2020 FITs restructuring in Ukraine

Vitaliy Radchenko, CMS
CMS - Global law firm. Top Energy law firm in CEE

Staff
> 8,000

Lawyers
> 4,800

Partners
> 1,100

49 NEW PARTNERS IN 2019, TAKING THE TOTAL TO OVER 1,100

Operating in
70 cities

Across
43 countries

EUR 1.36bn turnover for 2018

19 PRACTICE AND SECTOR GROUPS WORKING ACROSS OFFICES

Ranked 5th largest law firm
(by headcount) in the 2018 Am Law Global 100

- #1 CEE, DACH, Germany (Mergermarket)
- #1 Germany, UK (Thomson Reuters)
- Top rankings in 2018 M&A League Tables (by deal count)
- #1 Europe, Germany, UK (Bloomberg)
CMS Energy clients in Ukraine
Current renewable energy market situation in Ukraine

Ukraine had attractive feed-in-tariffs (FIT):

- SPPs - 15.03 eurocents/kWh (2019) and 11.26 eurocents/kWh (2020)
- WPPs (>2MW) - 10.18 eurocents/kWh (2019) and 9.05 eurocents/kWh (2020-2024)

Significant growth of renewables up to 7 GW in May 2020 (12.7% of total installed capacity).

Consumer prices did not keep pace with FIT support, leading to a tariff deficit.

Deficit of the Offtaker estimated to be around EUR 0.86 billion in 2020.

Government/TSO blame stability and balancing problems in energy system on RES

Curtailment of RES estimated by the TSO to be 1 billion kWh in 2020

Solutions proposed by Govt:

- Restructuring of the GT scheme
- Moving from the GT scheme to Auctions

RES installed capacity growth:

- Solar
- Wind
- Other

Graph showing installed capacity growth from 2016 to May 2020 with specific capacities for each year.
Negotiations between the RPPs and the Govt continued since autumn 2019. On 10 June 2020 the RPPs and the Govt signed Memorandum of understanding regarding regulation of problematic issues in the sphere of renewable energy in Ukraine (MOU).

### Mandatory GT decrease without its prolongation

- **15%** reduction for *all solar RPPs = or > 1MW commissioned between 1 July 2015 and 31 December 2019*
- **10%** reduction for *all solar RPPs < 1 MW commissioned between 1 July 2015 and 31 December 2019*
- **7.5%** reduction for *all wind RPPs with a single turbine capacity = or > 2MW commissioned between 1 July 2015 and 31 December 2019*
- **2.5%** reduction for *all solar and wind RPPs commissioned after 1 January 2020*
- **21.97 eurocents per 1 kWh** threshold for *all RPPs commissioned before 30 June 2015*

### Commissioning of the RPPs under Pre-PPAs executed before 31 December 2019

- Solar RPPs must be commissioned by **31 July 2020** (instead of two years after execution of the Pre-PPA) to be eligible for GT
- Timeframe for commissioning of wind RPPs remains the same (three years after execution of the Pre-PPA)

### Balancing responsibility

- **50%** starting from 1 January 2021, and
- **100%** starting from 1 January 2022;
- *5% threshold for solar and 10% threshold for wind*

### Debts of the Offtaker

Payment of all outstanding debts of the Offtaker (around EUR 0.3 billion) by 31 December 2021 (40% in the fourth quarter of 2020; and 15% in each quarter of 2021)
Restructuring of the GT scheme
MOU Implementation in legislation

On 15 June 2020 draft law No. 3658 aimed at implementing MOU (Implementing Law) was registered in Ukrainian parliament
On 23 June 2020 draft law No. 3658-1 alternative to the Implementing Law (Alternative Law) was registered in Ukrainian parliament

<table>
<thead>
<tr>
<th>Implementing Law (3658)</th>
<th>Alternative Law (3658-1) – Gerus draft law</th>
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<tbody>
<tr>
<td><strong>Mandatory GT decrease without its prolongation</strong></td>
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<td><strong>Commissioned:</strong></td>
<td><strong>Solar RPPs</strong></td>
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<tr>
<td><strong>Before 30 June 2015</strong></td>
<td>reduction to <strong>21.97 eurocents per 1 kWh</strong> for all solar RPPs</td>
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| **Between 1 July 2015 and 31 December 2019** | • 15% reduction for all solar RPPs = or > 1 MW  
• 10% reduction for all solar RPPs < 1 MW | • 15% reduction for all solar RPPs = or > 1 MW  
• 10% reduction for all solar RPPs < 1 MW |
| **After 1 January 2020** | • 2.5% reduction for all solar RPPs < 1 MW  
commissioned after 1 January 2020  
• 2.5% reduction for all solar RPPs = or > 1 MW  
commissioned between 1 January 2020 and 31 July 2020  
• 60% reduction for all solar RPPs = or > 1 MW  
commissioned after 1 August 2020 | • 2.5% reduction for all solar RPPs < 1 MW  
commissioned after 1 January 2020  
• 2.5% reduction for all solar RPPs between 1 MW and 5 MW commissioned between 1 January 2020 and 30 September 2020  
• 20% reduction for all solar RPPs between 1 MW and 5 MW commissioned between 1 October 2020 and 30 June 2021  
• 30% reduction for all solar RPPs = or > 5 MW commissioned between 1 October 2020 and 30 June 2021  
• 60% reduction for all solar RPPs = or > 1 MW commissioned after 1 July 2021 |
On 15 June 2020 draft law No. 3658 aimed at implementing MOU (Implementing Law) was registered in Ukrainian parliament.

On 23 June 2020 draft law No. 3658-1, alternative to the Implementing Law (Alternative Law) was registered in Ukrainian parliament.

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<td>Before 30 June 2015</td>
<td>- 7.5% reduction for all wind RPPs with a single turbine capacity = or &gt; 2MW</td>
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<td><strong>Other differences</strong></td>
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<tr>
<td><strong>Stability clause</strong></td>
<td>Change of law clause + guarantee not to change GT</td>
<td>Change of law clause deleted (only guarantee not to change GT remains)</td>
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<td><strong>Commissioning of the RPPs under Pre-PPAs executed before 31 December 2019</strong></td>
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<td>Solar RPPs can still benefit from a reduced GT after 31 July 2020</td>
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<td><strong>Balancing</strong></td>
<td>New balancing responsibilities are applicable only to all RPPs = or &gt; 1MW</td>
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<td><strong>Eligibility for GT</strong></td>
<td>Eligibility of wind RPPs with up to three wind turbines (irrespective of their capacity) for the GT excluded</td>
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Contacts

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