

Legislative initiatives for 16-28 February 2021 impacting RES producers

Verkhovna Rada of Ukraine, adopted laws

On 16 February 2021, there was adopted the Law on Amendments to Certain Laws of Ukraine Concerning the Resumption of Competitions for Civil Service Positions and Other Civil Service Issues.

The Law, in particular:

- stipulates a number of restrictions concerning the exercise of powers by the First Deputy and Deputy Ministers performing duties of the Minister in absence of the latter. Restrictions imposed by law concerning the exercise of the Minister's powers after 60 days of temporary duties made comprehensive functioning of the Ministry almost impossible. This form was chosen in order to encourage the Government to resolve issues on submission to the Verkhovna Rada of Ukraine for approval of the candidacy of the Minister within 60 days;
- introduces a prohibition to impose the duties of the Minister on the person whose candidacy for the post of minister was rejected by the Verkhovna Rada of Ukraine of the current convocation. This norm in fact makes it impossible to submit one candidacy for approval to the Verkhovna Rada more than once.

On 17 February 2021, the Law was signed by the Chairman of the VRU and sent to the President of Ukraine for signing. On 18 February 2021, the President returned the law with proposals to lift the above restrictions and prohibitions. On 23 February 2021, the Law with the President's proposals was adopted at the extraordinary sitting of the VRU.

According to the finally adopted version of the Law, the First Deputy Minister of Energy, Deputy Ministers of Energy are entitled to perform the duties of the Minister without time limit in full, as defined by the Law of Ukraine "On Central Executive Bodies". The Law does not set deadlines for the Cabinet of Ministers of Ukraine to submit a candidacy of a minister to the Verkhovna Rada of Ukraine for approval.

The Verkhovna Rada of Ukraine, registered draft laws

25 February 2021, there was registered the draft Law with No. 5147 on Amendments to Certain Legislative Acts of Ukraine regarding the conditions of sustainable operation of the Guaranteed Buyer.

The draft law proposes a number of provisions aimed at stabilizing the activities of the Guaranteed Buyer and RES producers:

- it is prohibited to initiate bankruptcy proceedings against the Guaranteed Buyer until 31 December 2022, except in cases of liquidation of the enterprise by the decision of the owner (state);
- Guaranteed Buyer shall provide an equal percentage of payment for the cost of electricity in each billing period (month) to every RES producer;
- cost of the service to increase RES share provided by the Guaranteed Buyer is reduced by the amount of financial support received by the Guaranteed Buyer in the billing period from the state budget to pay for electricity produced from RES. It applies to budget support stipulated by Law No. 810-IX (20% of the volume of marketable products of RES producers), but it is not actually provided in 2021 State Budget and its amounts are already deducted from the cost of the service of the Guaranteed Buyer; it will lead to non-payment to the RES producers by respective amount of funds;
- the Guaranteed Buyer is obliged to keep separate records of costs and revenues from the performance of activities related to PSO on purchase of electricity from RES producers as well as performance of other special obligations. This measure should create the preconditions for transparency in the activities of the Guaranteed Buyer and avoidance of transfer of losses from one type of special obligations to another, as was the case in 2020;
- within GB's performing other special obligations to ensure the general public interest (other than the obligation to purchase electricity from RES producers), only positive results from such other activities are taken into account to estimate the cost of services concerning RES share increase to be invoiced from the Buyer Guaranteed towards the Transmission System Operator for compensation. Losses from other special obligations in this case are not transferred to the compensation mechanism for RES producers.

On 25 February 2021, the draft Law with No. 5160 was registered on Amendments to the Code of Ukraine on Administrative Offenses on the introduction of liability for non-compliance with the Law of Ukraine “On Strategic Environmental Assessment”.

The Draft Law provides for introduction of administrative liability for violation of the statutory procedure for strategic environmental assessment, including the procedure for informing the public and the procedure for public discussion and taking into account its results, failure to carry out the procedure of strategic environmental assessment. Protocols on administrative offenses in the field of strategic environmental assessment will be drawn up by the state environmental inspection bodies.

The draft law (if adopted) may affect investors developing or planning to develop new RES projects.

On 22 February 2021, the draft Law with No. 5132 was registered on amendments to the final provisions of the Law of Ukraine “On Amendments to the Law of Ukraine “On 2020 State Budget of Ukraine” concerning tax audit moratorium.

Laws of Ukraine No. 540-IX dated 30 March 2020 and No. 591-IX dated 13 May 2020 introduced a temporary moratorium on documentary and factual tax audits for the period of measures aimed at preventing the occurrence and spread of coronavirus disease (COVID- 19). Subsequently, the Law of Ukraine No. 909-IX of 17 September 2020 entitled the Cabinet of Ministers of Ukraine to reduce the validity term of restrictions, prohibitions, benefits and guarantees with regard to tax audits. As stated in the Monitoring of Legislative Initiatives for 01-15 February 2021, the Cabinet of Ministers of Ukraine (by Resolution No. 89 of 03 February 2021) limited the validity of mentioned moratorium for certain types of inspections.

Provisions of the Draft Law No. 5132, registered by the MP Ya.I. Zhelezniak (“Voice” political party) clarify that the Cabinet of Ministers of Ukraine is not entitled to reduce the term of the moratorium on inspections under the Tax Code of Ukraine and prohibitions (restrictions) on other measures of state supervision (control) established to prevent the emergence and spread of acute respiratory disease COVID-19 within the territory of Ukraine.

On 22 February 2021 a draft Resolution with No. 5129 was registered on implementation of the National Emissions Reduction Plan for Large Combustion Plants.

In order to fulfil its obligations under the Treaty establishing the Energy Community, Ukraine has committed to meeting the requirements of Directive 2001/80/EU on the limitation of emissions of certain pollutants into the air from large combustion plants. In particular, it refers to reduction of industrial pollution by thermal energy facilities. In this regard, in 2017 the Cabinet of Ministers of Ukraine approved the National Emissions Reduction Plan for Large Combustion Plants (the “NERP”)

Start of implementation of the NERP was scheduled on 01 January 2018. The environmental modernization of 21 of the 90 plants has already been postponed for term from two to five years due to a lack of financial resources available at the companies that own the plants. In 2020, the temporary working group of the Ministry of Energy established to develop a mechanism for NERP implementation raised for the second time the issue of postponing the start of environmental modernization of CHP, TPP and large boilers. However, extension for the second time is unrealistic.

40 MPs representing various political parties and factions registered a draft resolution in which the Verkhovna Rada of Ukraine issues instructions, in particular:

- The Cabinet of Ministers of Ukraine shall:
 - approve a list of potential sources of pollution and financial support instruments for the implementation of the National Emissions Reduction Plan for Large Combustion Plants in compliance with the established standards of state support;
 - develop and approve the draft law of Ukraine on the Energy Strategy of Ukraine until 2050, in which to determine in particular:
- NEURC shall amend the statutory instruments to ensure implementation of the National Emission Reduction Plan in a liberalized electricity market.

In the short and medium term, the role of thermal energy in ensuring the stable operation of Ukraine's energy system will remain important (at least until introduction of an effective and efficient system to support the construction of new flexible facilities, energy storage systems). It is thermal generation that allows to balance the energy system during the hours of active generation of electricity from RES. Considerable attention will be paid to the issue of providing financial resources for the modernization of thermal energy, including environmental modernization. Currently, there is a package of draft laws offering to allocate for environmental modernization of enterprises part of the environmental tax received in the State Budget.

The Cabinet of Ministers of Ukraine

Made decisions

According to the Order No. 133-r dated 17 February 2021, the State Office for Attracting and Supporting Investments has been designated as an authorized party to provide support to the applicant and investor with significant investments in accordance with the Law of Ukraine "On State Support for Investment Projects with Significant Investments" (the so-called "Investment Nanny" Law).

The National Energy and Utilities Regulatory Commission

Made decisions

At the meeting held on 17 February 2021, the NEURC adopted a resolution No. 254 "On submission of financial statements by economic entities in the fields of energy and utilities to the National Commission for State Regulation of Energy and Public Utilities".

NEURC specified the list of financial statements that business entities operating in the energy sector and are licensed by the NEURC are obliged to submit to the NEURC in addition to sectoral reports:

Quarterly financial statements:

- No. 1 Balance sheet (Statement of Financial Position);
- No. 2 Statement of Financial Results (Statement of Comprehensive Income).

The list is similar to the list of quarterly statements previously determined by the NEURC (NEURC Resolution No. 624 dated 11 May 2017). The deadline for submitting quarterly statements has been changed. Quarterly statements are submitted by the 30th day of the month following the reporting quarter.

Annual financial statements:

- No. 1 Balance sheet (statement of financial position);
- No. 2 Statement of Financial Results (Statement of Comprehensive Income);
- No. 3 Cash Flow Statement;
- No. 4 Equity Statement;
- notes to financial statements.



The list is similar to the list of annual statements previously determined by the NEURC (NEURC Resolution No. 624 dated 11 May 2017). The deadline for submitting annually statements has been changed. Annual statements are submitted by 05 March of the year following the reporting year.

The requirements for the form of statements have been changed. The statements shall be submitted to the NEURC in electronic form in Excel format with certified digital signature of the authorized person of the licensee and/or certified digital seal of the licensee.

Violation of the licensing conditions of the relevant type of economic activity (in the part concerning the provision of documents (their copies), information (data, information, reports) necessary for the NEURC to perform and exercise its powers and functions, the NEURC may impose a fine on the licensee in the amount of UAH 85 thousand hryvnias to UAH 1 million 700 thousand hryvnias.