

## Legislative initiatives for 01-15 February 2021 impacting RES producers

### The Verkhovna Rada of Ukraine, adopted laws

On 02 February 2021, there was approved the Law on Amendments to Certain Legislative Acts of Ukraine (concerning unified legal conditions for a land plot and a real estate object located on it).

The law prescribes an “automatic” transfer of ownership/title to use land while transferring ownership of a building or construction located on it to a new owner. The law is submitted to the Chairman of the Verkhovna Rada of Ukraine for signing.

The law was drafted and adopted in the interests of developers. At the same time, it can be used by investors within RES construction and by DSOs and TSO within land allocation for construction of own facilities.

At the same time, it should be noted that lawyers make a number of thorough remarks on the law, which call into question the constitutionality of some of its provisions. It may result in initiating the appeal from MPs to the Constitutional Court concerning constitutionality of the relevant provisions of the adopted law.

### Registered draft laws

On 08 February 2021, there was registered the draft Law with No. 5041 on Amendments to the Law of Ukraine “On the State Budget of Ukraine for 2021”. The draft Law provides for the following:

- the Ministry of Finance of Ukraine is entitled to issue government bonds upon the decision of the Cabinet of Ministers of Ukraine. It is planned to issue government bonds in the amount of UAH 25.15 billion;
- receipts from the sale of issued government bonds will be allocated to a special fund of the State Budget with special purpose, i.e., to finance the budget program “Financial support of the SE “Guaranteed Buyer” to pay for electricity produced from RES.

On 04 February 2021, there was registered the draft Law with No. 5020 on Amendments to the Law of Ukraine “On Public Procurement” regarding procurement by natural monopolies.

According to the draft law, the companies engaged in the distribution of electricity and natural gas, transportation of heat, centralized water supply are obliged to conduct their procurement through tenders in the Prozorro system. According to the authors of the draft law, it will contribute to the transparency of the use of tariff funds and setting of fair prices for such procurement.

In particular, the draft law covers the procurement carried out by distribution system operators to connect RES facilities. However, today, in accordance with Article 21 of

the Law “On the Electricity Market”, distribution system operators already perform procurement on a competitive basis for connection services.

On 03 February 2021, there was registered the draft Law with No. 5009 on Amendments to Certain Legislative Acts of Ukraine concerning simplification of grid connection. In particular, the draft provides for the following:

- simplified procedure for drafting land development projects for the allocation of state and communal lands for the construction of linear energy infrastructure facilities;
- possibility of construction of linear energy infrastructure facilities on state and communal lands without the need to allocate them, if such construction is carried out in accordance with urban planning documentation;
- there is arranged the procedure for agreement conclusion in respect to land easement on land plots of state and communal property;
- introduction of a “single window” mechanism for developers to submit design documentation and coordinate it with stakeholders;
- other issues.

According to the authors of the draft, the proposed approach will shorten the time needed for connection by 2.5 times.

#### The Cabinet of Ministers of Ukraine

08 February 2021, the decree No. 105-r was adopted to approve the strategic development plan of the SE “Guaranteed Buyer” for 2021-2024. The plan was not in public access at the moment of memo drafting and it is not the subject of the memo.

On 03 February 2021 the Resolution No. 89 was adopted. The Government reduced the term of moratorium on certain types of inspections stipulated by paragraph 52-2 of subsection 10 of section XX of the Transitional Provisions of the Tax Code of Ukraine and defined a list of types of inspections of legal entities that are allowed. This list, in particular, includes:

- temporarily suspended documentary and factual inspections initiated before 18 March 2020 and not completed;
- scheduled documentary inspections;
- unscheduled documentary inspections of taxpayers about which there is tax information received about violations of foreign exchange legislation in terms of compliance with deadlines for receipt of goods for import transactions and/or foreign exchange earnings for export transactions;

- unscheduled documentary inspections on controlled transactions and transfer pricing defined by clauses 7.8.1.12, 78.1.14, 78.1.15, 78.1.16 of the Tax Code of Ukraine.

The Resolution came into force on 09 February 2021.

The National Energy and Utilities Regulatory Commission

Made decisions

On 10 February 2021, the NEURC issued the Resolution No. 218 amending the Licensing Conditions for Conducting Business Activities for Electricity Production (approved by the NEURC Resolution dated 27 December 2017 No. 1467). The Resolution came into force on 11 February 2021.

New requirements have been set for licensees for electricity production:

1) the licensee shall address the NEURC to confirm compliance with the licensing conditions and laws in the fields of energy and utilities, if:

- licensee intends to transfer the integrated property complex to another business entity (unless the statutory documents stipulate that all rights and obligations of the previous licensee are transferred to the business entity to which the integrated property complex is transferred);
- the licensee carrying out economic activity at the integrated property complex intends to revoke the license.

The NEURC shall be contacted no later than two months before the transfer of the integrated property complex or the revocation of the license.

“Integrated property complex” means the means and places of economic activity declared by the licensee (license applicant), the set of which provides the possibility of conducting economic activity in the market.

2) in cases provided by the laws on protection of economic competition, the licensee shall notify the AMCU of the acquisition (to own or use) of integrated property complexes or change of the licensee's control structure in favour of another party arising from obligations, including monetary, trade obligations, obligations taken because of financial support conditions.

On 05 February 2021, the NEURC issued the Resolution No. 189 to amend the Market Rules; the amendments concerned cancellation of obligation of balancing market participants to indicate the price not less than 55% of the DAM price in their bids for balancing electricity sale. The decision shall come into force on 01 March 2021.

This decision applies to RES producers who carry out or intend to carry out activity in the market independently (not within the balancing group of the Guaranteed Buyer).

In addition, this decision may affect the performance of the Guaranteed Buyer within its buying/selling imbalances of its balancing group in the balancing market and further allocation of these costs to the cost of the service to increase the RES electricity share.

On 03 February 2021, the NEURC issued the Resolution No. 144 and obliged electricity producers not to sell more than 50% of monthly volume of electricity production under bilateral contracts to the parties that are the members of its vertically integrated entity or are affiliated with them. The decision was adopted pursuant to the Law No. 832-IX dated 01 September 2020 and entered into force on 04 February 2021.

In this case, within three working days after the conclusion of the bilateral contract, the parties to the bilateral contracts shall inform the Regulator about the subject, electricity price and/or

procedure for its calculation (formation), electricity volume and hourly electricity sales schedule, terms and electricity delivery procedure.

This decision applies to RES producers who carry out or intend to carry out activity in the market independently (not within the balancing group of the Guaranteed Buyer).

On 03 February 2021, the NEURC issued the Resolution No. 138 amending the Procedure for setting, revision and termination of the FiT (approved by the NEURC Resolution No. 1817 dated 30 August 2019). The Resolution came into force on 04 February 2021.

Main changes in the regulation of the setting, revision and termination of the FiT for RES producers with a capacity exceeding 1 MW (for SPPs) and 5 MW (for WPPs):

- 1) the list of documents is specified to be submitted for FiT approval, in particular:
  - the connection agreement is also submitted together with the technical conditions;
  - there is excluded the requirement to submit a letter from the State Architectural and Construction Inspectorate of Ukraine stating the date and number of registration of the declaration of readiness of the power facility (if the copy of the declaration contains no date and/or registration number).
- 2) While submitting documents for approval of FiT, RES producer who has previously entered into a pre-PPA shall avoid discrepancies of the technical and economic indicators of the electricity facility specified in the pre-PPA and the technical and economic indicators specified in the documents provided for FiT approval, namely:
  - increase in the value of the maximum design (forecast) load taking into account the allowed (connected) capacity of the facility;



- division of a power facility for which a pre-PPA has been concluded into stages and/or start-up facilities with a capacity of up to 1 MW (for SPPs) and 5 MW (for WPPs).