Directive 2009/28/EC has actually led to withdrawal of investments from this sector. That is the result of the big number of new renewable energy projects which apply for connection to the electric grid, as well as of the opinion of the Bulgarian Government that the share of 16 % envisaged in the national target would be easy to achieve.

As stated above, the incentives under the previous RES Act brought about applications for the connection of more than 10,000 MW of renewable energy which were, of course, at the design phase. Many domestic and foreign investors had applied for the conclusion of connection agreements with the respective electricity distribution companies, thus declaring their intention to produce such an enormous quantity of renewable energy that would exceed the electric grid capacity by more than 100 percent.

Besides, in March 2011, the Ministry of the Economy, Energy and Tourism adopted the 2010 Report on the implementation of the national indicative targets for the generation of renewable energy, which was based on the repealed Renewable and Alternative Energy Sources and Biofuels Act. The Ministry announced in its Report that the national target of 11 % that the Government had committed itself to under the repealed Directive 2001/77/EC had already been achieved and even exceeded since the energy from renewable sources accounted for 15 % of the overall production. Its assumption was the most likely reason for the Government to reduce the incentives for RES investments in Bulgaria, which made the process of establishing new RES capacities much more complicated.

The discrepancy resulted from the fact that the share of 15 % attained by the Republic of Bulgaria was calculated on the basis of the repealed Directive 2001/77/EC that calculated the share of the electric energy from renewable sources, whereas the new Directive 2009/28/EC requires calculations based on the share of renewable energy which encompasses not only electricity but also heating, fuels and any other form of energy. Therefore it is very likely for the 15 % share attained in the production of renewable electric energy to fall short of the target of 16 % of the production of renewable energy in the gross final national consumption and the Republic of Bulgaria might encounter difficulties in the efforts to achieve the new mandatory target.

Nevertheless, it could be argued that the adoption of the new RES law caused confusion in the energy sector because it drastically changed the way of and incentives for the construction and development of renewable energy projects within the territory of the Republic of Bulgaria. More specifically, the new legislative rules actually suspended the procedures for connection to the electric grid. In accordance with paragraph 6 of the Transitional and Final Provisions of the new law, the opinions issued on the terms and conditions for the connection of energy facilities for the production of renewable electric energy shall be considered null and void, unless preliminary connection agreements were signed as of the date of entry into force of the new law. In other words, all connection procedures under the repealed law which had not reached the stage of a preliminary connection agreement were terminated and the entrepreneurs had to re-apply for connection to the electric grid.

Still, the new procedural rules for the connection to the electric grid are laid down in the new RES Act and the investors could follow them to get a connection agreement if these rules had entered into force together with the other provisions of the new RES Act. But since the rules concerning the applications for connection will enter into force after 1 July 2012, distribution companies are rejecting any application for connection on the ground that the procedural rules of the new law have not entered into force yet. Thus the new legislative act has effectively stopped investment initiatives for a period of more than a year, which runs counter to the declared policy of support for renewable energy by the Republic of Bulgaria. There exist some additional obstacles even to projects for which preliminary connection

agreements have been signed. For the purposes of ensuring the validity of the preliminary agreements, investors have to provide guarantees to distribution companies in the form of cash payments per megawatt of installed capacity in accordance with the application within very short time limits. In this situation, many investors would not be able to observe the deadline for the guarantees and although they have paid the required amounts and provided the distribution companies with the requisite documents, their preliminary agreements would become invalid and the investors would have to re-apply for connection.

Nevertheless, the most important changes in the RES sector relate to the new way in which the preferential purchase price of renewable energy will be calculated and they have brought about actual reduction of the price for some renewable energy technologies.

In accordance with the previous legislative arrangements, the preferential price was calculated on an annual basis by the National Regulator which applied a mechanism to guarantee that the price would not be reduced in the course of time and that it would reflect the economic changes and the development of the renewable energy sector. The price was assumed to amount to 80 % of the average selling price of electricity in the preceding calendar year calculated by the state-owned or final suppliers plus a surcharge which would be at least as big as the surcharge for the preceding year.

At present, the new RES Act reads that the preferential purchase price of energy will be calculated for the whole period of mandatory purchase and will not be subject to any adjustments. This means that the energy purchase price will be fixed before the energy facilities are completed and set into operation and it will remain unchanged throughout the mandatory purchase period in spite of any changes of operational costs or inflation rates.

Moreover, the new mechanism for the calculation of preferential prices is absolutely unclear as to the way in which the National Regulator will fix this price and the input data to be used for calculation purposes. The only thing which the law makes clear is that the price will be calculated, while taking into account the type of renewable energy, the type of technologies, the installed capacity of the facilities, as well as the location of the facilities and the type of connection to the grid. It is not clear, however, what weight will be assigned to each price formative element in the final preferential price calculation or what methodology will be

applied to the calculations. This sheds no light, for instance, on the way in which the regulator has come up with the price for photovoltaic installations which is lower than the price existing only two months earlier. Besides, it is incomprehensible what input data have been used for the calculations since the National Energy Regulator has failed to make them public.

Currently, an appeal has been filed against the decision on the preferential price calculation under the new RES Act before the Supreme Administrative Court and therefore we should wait for the judiciary to rule on the lawfulness of the decision. Meanwhile, what is left to investor is to wait and to decide whether to continue investing on the Bulgarian RES market. In my opinion, however, the problems caused by the new RES Act could be resolved only through a legislative change introducing a comprehensive mechanism to calculate the preferential prices, which would ensure predictability of these prices ever since the outset of the investment process, enabling investors to develop their business plans and apply for lines of credit. Moreover, real promotion of investment in the renewable energy sector would be achieved through a pricing mechanism that would provide for ways to update price levels in the course of the mandatory purchase period in accordance, for instance, with inflation rates and operational costs. Amending the new RES Act is a necessary and urgent measure so that to ensure the ability of the Republic of Bulgaria to meet the 16-percent target by 2020 and to avoid a possible infringement procedure.

[1] Adopted, The State Gazette, No. 49 of 19 June 2007; Amended, The State Gazette, No. 98 of 14 November 2008; Amended, The State Gazette, No.82 of 16 October 2009; Amended, The State Gazette, No.102 of 22 December 2009; Amended, The State Gazette, No. 35 of 3 May 2011

[2] Directive 2006/108/EC of 20 November 2006 adapting Directives 90/377/EEC and 2001/77/EC in the field of energy, by reason of the accession of Bulgaria and Romania

[3] Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity from renewable energy sources in the internal electricity market

[4] The calculations are based on the statistical data made available by the National

Statistical Institute and the information contained in the National Renewable Energy Plan prepared by the Ministry of the Economy, Energy and Tourism and submitted to the Council of Ministers for approval.