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EUROPE UPDATE

EUROPE ENERGY DEVELOPMENTS

Message from the Europe Committee

Our Europe Committee celebrated our Section's Washington DC 2013 Spring Meeting with a diverse and active social agenda as well as a full slate of programs organized by Europe Committee members, touching on the legislative process of the European Union, the roles of common and civil law notaries, secured lending in the economies of Eastern Europe, and intellectual property issues.

Looking forward, we hope that Europe Committee members are making plans to attend our Section's leadership retreat in Sausalito, California just prior to the American Bar Association Annual meeting in San Francisco this August, and our Section's fall 2013 meeting in London. Now by the way is the time to be approaching the Committee chairs with ideas for Europe Committee programs at the New York spring 2014 meeting! We commend to interested members conversations as well with **Alexandra Darraby**, Europe Committee Vice-Chair for programs, and Europe Committee members who have had recent positive experiences with seasonal meeting program organization, such as **Francesca Giannoni-Crystal**, **Georgi Gouginski** and **Stephane de Navacelle**.

Look for our monthly calls the first Tuesday of each month at 11 am Washington, DC/5 pm Paris time.

As we continue with the annual update of our Europe Committee's business plan for the coming bar year, we warmly welcome outreach from Europe Committee members who would like support in becoming more active volunteers in the work of our Committee.

Patrick Del Duca, Florian Jörg, Europe Committee Co-Chairs

A Note from the Editors

This hot topic issue of EUROPE UPDATE highlights legal aspects of energy sector developments in Bulgaria, Greenland, Turkey, Ireland, Germany, Spain, Sweden, Norway and Poland..

Look for the an issue of our Europe Committee's HOT TOPICS NEWSLETTER on Europe/China direct investment that will make the final edition in this bar year.

We welcome our Europe Committee members who wish to step forward as guest editors to organize further issues such as this one and others posted on the Europe Committee website.

Francesca Giannoni-Crystal (fgiannoni-crystal@cgcfirm.com), **Michael L. Balistreri (**michael.balistreri@rhi.com), **Editors**

Issue 6, July 2013

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About the Europe Committee

The Europe Committee seeks to engage lawyers conducting practices that touch Europe, including the various European countries, the European Union, and the institutions of the Council of Europe. It nurtures a community of lawyers sophisticated in cross-border matters, comparative law, and the continuously emerging transnational law of Europe, public and private. The Europe Committee's activities include the sponsorship of programs at the Section of International Law's seasonal meetings, hot topics teleconferences and newsletter presentations by experts on emerging developments of European law, exploration of legal policy and law reform topics, contribution to the Year in Review issue of The International Lawyer, and co-sponsorship of Section of International Law standalone and other programming.

The Europe Committee's membership is its most important asset. We encourage all Committee members to be involved in Committee activities and to communicate freely suggestions and ideas.

Upcoming Events

ABA Section of International Law
2013 Leadership Retreat
Sausalito, California
August 7-9, 2013

London Fall 2013 Meeting

Programs Co-sponsored by the Europe Committee

October 15

1:00 pm– 2:20 pm

The Other Merger: Statutory Mergers and Structuring Opportunities within the EU and Across its Borders

4:30 pm - 6:00 pm

Legal Management JEOPARDY: Managing Law Firm Relationships To Avoid Unintended Consequences

October 16

2:30 pm - 4:00 pm

Transatlantic Defense Cooperation: Challenges and Opportunities in a New Regulatory and Enforcement Era

4:30 pm- 6:00 pm

1) A Family Affair: An International View on Governance, Succession and Dispute Resolution in Family Owned Enterprises

2) Opting Into the UN Convention on Contracts for the International Sale of Goods: Choice of Law in Non-Convention States

October 17

11:00 am -12:30

1) Collective Actions in Europe: Go Directly to London?

2) The Smartphone Patent Wars: What's New Under The Sun?

4:30 pm - 6:00 pm

Merger Control in the EU and US vs. China and Brazil: How Do the Newcomers Compare to Established Jurisdictions?

October 18

2:30 pm - 4:00 pm

1) It's Hard to Say Goodbye: The Do's and Don'ts of Agency and Distributor Terminations in the European Union

2) The Wave of New Criminal and Regulatory Customs Enforcement Investigations: Current Enforcement Agenda and Outlook for Importers Globally

4:30 pm - 6:00 pm

Commercial Rights and Remedies of Celebrities in the Global Marketplace - Applying 19th Century Principles and 20th Century Laws to a 21st Century Marketing Phenomenon

*** Committee Events Summary in Next Issue**

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Energy Law Developments Overview
by *Georgi Gouginski*

Despite the upbeat tone coming from some European countries, this issue of EUROPE UPDATE portrays a rather troubled European energy sector. The focus is on the renewable energy sector, and the contributions presented reflect the concerns of markets and policy makers that the sector is struggling.

The renewable energy industry has neared a collapse in southern countries, where stagnation in the sector seems most visible and drastic. Reduction of feed-in tariffs in some countries (Spain, Bulgaria) appears to be the dominant common policy action. Interference with feed-in tariffs was naturally accompanied by other changes of policy that upset investors and led to a large number of litigation proceedings (Spain).

By contrast, northern countries have sought opportunities to cooperate in renewables and integrate their markets. The case of Ireland and the UK shows a sophisticated interaction where Ireland will rely on the cooperation mechanisms under Directive 2009/ 28/ EC, striving to export its renewable potential.

Norway and Sweden plan an even closer integration of electricity markets. The policy action aiming at a common market for certificates is expected to increase the liquidity in the market and strengthen the support for renewable energy. It remains to be seen, however, whether this would be a fair partnership.

Offshore wind farms continue to present a challenge to the penetration of renewable energy into the electricity system. Increased offshore capacity raises reliability issues for the German electricity grids. In Germany, a new liability regime will govern the interaction between power generators, transmission grids and customers.

Poland and Sweden have initiated a revision of their burdensome authorization procedures, with the goal to increase the bankability of renewable energy projects. This initiative has resulted in a draft for a new support scheme in Poland, which for various reasons has been delayed.

On another end, conventional sources of energy have also been the subject of interest due to the ever increasing dependency of European countries on foreign supplies. In Greenland, there is a well-settled regulatory framework dealing with the prospecting and exploitation process of hydrocarbons under adverse weather and operational conditions. In the South, Turkey is a jurisdiction where outdated legislation is expected to undergo reforms to match the needs of its modernizing economy. At the same time the public in some of its neighbors (Bulgaria) is deeply divided between environmental considerations and the benefits of untapped shale reserves.

The mix of issues and challenges in the European energy sector here presented demonstrates some of the trends driving (or constraining) one of Europe's most important industries. I hope that you will enjoy this issue and that the diversity of narratives kindly provided by our distinguished contributors will provide you an interesting comparative perspective.

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Bulgaria: Faltering Progress and Resistant Politics: the Way Forward

by *Yassen Spassov*

The energy sector in Bulgaria continues to lag behind the attainments of European liberalization in most European Union countries. In recent years, the sector has been deeply engulfed in the "politics of the day," creating winners aligned to the whims of the ruling factions, and losers on all other sides. And yet reforms, no matter how extensive or profound, have become an instrument of easing social unrest and resolving grave economic woes. On this plane, the social function of regulation has proven that under extreme circumstances, it has the power to turn against the previously advantaged.

The energy sector in Bulgaria continues to lag behind the attainments of European liberalization in most European Union countries.

The problem with setting the right course of action is the chronic lack of longer-term perspective. Many of the emerging problems today could have been avoided with prudent planning years ago. The response by politics and regulators aims to plug the running holes with no regard for all potential consequences.

Renewable Energy

In the earlier years of unbridled expansion of renewable energy, *i.e.* 2007-2011, the feed-in tariffs provided a generous rate of return. The renewable energy segment has now come to a grinding halt with no foreseeable prospects of resurgence. The first major setback was the promulgation of a new law on renewable energy in May 2011 that radically changed the terms of interconnection to the grid and the formation of feed-in tariffs. If the increased interconnection fees were not enough, the State Energy and Water Regulatory Commission (SEWRC) imposed a temporary moratorium on interconnection for new power plants that sought renewable feed-in support.

In-line, feed-in tariffs have been substantially reduced, and what is more, a new tariff on access to the grid was implemented in September 2012. Understandably, the validity of the access tariff proved extremely controversial and provoked a severe backlash from the renewable energy industry. The regulatory action on access tariffs was immediately brought before a judicial review that upheld the appeal and invalidated the access tariffs. This is not a final judicial ruling, and at best it indicates that there may be a flickering light at the end of the tunnel. Against such a backdrop, acquisitions of operating plants and refinancing transactions are the elements currently shaping the structural dynamics of the renewable sector in Bulgaria.

Distribution and Supply of Electricity

The political turmoil around the premature resignation of the cabinet in February earlier this year undoubtedly has sent shockwaves through the economy and especially the electricity sector. The reason for this is the high energy costs for households compared to the average national income. Distribution and supply companies have been the primary target of regulatory action coming from the SEWRC as well as investigations by public prosecutors. Major political parties have pledged reforms in one way or another after the general elections in May of this year.

The New Program of the Interim Government

In the meantime, the newly sworn interim government was fast to announce a new program of operational measures in the electricity sector. The Minister for the Economy, Energy and Tourism admitted that the electricity sector is inefficient and oversupplied. Installed capacity currently amounts to 12,000 MW, which outstrips the 4,700 MW necessary to meet

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demand. Exports require a further 300 MW of capacity. Planned measures include tougher enforcement of existing regulations *vis-à-vis* renewable energy producers, the overhaul of certain trading rules, a reduction of capacity designated for cold reserve and ancillary services, lifting of restrictions for exports to Turkey, and the implementation of new mechanisms for balancing production.

On the face of it, the overall concept seems rational as it seeks to reap the benefits of optimization in the sector where possible. Continuation of such policies would drive the market towards real competition.

Environmental issues are not to be overlooked, as the case for shale gas has proven.

Hydrocarbons

A safer strategy for investment seems to be an investment that is least likely to cause a direct impact on household budgets. However, environmental issues are not to be overlooked, as the case for shale gas has proven. The Parliamentary ban on hydraulic fracturing has demonstrated that environmental grounds could also be the source of trouble even for investors employing state-of-the-art technologies. It is reasonable to expect, however, that this argument will weaken and public opposition will lose momentum under the pressure of higher energy bills. Domestic hydrocarbon exploration and extraction delivering cheaper energy may turn out to be the solution that offers a safe haven from the sweeping currents of upcoming regulatory actions and reforms. Since the resignation of the former government, there have been resumed calls for repealing the ban on shale gas exploitation.

In conventional terms, a recent flagship initiative is the Khan Krum project, where the international consortium between Total, OMV, and Repsol recently signed an agreement for prospecting and exploration of oil and gas in the Black Sea. There have been other appealing projects for oil and gas both onshore and offshore.

Overview of Licensing Possibilities in Greenland

by *Michael Meyer* and *Anne Kirkegaard*

Introduction

Recently, Greenland and its potential natural resources have been subject to increased debate in the Nordic media. There is little doubt that Greenland has much to offer. The question is whether and to which extent natural resources will be found and if so, delineating the possibilities of potential future commercial exploitation of such natural resources for interested parties. This article provides an overview of the requirements set out and the factors considered by the competent authority when assessing an application for a license for exploration and/or exploitation in Greenland.

The Greenland Self-Governing Act, adopted June 21, 2009, provides the framework for standards and regulations regarding exploitation of natural resources. The responsibility for the mineral resources, including hydrocarbons, was transferred to the Greenlandic government by the Greenland Self-Governing Act. All licenses for hydrocarbons are granted by the Greenlandic Bureau of Minerals and Petroleum ("BMP") (see www.bmp.gl) either following a licensing round or under the so-called "Open-Door" procedure. The responsibility of BMP is to assure the existence of a legal and political framework for reliable, environmentally sound, and clean exploitation of energy and minerals resources in Greenland, and that BMP is a so-called "One Stop Shop" for any potential or actual licensee under the Mineral Resources Act in Greenland.

Currently, BMP is carrying out the 2012/2013 licensing round in the offshore areas in Northeast Greenland (the Greenland Sea area) in an area that has been part of the Kanumas project. The prospecting

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license for the area was granted in the 1990s, and then, in 2010, a number of exclusive licenses for exploration and exploitation were granted for part of the area. Currently, a pre-licensing round requiring the participation of one of the parties from the prospecting license is taking place. Any area not licensed in the pre-licensing round will be offered for exploration and exploitation licenses open to all parties fulfilling the license requirements. This license round will open June 15, 2013.

The Greenland Self-Governing Act, adopted June 21, 2009, provides the framework for standards and regulations regarding exploitation of natural resources.

Licenses for Prospecting, Exploration and Exploitation of Hydrocarbons Off Shore

Basis for Licenses

Any license for prospecting, exploration or exploitation of hydrocarbons is granted based on an application process run by the BMP in accordance with the Mineral Resources Act and based on the terms and conditions published in connection with each licensing round. Any license will be subject to the payment of fees and charges as stated in the licensing documentation. Certain fees and charges may be changed during the lifetime of the license.

A prospecting license may be granted for periods up to five-years. A prospecting license is non-exclusive, which allows multiple licensees to hold prospecting licenses for the same geographical area.

A license for exploration is normally exclusive for the area covered by the license. The terms of the license typically set out the obligations on the licensee to explore the area as well as regarding which areas must be relinquished during the term of the license. The duration of a license for exploration is generally ten years with the possibility for extensions, up to three years at a time.

A licensee licensed to explore a specific geographical area has a right to obtain a license to exploit such area if it has fulfilled the terms of the exploration license. Licenses for exploitation may extend up to thirty years. A "stand-alone" exploitation license may be granted for up to ten years with the possibility of extensions each by up to three years. The aggregate duration of exploration and exploitation licenses may not exceed fifty years.

Any license granted will have the participation of Nuna Oil A/S, a private limited company wholly owned by the Greenland Self Government.

Who May Apply for a License?

Basically, any interested party may apply for a license for prospection, exploration, or exploitation of a specific area. However, licenses for exploitation may only be obtained by a private limited company ("A/S") domiciled (as a general rule) in Greenland. Further, such company may only perform activities licensed under the Mineral Resources Act.

During the processing of an application for exploration and/or exploitation, BMP authorities will attach particular weight to the technical and financial capabilities of the applicant as well as how the applicant intends to carry out the exploration or exploitation as set out in more details below.

Technical Requirements

Particular weight is attached to a potential licensee's technical capabilities for exploration and exploitation. Basically BMP considers the expert knowledge of the applicant and the applicant's previous experience in exploration or exploitation of hydrocarbons (in general), as well as the applicant's previous experience in exploration or exploitation of hydrocarbons in areas with conditions comparable to Greenland.

Financial Requirements

Generally, any exploration or exploitation license requires very substantial investments prior to any profit-generating commercial activities. Hence, a potential licensee's financial capabilities are closely considered. The BMP generally requires a full parent guarantee as well as the procurement of insurance policies to cover any liability under the license.

Further, a company holding an exploitation license may not be subjected to joint taxation or be thinly

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capitalized compared to the group of companies/ corporation to which it belongs.

The fee for obtaining a prospecting license in 2013 is set at DKK 23,066 (approx. €3,000), whereas the fee for submitting an application for an exploration license during the current licensing round is set at DKK 25,000 (approx. €3,300) with a further DKK 100,000 (approx. €13,300) to be paid upon an exploration or exploitation license being granted.

How to Conduct the Exploration and/or Exploitation

A third very important factor in the assessment of any license application is the description of how the applicant intends to perform the exploration and/or exploitation if the license is granted. In this respect, the BMP looks at the applicant's procedures in connection with safety, health and the environment ("HSE"), and the applicant's ability to perform thorough exploration documented by the applicant's proposed work-program and its supporting documentation.

Additionally, the BMP may decide to include in the assessment of any license application further relevant, objective, and non-discriminatory factors including the applicant's previous performances, taking into account also non-efficiency and non-compliance in performing its tasks and obligations under any previously granted licenses in Greenland.

Conclusion

As is evident from the overview of factors considered in the licensing procedure in Greenland, the license procedure is like licensing procedures for hydrocarbons in other jurisdictions, and it should be expected that the requirements set out will be strictly applied for potential licensees - whether for exploration or for exploitation. There is little doubt that if the activities in the off shore sector lift off, it will benefit the Greenlandic society substantially. However, it remains to be seen whether the potential commercial gains from any strike off shore will be considered as sufficiently propitious by the market players, as it only comes at considerable risk, as the exploitation of hydrocarbons located off shore will take place at incredible depths and under weather conditions counted among the harshest on Earth.

Paving the Way for Liberalization: Turkey's Draft Petroleum Law

by *Yeşim Bezen* and *Onur Okşan*

The Petroleum Law of March 7, 1954, numbered 6326 (the "**Petroleum Law**"), currently governs upstream activities in Turkey for hydrocarbons, i.e. both oil and natural gas. The need for an overhaul of the Petroleum Law is apparent as it is no longer able to meet the demands of the modern market players.

Thus, a proposed Petroleum Law (the "**Draft Law**") was submitted to the Turkish Grand National Assembly in December 2012. The Draft Law would introduce important changes, including to streamline the license application and evaluation processes in line with the internationally accepted standards. The purpose is to slash the red-tape governing petroleum activities and hopefully catch Turkey up with its peers in the world.

The Draft Law aims to encourage the discovery of Turkey's yet untapped petroleum resources. To achieve this purpose, the Draft Law redefines "survey" activities and entitles legal entities holding such licenses to carry out any activities other than drilling for exploration purposes. Accordingly, survey activities, crucial also in the context of Turkey's shale gas endeavors, can be performed without onerous permitting requirements.

The Draft Law aligns the boundaries of exploration licenses with the internationally accepted geographic grid system, thus eliminating an important market entry obstacle for foreign investors. Legal entities applying for licenses will not only be subject to more objective and reasonable criteria for the evaluation of their respective applications but will also be required to submit an investment program and deposit a security in proportion to their respective investments.

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The Draft Law further contributes to the differentiation of real investors and from opportunistic investors, who apply and hold licenses for license trading purposes only. Except for *force majeure* events, in cases where the operation has not started or has been halted for a period of one year, the relevant legal entity will be required to start the operation within 180 days; otherwise its license will be cancelled.

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The interests of the Turkish State are also protected under Turkish Law, as the "State Share" for each barrel of crude oil shall be indexed to the market price (wholesale price for natural gas) instead of the well price which is considerably lower. Also, the Draft Law introduces significant sectorial incentives by way of amendments to tax, customs, and related laws. Customs and stamp duty exemptions for the equipment and material imports are incentives of note, as the corporate income tax is limited to 40%.

The Draft Law also paves the way for restructuring of the state-owned Turkish Petroleum Corporation (the "**TPAO**"), to ensure its survival in the ever competitive global oil and gas sector. Accordingly, it will continue as the flag carrier of the Turkish government's efforts on discovery of new energy sources while retaining some of its privileges with respect to its exploration and operation licenses.

The Turkish government intends to encourage the oil and gas sector by incorporating internationally accepted norms and increasing competitiveness. This would allow Turkey's undiscovered hydrocarbons to be explored, potentially decreasing the country's dependency on foreign resources. Its approval at the relevant commission of the Turkish Grand National Assembly on March 26, shortly after its submission, evidences the Turkish government's commitment. This legislative development will attract the attention of both local and foreign investors, especially considering the fast-changing energy landscape of the region where Turkey is strategically located.

Cooperation Mechanisms and the Export Potential for Irish Renewable Electricity

by ***Alex McLean*** and ***Nicole Ridge***

On January 24, 2013, Ireland and the United Kingdom signed a Memorandum of Understanding, indicating each State's willingness to develop their partnership in relation to energy policy, integrate their electricity markets, and maximize the sustainable use of low carbon renewable energy resources. The Memorandum of Understanding was signed to facilitate achievement of the renewable energy targets set out under Directive 2009/28/EC (the "**Renewable Energy Directive**" or "**RED**"). The RED sets an overall target of 20% of the total consumption of energy in the EU to be generated from renewable sources by 2020, with individual targets for each Member State. The RED sets outs three cooperation mechanisms to enable a Member State to count renewable production in another Member State for the purposes of compliance with that Member State's national target. Those mechanisms are (i) joint projects, (ii) joint support schemes and (iii) statistical transfers. As a result, one of these cooperation mechanisms is likely to form the basis of a comprehensive framework for the implementation of the policies set out in the Memorandum of Understanding.

Joint Projects

Ireland may agree to implement a joint project with another Member State to produce electricity, or heating or cooling from renewable energy sources. For example, a project funded by the United Kingdom may be established in Ireland, and in turn, the power is exported back to the United Kingdom. Under an intergovernmental agreement, a certain proportion of the renewable power may be counted towards the United Kingdom's overall target. Commission

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approval of the project is not required, but certain information must be submitted to the Commission on an on-going basis.

Private operators may participate in joint projects, which would incentivise growth in the construction and energy sectors. Joint projects may be set up as short or long-term arrangements or on a project-by-project basis. While the joint project mechanism is the most flexible option of the three cooperation mechanisms, and would be easier and faster to implement, there are some practical problems associated with the implementation of such projects. Member States need to set out a support mechanism in the agreement, and identify who will pay for and monitor the project. The agreement also needs to address how the Member States will share direct and indirect costs and benefits of the project, which may be difficult to draft from both technical and political perspectives.

On January 24, 2013, Ireland and the United Kingdom signed a Memorandum of Understanding, indicating each State's willingness to develop their partnership in relation to energy policy, integrate their electricity markets, and maximize the sustainable use of low carbon renewable energy resources.

Joint Support Schemes

Member States may enter into a joint support scheme whereby they agree to join or partially coordinate their national support schemes in order to collectively achieve their targets. Targets may be pooled in two ways: (i) through a statistical transfer arrangement, or (ii) by allocating energy from renewable sources under an agreed "distribution rule". Each participating Member State must notify the Commission of the total electricity or heating or cooling from renewable energy sources produced during that year which is to be allocated under the agreed distribution rule.

A joint support scheme is generally a long-term arrangement. Such a scheme requires a high level of coordination between Member States to design an arrangement that is mutually beneficial, particularly in relation to the allocation of costs and benefits under the distribution rule. The coordination and agreement required between Member States may result in significant delay to the practical implementation of such a scheme.

Statistical Transfers

Ireland may make an arrangement with another Member State for the statistical transfer of a specified amount of energy from its renewable resources, allowing the receiving Member State to take into account the energy transferred under such an arrangement for the purposes of complying with its national renewable energy target. This does not require a physical transfer of energy. Instead, it is a mechanism for transferring the credit for having produced such energy.

There are a number of drawbacks that make this choice an unlikely option for Ireland. For instance, it can be difficult to negotiate a usable inter-governmental agreement to deal with issues surrounding risk, price and supply, particularly as the production of renewable energy in Ireland may be intermittent and unpredictable. The exporting Member State also needs to ensure that their own national targets have been met before transferring credit for renewable energy produced in their territory. The potential financial benefits for Ireland to be gained from this kind of arrangement must be balanced with the potential costs incurred. For example, system integration costs, societal and environmental costs, policy costs, as well as additional costs incurred to reach Ireland's own national target by 2020, require careful consideration.

Conclusion

Each of the three cooperation mechanisms under RED present challenges of varying complexity, such as price determination, risk sharing and apportionment of benefits. However, the potential rewards for Ireland if it can successfully deliver large-scale exports of renewable energy to the United Kingdom under these mechanisms would be significant.

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Germany's New Liability Regime for Offshore Wind Energy – A New Spin for the German Energy Turnaround (*Energiewende*)?

by *Thorsten Mäger* and *Daniel J. Zimmer*

Since 2006, the two German coastal transmission system operators ("**TSOs**") responsible for a control area (*Regelzone*), i.e. 50Hertz Transmission GmbH and TenneT TSO GmbH, have been obligated to construct and operate lines connecting offshore wind farms ("**OWFs**") to their onshore transmission grid. However, as a result of the extensive promotion of offshore wind energy and the so-called energy turnaround ("***Energiewende***") in Germany, the previous statutory framework proved to be insufficient for further investments in particular in the offshore grid.

The new liability regime aims to strike the right balance . . ., but . . .will now be fleshed out . . . by the German Federal Network Agency.

Rather, the already rapidly growing German offshore grid (with currently 8 HVDC and 3 HVAC connections planned or already in operation providing for some 6.2 GW of offshore transmission capacity in the North Sea) required higher planning security for both OWF developers/operators and responsible TSOs. The German legislature heard the call and enacted, after a fast-track legislative process, the Third Energy Industry Amendment Act. The Act entered into force on December 28, 2012 and provides, *inter alia*, for a new offshore liability regime for delays in completion or interruptions of operation of such offshore grid connections.

Accordingly, the responsible TSO is obligated to compensate – irrespective of its fault – OWF developers/operators for 90% of their lost feed-in remuneration (up to 190 EUR/MWh) as of the eleventh day of a delay in completion or (consecutive days') interruption of operations to cover any and all pecuniary losses sustained.

Except for cases of willful misconduct (when the compensation payment would equal 100 % of the lost feed-in remuneration as of day one of such delay or interruption), the responsible TSO can pass-on ("roll") such compensation payments to end consumers through an offshore liability levy (***Umlage***). However, aiming to ease the tension between the affordability of electricity and the need to expand the offshore grid, the offshore levy is generally capped at 0.25 cents/kWh. Hence, the responsible TSO will have to pre-finance compensation payments exceeding the rollable amount and roll such payments (including pre-financing costs) into future years.

In addition, the TSO has to retain a "deductible" (***Selbstbehalt***) reflecting the TSO's degree of negligence when causing such a delay or interruption. For simple negligence, the deductible is capped at €17.5 million per offshore connection line; for gross negligence, a sliding scale applies with a deductible of up to €110 million for compensation payments totaling €1 billion in a given year. This cap of €110 million also applies as an overall (annual) cap for all offshore connection lines within the control area of the respective coastal TSO.

The new liability regime aims to strike the right balance between OWF developers/operators and the responsible TSOs, but as always, the devil lies in the details, which will now be fleshed out (to a considerable extent) by the German Federal Network Agency. The regulator has already initiated a public consultation to provide for a guidance paper (*Leitfaden*) on how to implement the new liability regime in practice.

Overall, the new statutory framework should provide a sound basis for making the Energy Turnaround a success story. However, it is now up to all of the involved stakeholders to find a balance in creating a workable solution.

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Renewable energy in Spain: the tragic story of success turned to failure

by *Juan I. González Ruiz*

At one time Spain was considered to be at the forefront of European renewable energy development. Spain was proud of the number of MWs of installed capacity of wind farms, solar photovoltaic (PV) plants, mini-hydro power plants and the like. Further, Spain was always near the top of the international league tables. Prior to 2009, Spanish lawyers were busily putting together investments in new capacity, advising project finance lenders, suppliers, contractors, sellers and buyers about permits and projects. However, in 2009 things began to take a dramatic turn for the worse; what was once a success story, became a tragedy. Regulations from different governments, both socialist and conservative, have led to a total cessation in the development of new projects. This has put existing projects in dire financial straits and lead to a myriad of litigation against the government and the Kingdom of Spain. Further regulations introduced from the end of 2012 until February 2013 added to the misery of renewable energy operators in Spain. The operators of concentrated solar power (CSP) facilities have been particularly affected. These operators genuinely believed that they gave up certain rights in 2010 to help the Spanish government plan for the commissioning of new capacity in exchange for promises of regulatory stability.

At one time Spain was considered to be at the forefront of European renewable energy development. . . . However, in 2009 things began to take a dramatic turn for the worse; what was once a success story, became a tragedy.

The root of the problem has been the so-called "electricity tariff deficit". In the early 2000s, the Spanish utilities and government reached a compromise designed to bring stability and price controls to regulated electricity supplies. The regulated portion of the electricity bills, namely, the regulated price components (originally, the regulated supply prices and then following the full supply liberalization, the regulated tolls and charges for the use of the grid), was supposed to pay for all regulated costs. These regulated costs included a regulated remuneration of investments in transmission and distribution networks, the running costs of certain bodies (such as the energy regulator and the technical system operator), price subsidies to electricity consumers in the islands, and the cost of the development and use of renewable energy facilities.

At least since 1997 (notwithstanding precedents actually dating back to the early 1980s) all renewable energy facilities and energy efficient facilities (such as CHP), subject to a maximum installed capacity per facility of 50 MW, have been classified under the so-called "Special Regime." The Special Regime was based on two major advantages: (a) all the electricity generated by the facilities has dispatch priority; and (b) electricity supplied to the grid by Special Regime facilities were remunerated by distributors, who were obliged to purchase the electricity, through a complex settlement scheme, at regulated prices or "feed-in tariffs". Feed-in tariffs were determined by the government based on a number of different factors, such as technological evolution, environmental costs avoided, security of supply and so forth. However, the predominant feature of these tariffs has always been to ensure a fair remuneration on the developers' investments by reference to the cost of capital in the markets. No express or implicit guarantee was originally set out in the regulations, stating that the tariffs would be maintained, unaltered, or that the feed-in tariffs would continue to increase. Nevertheless, developers and

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operators relied on the legal mandate contained in the 1997 Electricity Sector Law with the belief that the feed-in tariffs must procure a reasonable return on the investments carried out in renewable energy facilities.

Gradually, regulated costs increased over the regulated income in the Spanish electricity system. The government established that any deficit arising from the divergence between regulated costs and regulated income would be financed by the five largest integrated utilities. These, in turn, would then have a credit against the Spanish electricity system for the recovery of the amount paid to offset the tariff deficit. The subsequent years' regulated tariffs would include amounts designed to pay off the amounts previously financed by the utilities. However, the system was quickly jeopardized once the Spanish government realized that it was easy to manipulate regulated tariffs to maintain them at an artificially low rate, given that the utilities would bear the costs and ultimately finance the deficit.

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One of the last regulatory changes introduced by the conservative government before it left office in March 2004 was to approve a fundamental change in the regulation of the Special Regime. The conservative government approved new feed-in tariffs with a major additional change: developers would now receive express recognition of their entitlement to a certain tariff over a period of time that would be linked to the useful life of their projects. For example, the government recognized a certain set of tariffs for solar PV projects for the first 25 years of commercial operation and slightly lower tariffs thereafter. However, every four years the tariffs would be revised, but would only apply to new projects. This agreement was expressly intended to protect developers from any subsequent [unfavorable] changes to the tariffs. The new socialist government followed suit and, in new regulations in 2007 (RD 661), elaborated on the same principles set out in March 2004. The tariffs would escalate every year pursuant to the general inflation index minus 50 and then 25 basis points, with a general review of the tariffs taking place every four years for new projects.

In hindsight, both governments made the mistake of not putting a cap on the total capacity that could be developed and put into commercial operation. There were no gatekeepers put in place. Once certain capacity milestones had been achieved for each renewable energy technology, new feed-in tariffs (presumably, lower) would be implemented, but existing projects would not be affected.

Generous feed-in tariffs combined with essentially no caps led to incredible development in renewable energy projects in Spain. This was especially true in solar PV projects and, to a lesser degree, CSP projects. In September 2007, after 85% of the solar PV capacity targeted had been achieved, it was announced that feed-in tariffs for solar PV projects would be adjusted by 28 September 2008. This led to a frenzied rush of solar PV projects desperately competing to enter into commercial operation by the adjustment date. Fuelled by cheap credit and the promises made by the Spanish government in official regulations, no one paid much attention to the adjustments' aftermath. At the end of September 2008, however, the Spanish government showed the first signs of realizing its' mistakes.

Going forward, new solar PV capacity would only be developed pursuant to quarterly tenders (subject to capacity caps) at lower prices to be determined by the government. However, this approach was akin to closing the stable door after the horse had already bolted. The solar PV capacity, commissioned by the 28 September 2008 adjustments, far exceeded original expectations. The impact on the regulated costs of the

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new capacity on the tariff deficit was significant. The Spanish government reacted forcefully and quickly issued several successive regulations to deal with the solar PV fiasco. First, it launched a program of inspections to verify whether each new facility had actually been completed by 28 September 2008 deadline. Then, by creating a cap on the number of operating hours the facilities were entitled to the feed-in tariffs, the government limited the impact of the new facilities on the regulated costs. Technically, the tariffs were not actually amended. Since 2010, there has also been a 30% reduction in tariffs payable to solar PV plants. The government carefully passed the changes affecting tariffs through a royal decree-law; a type of regulation available to the government in urgent situations where the completion of the legislative process is not a viable option. Governments need Parliamentary endorsement of such royal-decree-laws within 30 days. As a law, companies or citizens may not challenge royal-decrees in courts of law but, instead, they must file an indirect constitutional challenge with the Constitutional Court. The filing of this type of constitutional challenge by companies or citizens is extremely difficult and a lengthy process because it involves convincing a court of justice, in the context of an ordinary challenge of secondary regulations or actions taken by government officials, to submit a question on whether or not a provision of the law applicable to the case at hand is constitutional. Ordinary courts of justice are permitted to disregard the application of a law if it is held to be contrary to EU legislation.

Litigation against the government's new regulations has been initiated by several international investors against the Kingdom of Spain upon which the renewable energy industry's hopes now reside.

Litigation against the government's new regulations has been initiated by local investors, but it is in international arbitration proceedings filed by several international investors against the Kingdom of Spain upon which the renewable energy industry's hopes now reside. Several arbitration proceedings have begun pursuant to the Energy Charter Treaty. These claims are based on a breach of the legitimate investors' confidence and/or indirect expropriation. For the time being, it seems no one has found an EU silver bullet argument against the new regulations on solar PV in Spain. On the contrary, some Spanish Supreme Court's judgments, although not directly analyzing the long term promises not to review the tariffs for existing projects, have supported the Spanish government's actions to tackle the tariff deficit by reducing the remuneration payable to solar PV facilities. In the Spanish Supreme Court's opinions, it seems that a developer investing in the regulated power generation segment of the market should know or should have known that its regulated nature renders the investments more susceptible to changes in regulation. According to the Supreme Court, there is no retrospective application of the rules, as only future cash flows are affected, and no one really knows what the impact on existing projects will be until the end of their useful life.

In 2010, in the wake of the changes to the solar PV industry, the Spanish government went even further and negotiated a compromise with the CSP developers and the wind industry that , in exchange for promising to refrain from incorporating more severe reductions to the respective feed-in tariffs, all parties agreed, inter alia, to putting into place regulated feed-in tariff operating hourly caps and phasing the commissioning of new projects over a number of years. This truce allowed the completion of several sales and purchases and financing of CSP projects.

Despite the above attempts by the Spanish government to reduce the tariff deficit, the financial crisis made the situation even worse as consumption of electricity decreased, in turn reducing the regulated income. Increasing tolls and charges duly augmented regulated costs, but the electricity tariff deficit

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continued to grow. By the end of 2011, the accumulated tariff deficit was said to be roughly EUR 24 billion (EUR 29 billion at the end of 2012).

At the end of 2011, shortly after the new conservative government took office, the Spanish government gave up on new renewable energy developments. The development of new renewable energy projects has basically been suspended until further notice. There is a complete moratorium in effect, and all new projects are frozen, although ongoing projects under construction may continue until completion. Other steps have been taken to generate more regulated income to deal with the tariff deficit, including the direct allocation of funds from the Spanish State budget.

Still, one of the government's recent stellar moves was a bill to create a new tax on power generation and sales. The bill was finally passed and came into force on 1 January 2013. A 7% tax is levied on all gross sales of power by all types of power generators in Spain. There is a subtle difference, however, among power generators: large generators, such as CCGTs and the like, (known as "ordinary generators"), will be able to pass on the tax through the final prices they bid within the Spanish "pool", while Special Regime generators may not. CSP projects suffered yet another blow: any electricity generated using natural gas will not be remunerated at the feed-in tariff prices. CSP projects were undertaken assuming a 12 to 15% permitted natural gas consumption to maintain their heat storage systems in operation. That particular use of natural gas is expressly permitted under the regulations, which make no exception in terms of feed-in tariffs available to CSP projects using natural gas.

The most recent blow was a set of changes passed on 1 February 2013. By and large, every year Special Regime projects (other than PVs) could opt between a fixed feed-in tariff and supplying their electricity to the Spanish "pool" or collecting a regulated premium (subject to a certain cap and a floor). That choice has now been rendered useless as the regulated premium stands at zero (0). Furthermore, any project choosing to sell its output in the "pool" plus a zero (0) premium does not have the option of returning to the fixed feed-in tariff. The most controversial change, however, has been the use of a core inflation index (i.e., the general inflation index without energy prices and processed foodstuffs, at constant taxes) when annually reviewing the feed-in tariffs. The move to a core inflation index will have a significant impact on the base-case of all projects when planned for 10, 15, 20 or even 25 years of commercial operation.

. . . it comes as no surprise that the talk among developers and operators of such projects in Spain turns to litigation and the restructuring of credit facilities.

Again, by using its outright majority in Parliament, the government has implemented the recent changes through regulatory instruments with the force of law rather than secondary regulations. As discussed above, this means that potential legal challenges to these changes are limited. Investors against the new measures are preparing arbitration cases against the new changes. CSP investors, in particular, have felt singled out and unjustly treated by the new regulations in the wake of the 2010 promises.

Given the evolution of the regulatory framework for renewable energy projects in Spain, which has been briefly summarized in the preceding paragraphs, it comes as no surprise that the talk among developers and operators of such projects in Spain turns to litigation and the restructuring of credit facilities. Although it may sound like music to the ears of many lawyers, Spanish lawyers have been greatly disappointed, who were led to believe that good, predictable and solid regulation formed the basis of the Spanish energy regulatory system. For Spanish citizens, it is even more frustrating, as they will ultimately have to bear the cost of their governments' regulatory failures.

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Swedish Wind Power – Against the Head-Wind?

by *Jakob Falkman* and *Rickard Haglund*

The European Union has targeted to raise the share of EU energy consumption from renewable sources to 20% by 2020, the so-called "20-20-20" target. At national level, Sweden's target for the share of renewable energy by 2020 was first set at 49%, and then 50%, in Sweden's National Action Plan. Wind power is seen as an important means of achieving Sweden's renewable energy target. The Parliament has thus established a national planning framework for wind power that corresponds to 30 TWh by 2020, implying growth of wind power plants from 900 (in 2007) to 3,000–5,000 by 2020, depending on size and location.

Legislative measures supportive of renewable energy include introduction of guarantees of origin and Eco labeling of electricity, plus simplified permitting. Sweden introduced a market-based *electricity certificate* scheme in 2003 to encourage renewable energy production. Under this scheme, most producers of electricity from renewable sources receive one electricity certificate for each MWh of electricity produced. Concurrently, electricity *suppliers* (and some electricity users) must purchase certificates corresponding to a portion ("quota") of their electricity sales (or use), creating a demand for certificates. The producers thus receive revenue from selling both electricity and certificates. To create continued demand for certificates, each year the suppliers submit the purchased certificates to the government which annuls them. The supplier's cost for the purchased certificates is then included as a portion of the electricity price that the supplier charges its customers (electricity users), who thus contribute to renewable energy promotion.

2012 statistics show that Sweden accounts for an increasing share of total EU wind power capacity. While eighteen Member States are falling behind their wind power capacity trajectories, Sweden (with +55% on the MW-forecast) takes the lead in surpassing its target. Based on these numbers and the supportive governmental measures, one would believe that Swedish wind power producers have the wind at their back.

However, according to reports of EWEA and the Swedish Energy Agency, the market still identifies barriers that negatively affect the possibilities of reaching the target. One barrier is the lengthy, costly and unpredictable permit process. For example, many investors are reluctant to invest in the planning stage of wind power projects, not knowing if or when a binding permit for the installation and operation of a wind power plant may be granted. Obstacles identified include: (i) the costly and lengthy consultation procedure prior to permit application submission; (ii) the municipality's right of veto and the uncertain reasons for its use of the veto right, and (iii) the unforeseeable range of stakeholders that need to be consulted and who may prolong the procedure by appealing permit decisions.

A worrying number of wind power producers in Sweden have recently filed for bankruptcy.

A worrying number of wind power producers in Sweden have recently filed for bankruptcy, and many others have had a rough time managing their businesses. One important reason is the current low electricity prices, resulting from a surplus of electricity supply. This, in turn, results in a decrease in the price of the electricity certificates, limiting the efficiency of the prime support mechanism.

These conditions render wind power projects less interesting as borrowers for banks and as targets for investors. In this light, one could argue that wind power producers in Sweden are struggling against a head wind. Although many measures have been successful and resulted in an increase in the number of wind power plants, further measures remain needed to ensure the viability of existing plants and to prevent stagnation of wind power development. Investors should however not be too put off by today's less lucrative conditions – which may very well improve in the not too distant future – but could instead look for attractive acquisition opportunities arising in the current business climate.

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The Common Swedish-Norwegian Market for Electricity Certificates

by *Odd-Harald B. Wasenden* and *Kristoffer B. Grimstad*

A common Swedish-Norwegian market for trading of electricity certificates was established January 1, 2012. The market was established as a support scheme in order to increase the share of electricity production from renewable energy sources and an incentive for investing in new power production facilities based on renewable energy sources.

Norway has implemented the directive as a part of the EEA-agreement and a national target has been set at 67.5% by 2020 (up from 56% in 2005).

A joint market for electricity certificates attracts more players in the market, greater turnover volume, more competition and better liquidity compared to a national market. This shall in turn result in better utilization of the natural resources of the countries, especially because the duty to finance half of the support scheme does not affect how the increase of production shall be divided by the countries. Market players in Norway and Sweden have long term experience with supra-national markets from the pan-Nordic electricity market which was established in 1996.

A common Swedish-Norwegian market for trading of electricity certificates was established January 1, 2012.

The electricity certificates market was established by way of a treaty, under which Norway joined the Swedish market for electricity certificates which had been in force since 2003. The Swedish market was amended pursuant to the treaty to facilitate the supra-national dimensions, related to revised targets. Negotiations regarding a common market failed in 2006 when Norwegian officials expressed concerns that a common market would be too expensive for Norwegian consumers and industry. However, the launch of the EU Renewables Directive (*Directive 2009/28/EC*) regarding promotion of the use of energy from renewable sources increased the challenges for Norway to develop a beneficial internal support scheme. Therefore, negotiations were reinitiated in 2007, leading to the two countries making use of the directive's opportunity to establish a joint support scheme. Norwegian implementation of the EU Renewables directive was a prerequisite for the common market to enter into force.

Directive 2009/28/EC – promotion of renewable energy sources

The Renewables Directive introduces a mandatory energy usage target of at least 20 % from renewable sources in the EU in 2020. Based on this, each nation is obliged to adopt national targets for its percentage of share of use of energy from renewable sources in 2020. Norway has implemented the directive as a part of the EEA-agreement and a national target has been set at 67.5% by 2020 (up from 56% in 2005).

One of the main elements to fulfill the goals of the Directive is to increase the share of power production based on renewable energy sources. The directive provides for several alternative support schemes as incentives to increase the renewable power production and accelerate investment in renewable energy technologies. Such support schemes includes investment aid, tax exemptions/ reductions, tax refunds, green certificates programs, and direct price support schemes including feed-in tariffs and premium payments.

Various support schemes have been established in the EU Member States. Feed-in tariffs, in different forms, usually a compensation rate provided to producers for the renewable electricity they produce, are established in several countries such as France, Germany and

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Italy. In other countries, including the United Kingdom and Sweden, market-based schemes have been adopted. Prior to establishment of the joint market for electricity certificates, the Norwegian support schemes were based solely on fiscal incentives.

The common market for electricity certificates

The certificate market is based on a demand for certificates created by law. The electricity certificates are issued to power producers for each megawatt (1 MWh) produced using new renewable energy sources. The law requires the electricity suppliers to purchase electricity certificates from the producers, with a further obligation to deliver such certificates for annulment based on a yearly quota-requirement. This creates the demand for certificates, and in turn, a price formation based on market mechanisms. As a result, the system will generate revenues for the producers in addition to the actual sale of power. Thus, the increased revenues generated by the certificate market will give previously non-profitable projects a greater opportunity to be profitable. In the end it will be the end-users that provide the cash-flow for purchasing certificates by paying electricity bills.

Even though both Norway and Sweden are obliged to finance half of the new production, there is no mandatory regulation regarding where the new production must be realized. A potential consequence therefore is that Norwegian consumers and Norwegian industry, to a large extent, will finance new renewable production in Sweden.

The goal of establishing the common market is to create 26.4 terawatts (TWh) of new power production from renewable energy in Norway and Sweden together by 2020, with each country committed to finance 13.2 TWh through the certificate system. The growth of power production will be an important tool for the countries to achieve their national targets regarding the use of energy from renewable sources.

Effects of the market and national variations

The volume and liquidity of a supra-national certificate market was necessary for Norway to join such a support scheme. Nevertheless, it should be noted that there are natural differences between the available renewable energy sources in Norway and Sweden. In Sweden approximately 50% of its power production is from renewable sources; while in Norway, the renewables share is already more than 95%. Thus, it is likely that the effect of the common market will be Sweden increasing its share of renewable production by reducing fossil fuel production, whereas Norway will increase the amount of renewable power generation rather than the *share of* renewable production.

So far, one can already observe an increase in activity in markets for new renewable energy in both Sweden and in Norway. However, from a national perspective, a risk of joining a common market is that the increased liquidity may only (or mostly) benefit one of the countries, i.e. that most of the projects will be developed in Sweden. Even though both Norway and Sweden are obliged to finance half of the new production, there is no mandatory regulation regarding where the new production must be realized. A potential consequence therefore is that Norwegian consumers and Norwegian industry, to a large extent, will finance new renewable production in Sweden.

Despite the establishment of a common market, natural and regulatory differences between Norway and Sweden will remain. This could impact the investment decisions, and in turn, result in situations where the best projects (in terms of use of natural resources) will not always be developed first. Investors will choose to develop projects based on not only the effects of the certificate market, but also the most beneficial concession policy, grid availability, development costs, grid access costs, and price expectations. Thus, there is no direct link between those locations with the best natural resources and the location of newly installed power production.

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Expected new Polish support scheme for renewables
by Krzysztof Cichocki and Hubert Moryson-Kowalski

The Polish Government has been struggling for months to adopt its new renewable energy law – RES Act. Investors and banks are awaiting the RES Act, but the legislative process has been stuck in the Council of Ministers since October 2012. Now, it is expected that the new RES Act will come into force at the beginning of 2014. This new version of the RES Act includes many significant changes to existing RES regulations. Specifically, the amendments include changes to the existing renewable energy support schemes, and a simplification of the administrative process regarding the operation of small RES systems.

An improved certificate system is anticipated to make the development of photovoltaic ("PV") installations more attractive through the government's introduction of a technology-dependent correction co-efficient. For PV technology, it is supposed to be up to 2.85 in the first two years after taking effect. To date, there has been a certificate for a renewable energy installation per kilowatt-hour ("certificate of origin"), regardless of the technology employed.

PV installations above 100 kW will receive green certificates to be sold at a market price of around 95% of the compensation fee, and fixed correction coefficients for a period of 15 years, but no longer than the end of 2035. Additionally, PV-generated electricity can be sold to the grid operator, allowing bigger PV systems to receive remuneration of around €0.22/kWh – significantly up from the €0.11/kWh PV plant operators receive from the current support scheme.

Originally, the Polish Government intended to support PV plants up to 10 MW in size. However, under the new plans, this could be reduced to 2 MW. Given the above, the current draft RES Act presents different payment schemes each designed as incentives for potential investors who would generate electricity from PV plants. These schemes depend on the size of the PV plant, namely 0 – 1 MW, 1 – 2 MW, and exceeding 2 MW – for which no remuneration has been provided.

In addition to the draft RES Act, the Ministry of Economy published the draft secondary legislation implementing the RES Act, the revised Energy Law Act and the Gas Law Act. The secondary legislation provides for the correction coefficients at the following levels (for selected RES):

Year	Onshore wind farms above 0.5 MW	Biomass (CHP) 10 MW to 50 MW/over 50 MW
2013	0.9	1.4/0.95
2014	0.9	1.4/0.95
2015	0.88	1.37/0.93
2016	0.86	1.34/0.91
2017	0.83	1.32/0.89

Year	PV 0.1 MW to 1 MW (rooftop/ other)	PV 1 MW to 2 MW	Agricultural biogas above 1 MW
2013	2.85/2.75	2.45	1.4
2014	2.85/2.75	2.45	1.4
2015	2.70/2.6	2.32	1.37
2016	2.55/2.45	2.2	1.34
2017	2.40/2.32	2.07	1.32

The producer is entitled to a certificate of origin for 15 years from the date of launching a new installation.

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For the renewable energy production launched before the RES Act came into force, the 15-year period is counted from the moment of first production of electricity, for which the certificate of origin was granted. The certificate system will be generally in place for (i) 5 years, but not longer than until 2020 – for coal-biomass co-firing installations, (ii) 15 years, but no longer than until 2027 – for micro (up to 40 kW) and small (up to 100 kW) installations, (iii) 15 years, but no longer than until 2035 – for all other RES. Nevertheless, certificates of origin, which have been issued before the new law will come into force, will stay valid.

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under the new RES Act draft, industrial consumers will have an obligation to purchase certificates, which will increase the number of potential purchasers, as well as final consumers being member of the Polish Power Exchange and Warsaw Stock Exchange.

Furthermore, no changes to the Excise Tax Law have been made, so renewable energy production is still exempted from the excise tax. Additionally, the Construction law will be amended, so that PV installations with more than 40 kW will require a building permit for construction. Additionally, under the new RES Act draft, industrial consumers will have an obligation to purchase certificates, which will increase the number of potential purchasers, as well as final consumers being member of the Polish Power Exchange and Warsaw Stock Exchange.

In addition, the draft RES Act envisages the following limitations to the support scheme:

- If the price of green energy will exceed 105% of the fixed purchase price of electricity generated from renewable energy sources (projected fixed price amounts to 198,9 zł for 1 MW), the generator of electricity from PV plant will not obtain green certificates.
- Correction coefficients for photovoltaic plants may be cut by up to 50% if the total capacity of installed photovoltaic plants in Poland will exceed 800 MW.
- PV plants would have to be installed at least 2 km apart. Such a rule, which also applies in Germany, is to stop investors from dividing their photovoltaic plants into small, individual installations, in order to obtain more support.
- PV plants developed by the same investor must be connected to the grid at least two years apart. With this rule, the Polish Government is looking to prevent an overheating of the large-scale solar farms market.

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