



MARTA HALABALA,
Senior Associate, Asters

How grounded are the plans of the Ministry of Energy and Environment of Ukraine to reduce the “green” tariff? What are the provisions of the Draft *Memorandum of Understanding*, presented to investors?

1. Due to the current crisis in the energy sector, both investors and governmental officials understand the need for change. To resolve the crisis the Ministry of Energy and Environment of Ukraine proposes to reduce the “green” tariff for existing projects, set a new “green” tariff for projects under development and a number of other novelties. If the proposed amendments is agreed and the relevant new Law is adopted, it would mean retrospective change of the Law.

If such Law were to be adopted the retrospective re-

duction of the “green” electricity tariff would violate one of the most important generally-recognized principles of law, which state that laws and other regulations shall not be retroactive in effect. In addition, the revision of the tariff violates Ukraine’s international commitments to investors regarding the stability and protection of their investments.

The proposed amendments may resolve the crisis in the energy sector, but it may cause negative economic impact, as investors will exit Ukraine.

2. The Draft *Memorandum of Understanding* foresees state bodies of Ukraine ensuring full and timely payment by the Guaranteed Buyer to RES producers for the electricity in future, and the existing debt for the electricity already supplied to be paid by 31 December 2021.

Under consideration is the possibility of allowing RES

producers to freely sell electricity on the market, creating their own balancing groups, retaining the right to receive compensation under the respective conditions from the Guaranteed Buyer as the difference between the established “green” tariff and the price of electricity sold on the market.

The Memorandum proposes to set maximum limits of the “green” tariff to be paid for existing projects. For all energy facilities that produce electricity from the RES, a “green” tariff maximum limit is to be set at the level of the tariff for solar power plants, whose capacity exceeds 10 MW and which are commissioned by 31 March 2013, reduced by 20%.

Reductions in the “green” tariff are proposed as follows:

— for solar power plants which are commissioned by 31 December 2019 — by 20%;

— for wind power plants which are commissioned by 31 December 2019 - by 10%;

— for solar and wind power plants commissioned from 1 January 2020 - by 2.5%.

3. One of the barriers for investors to enter Ukraine is the rule of law compliance.

The above-mentioned retrospective changes would be shortcoming in the application of the rule of law in Ukraine. The legal acts shall not be changed on a regular basis, in particular retrospectively. The fundamental principle of legality, meaning that all law be clear, ascertainable and non-retrospective, is to be breached. Any retrospective change in laws and regulations, including those reducing the “green” tariff, will have a negative effect and may lead to an outflow of foreign investors in the RES sector, which is one of the possibilities of increasing the country’s energy independence.



YEVGEN FILONENKO,
Counsel, Equity

On 17 April 2020 a group of Ukrainain MPs registered Draft Law No. 3357. What are the main changes of the Draft?

10 of the Law. In particular, it is proposed that state financial control bodies (controlling bodies) be given unimpeded access to:

— information with restricted access, which any state body, local self-government body, or any legal entity has;

— personal databases held by state bodies and local self-government bodies without obtaining the consent of a data subject.

Despite few changes introduced by the Draft, these developments, by their legal effects, imply a high risk of abuse of powers by controlling bodies, which may lead to violations of the rights and interests

of both individuals and legal entities.

Proposing the aforementioned changes, lawmakers point out only to the public procurement sphere where introduction of such powers of controlling bodies is expedient. At the same time, under the Law the controlling bodies are not limited only to the public procurement sphere, which, in its turn, will lead to exercising the said powers in other spheres of their activities.

The aforementioned powers are rather wide and significant. The information with restricted access is known to comprise confidential, secret and insider information (for

example, bank-client privilege, attorney-client privilege or doctor-patient privilege, etc.). Access to such information without any restrictions and / or restraining mechanisms (for example, court permission) is the violation of constitutional rights, freedoms and interests of an individual that may lead to gross violations on the part of the controlling bodies.

Thus, to achieve the aims specified by the Law, the said changes, by their essence, are expedient. However, their wording must be subject to drastic changes and amendments before they are put to the vote in the Verkhovna Rada of Ukraine.

On 17 April 2020 a group of Ukrainain MPs registered under No. 3357 a Draft Law *On Making Changes to the Law of Ukraine on the Basic Principles of Implementation of State Financial Control in Ukraine*.

The given Draft intends to make changes only to Article