

RES LEGISLATIVE & INVESTMENT ISSUES IN BULGARIA AND COMPARISON WITH THE GERMAN RES LAW

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The development of the technologically advanced world for the last 10 years has posed new responsibilities before the world business, related to protecting and preserving the existing natural resources on our planet. The technological development itself is to be regulated and planned in such a way that it shouldn't cause any damage to or have any harmful impact on the Earth's environment. Energy resources have been the basis and the prerequisite for the technological development in the 20th century and at present. Energy production is closely related to all technologies employed in the industrial field nowadays, as well as to the preservation of environment. Therefore the world economy should operate in such a way that will guarantee minimum source consumption and maximum energy efficiency, as well as simultaneously achieving better economic results. That explains why energy efficiency has become a priority of pivotal significance lately. It is considered as the only way of solving the global environmental problems and constantly increasing energy deficiency. The whole international community has concentrated their efforts on dealing with these issues immediately due to their scale and urgency. A number of steps at international level in the field of legislation have already been taken and a number of laws have already been passed, as well as contracts and agreements have been signed. They regulate the legislation of energy efficiency in the world, as well as at European and national level. Their primary aim is to promote conditions that favour the interests of both business and society, which in this case will coincide, as well as provide opportunities for sustainable investments in new businesses and production, as well as modernization of old plants and factories, meeting at the same time all the requirements for energy efficiency.

Germany is one of the most rapidly developing countries in the field of RES. In 1998 the country liberalized its market. In accordance with the legislation acts passes the same year, anyone can produce and sell electricity, not only monopolist companies. Out of a total number of 8 producers in Germany, only 4 have managed to keep their positions on then market and at present they share that market. These companies are: E.on, RWE, EnBW and Vatterfall. They own 90% of the power stations in the country at the moment. The current trend shows that more and more energy suppliers join forces or merge. Apart from Germany, the Scandinaviqn countries, England, Austria and Spain have also opened 100 % of their markets. By the year 2009, the whole European energy market will completely have been liberalized. Certain steps will be taken for using more RES, which will gradually supplant the existing conventional energy sources, employed nowadays in producing electricity.

Germany has proposed a number of different mechanisms to promote the development of RES:

- The law of RES in the field of the energy market
- In the field of heating –the implementation of a number of stimulating programmes; a law of producing heating energy, using RES is due to be passed very soon.
- In the field of the fuel market- tax concessions for biodiesels in the part concerning mineral oils, as a measure in the overall environmental taxation reform.

The legislation in Germany, concerning the promotion of RES, has gone through the following stages:

- The law of power/electricity supply was already passed on 1990, settling the remuneration for produced kWh. It depends on the average price of electricity, paid by consumers during that particular year. This, however, caused a problem, since the fluctuating prices of electricity altered the remuneration, which respectively caused uncertainty in planning for both owners and users of the facilities/equipment.
- A law of prioritized usage of energy, produced from Res, was passed and amended in 2004(EEG 2000). This law abrogates the law of electricity/power supply and as a result the existing facilities were included in new promoting mechanisms. The new law settles legal and financial issues, related to RES. It also regulates the price of electricity, produced from RES. The fluctuating annual remuneration, settled in the law of power supply, is supplanted by a fixed tariff, which remains unchanged for the whole period of 20 years stipulated in the regulations. The location of the facilities also influences the fixed remuneration/price that is due to be paid. The law introduces rules and regulations concerning the production and usage of RES- e.g. biomass, solar, water and geothermal energy. In accordance with the law the producers of energy from RES are to sell the end product at a price three times as high as the price of the energy, produced from conventional sources.

Key elements of the law are:

- Prioritized implementation of the facilities/equipment for producing energy from RES and methane into the electricity network.
- Prioritized purchasing and selling of electricity, produced from RES
- Guaranteed 20-year fixed tariff of remuneration for producing energy from RES.

According to the German legislation companies, supplying energy/electricity, are obliged to immediately include facilities, producing energy from RES or methane, in their networks, as well as purchase and sell such kind of energy at favourable conditions. The owners/users of already existing facilities shall cover the expenses for connecting such facilities/equipment to the network. A number of practical problems occur at this point, mainly related to the application of the law. The power supply companies must check which is the most appropriate place/spot for connecting the facilities to the network and if that is possible at all. Depending on which network the facility will be connected to and how remote the connection spot is, the expenses, covered by the owners/users very often may reach the amount of 80 000 Euro. That is the main reason for many owners/users to ask whether this is the most appropriate spot. The accurate specification of the spot is of paramount importance because:

- It may lead to disagreement and arguments in view of covering the expenses for connecting the facilities. For example, the expenses prior to connecting (e.g. installing a transformer) should be covered by owners/users. But if it is necessary to supplant the existing kiosk switch-gear with a bigger one or to add cable to the existing network of cables, the expenses should be covered by the power supply companies since it is their obligation to maintain the network.
- The connection point specifies the exact location of measurement-the main rule is that at this point of connection to the network of the power supply company a counter shall be installed and it shall count the units of electricity produced by the facility and supplied to the network. Very often these counters are installed in the facility/ respectively on the equipment itself, even before it is connected to the network. That, of course, is reflected in the fixed price due to be paid.

The German law of RES guarantees that the facility/equipment, producing energy from RES shall have access to the network, as well as specifies long-term prices. For each kWh supplied to the network the facility receives a precisely calculated amount of money. Apart from that, the law contains an edict, in accordance with which it is not obligatory to conclude a contract, when a claim is lodged after breaching an agreement or failing to fulfill duties related to connecting the facility to the network, accepting the energy,

produced from RES, and paying the remuneration. Of course, that does not exclude the possibility for concluding a contract, which will aim at clarifying the relations between the parties involved.

A table of remuneration tariffs for newly-built facilities/equipment which have been in exploitation since 2004.

Branch	Capacity of the facility	Remuneration/kWh	Differentiation of power	Digression*	Remarks
Water energy	Up to 5 MW	9,67 6,65	to 500 kW from 500 kW to 5 MW	-	In 2008 limitations will be implemented, related to the location
	From 5 MW to 150 MW	7,67 6,65 6,10 4,56 3,70	To 500 kW From 500 kW to 10 MW From 10 MW to 20 MW from 20 MW to 50 MW from 50 MW to 150 MW	1%	Only in cases of restoration and remuneration is due to be paid only if increase in capacity is achieved.
Gases from incinerated wastes in purifying installations, methane	No limitations	7,67 6,65 6,65	To 500 kW From 500 kW to 5 MW Methane to 5 MW	1,5%	As with gases produced after incinerating wastes in purifying installations, the price of electricity above 5 MW is defined by market prices.
	No limitations	9,67 8,65 8,65	To 500 kW from 500 kW to 5 MW Methane or 5 MW	1,5%	In cases of implementation of innovative technologies
Biomass**	To 20 MW	11,50 9,90 8,90 8,40	To 150 kW From 150 kW to 500 kW From 500 kW to 5 MW From 5 MW to 20 MW	1,5%	
	To 20 MW	3,90	To 20 MW	1,5%	In cases of using wood from categories A III and AIV when launched on 01.07.06.
	To 20 MW	17,50 15,90 12,90	To 150 kW From 150 kW to 500 kW from 500 kW to 5 MW	1,5%	Paragraph 2 is in force only for certain types of raw material (renewable and regenerative raw material)
	To 20 MW	17,50 15,90 11,40	to 150 kW from 150 kW to 500 kW from 500 kW to 5 MW	1,5%	Sentence 2 in Para 2 is in force in cases of burning wood in as it is stated in sentence 1
	To 20 MW	13,50 11,90 10,90 10,40	to 150 kW from 150 kW to 500 kW from 500 kW to 5 MW from 5 MW to 20 MW	1,5%	Para 3 is in force for electricity produced by co-generative facilities
	To 20 MW	13,50 11,90	from 150 kW from 150 kW to 500	1,5%	Para 4 is in force for the total amount of

		10,90	kW from 500 kW to 5 MW		electricity produced by co-generative facilities and while using certain innovative technologies
Geothermal energy	No limitations	15,00 14,00 8,95 7,16	to 5 MW from 5 MW to 10 MW from 10 MW to 20 MW from 20 MW	1% in 2010	
Wind energy on land		8,7 respectivel y. 5,5		2%	Depending on the capacity of energy production the amount of remuneration is guaranteed from 5 to 20 years
Wind energy at sea		9,10 respectivel y 6,19		2% in 2008	The increased amount of remuneration is paid in cases of launching the facility before 2011, and the guarantee of receiving the fixed suns depends on the location and is due to be paid for a period of 12 to 20 years.
Solar and ray energy	Equipment fit on buildings or sound-proof walls.	57,4 54,6 54,0	To 30 kW From 30 kW to 100 kW From 100 kW	5%	
	Façade equipment	62,4 59,6 59,0	To 30 kW From 30 kW to 100 kW From 100 kW	5%	
	Other facilities/equipment	45,7		5% in 2005 605% in 2006	Certain requirements must be met , regarding location

*The remuneration for kWh is fixed, it encompasses a period of 20 years and is in force for facilities that are in use. It depends on the calendar year of launching. The later the facility has started operating, the smaller is the amount of remuneration. Thus, companies strive at constantly increasing energy efficiency and lowering prices at the same time.

**As for biomass, other combinations are also possible as you can see in the table below

Electricity, produced from	Duration of receiving remuneration/years	Decreasing the value of remuneration per year %	Remuneration for 2006 New facilities in use Cent/kWh	Remuneration for 2020 New facilities in use Cent/kWh
Gases from dunk - hills 6 MW	20	1,5	6,43	4,15
Biomass	20	1,5	15,27	10,03
Wind, in cases when the facility is built on land - Beginning of receiving remuneration - End of receiving	20	2,0	8,36	5,02

remuneration			5,28	3,17
The sun (roof up to 30 kW)	20	5,0	51,80	20,14
Water (up to 5 MW)	30	none	6,65-9,67	5,30-7,71

As a result of all the legislative measures and mechanisms in the field of RES in Germany, the volume of electricity, produced from RES from 2002 to 2004 has increased from 13,6 tWh to 34,9 tWh. In the meantime the amount of energy, produced from wind and biomass has increased twice, and the photo voltage energy for the period mentioned above has increased 9 times. Only for the year 2004, as a result of using RES, the emission of carbon dioxide has been reduced by 70 million tons, of which 33 tons directly result from the law of RES. The law guarantees high safety of investment and as a result the interests and the risks in such investment are much lower compared to the investment in other facilities and equipment.

In Bulgaria, all the processes related to introducing new technologies, related to the use of RES have just begun. A number of international acts, settling relationships of this kind, have already been implemented in the Bulgarian legislation, for example: The EU Frame convention of climate changes, ratified by Bulgaria with the law of 16.03. 95(State Gazette, issue 28, year 95) and in force since 10.08. 95. Bulgaria is also one of the parties in the Kyoto Protocol ratified with the law of 17.07.2002, which has been in force on the territory of the country since 16.02. 2005. Bulgarian legislation favours ratifying international acts first to passing internal legislative acts. As a result of that priority of international legislative measures and in conformity with the UN Frame Convention of Climate Changes and the Kyoto Protocol the Bulgarian internal legislation is being changed at the moment to meet the requirements of these international acts. This process has been accelerated by the ongoing intensive negotiations in 2005 and 2006 concerning the Bulgarian membership in the EU and by the requirements imposed by the European Commission. As a result of all the facts, mentioned above, we can state that so far Bulgaria has completely adopted and implemented in its legislation all the rules and regulations that settle issues, such as investment, building, modernizing and functioning of new, cutting-edge facilities, as well as all the ecological and environmental requirements for energy production and energy consumption. The main law that defines the opportunities for investing in energy efficiency is the Law of Energy Efficiency (published in State Newspaper, issue 18, from 05.03.2004). The law defines also the term “energy efficient service” as: “ Energy efficient services, , related to doing research in the field, evaluating and assessing energy efficiency, planning, constructing, installing, maintaining and/or managing and monitoring, including services for energy saving.” (ESKO services)- Article 30 3EE, realized for the benefit of the energy consumer. The investors in energy efficient facilities are provided with certain opportunities and guarantees for reimbursement. The contractors’ remuneration can be paid off from the savings realized from energy supply to the consumer for a specifically negotiated period of time. Such clearly defined state policy aims at attracting investors in the field of energy efficiency and saving. Article 21, Paragraph 4 3EE regulates a concrete mechanism for regaining the capital invested. A special fund called “ Energy Efficiency Fund” has been established, without being part of the consolidated state budget. At preset investing in the field of energy efficiency is very attractive and lucrative business for the following reasons:

- Up to 1990 Bulgaria had no difficulty getting the necessary energy bearers due to its strategic political and economic connections with the former USSR. Respectively its economy didn’t meet any of the requirements for energy efficiency of the countries with free-market economy. This lack of technological advance in the field of energy efficiency has not been recompensed yet, which opens a wide niche on the market for investment in the technological development of the field.
- After joining NATO and the EU, Bulgaria can provide the political guarantees needed, namely that any government of the country will be highly motivated to take interest in developing energy efficiency programmes and policy. This will also guarantee Bulgaria’s energy independence from Russia, which the country has inherited from the Communist era.
- The favorable investment climate and the low cost expenses of investment in Bulgaria will provide excellent opportunities for rapid realization of projects, as well as fast profits from the investments made.

A new draft law has been put foreword in the Parliament, which aims at encouraging the usage of RES and alternative energy source (AES) and biofuels(e.g. biodiesel). It’s only a matter of time to pass and enforce

the law. Once passed, it will meet all the requirements, stipulated in Directive 2003/30/EU, settling the usage of biofuels or other RES in transport in compliance with the Contract of Bulgarian Integration to the EU.

Technological adaptation, part “ A. General (ADD13-Pre-joining adaptation). The law guarantees purchasing energy, produced from RES at favourable prices.

The legislative regulation of all these issues lowers the risks for investors in the field of energy and energy efficiency. Thus banks will be guaranteed for their credits by the authorities, which will lead to their offering more favourable financial conditions for investing in that field. That, on the other hand, will lower the risks for businessmen who are involved in realizing investment projects, related to energy efficiency. As a whole the general legislative regulations, concerning such investments, is very liberal. The regulations implemented are much more favourable, compared to international contracts, concerning investments done by foreigners: Law of stimulating investment-Article 3, Paragraph 1 “ In the cases when international contracts in which Bulgaria is one of the parties offer more favourable conditions for business activities involving foreigners, the more favorable conditions, stipulated in the foreign legislation shall be applied.” The same principle is in force when taxation of revenue is regarded and when the source of profit is in the country-.It is settled by the Law of corporate income taxation.”(Article 17, Paragraph 1): “If an agreement, concerning the avoidance of double income taxation, or another international contract, which is in force and ratified by Bulgaria, published in State Newspaper, contains edicts different from those in the law mentioned, the edicts of he respective international law or contract shall be applied.

There is a possibility the whole amount of realized profit from the project to remain with the investor, without being put a tax on. According to the Bulgarian legislation an incredibly favourable and auspicious field of investment is the field of managing energy producing powers. At present the investment in software and computer systems allows depreciation of fifty percent per year – article 22, paragraph 2, point 4 and article 3 of the law of corporate income taxation. In the meantime the investment in this field leads to fast profit, because the energy system of the country was built mainly in the period before 1990. The management system is from the same period and the same technological level. At present there are ongoing procedures for privatizing water power stations with different power capacity, which are considered RES in the Directive 2001/77/EC. Investing only in the improvement of their management – both on managerial and technological level – will lead to increasing their efficiency capacity. The guaranteed purchase of the energy produced will provide making profit from the investment. The geographical position of the country, the climate characteristics and the landscape features provide a number of opportunities for new investments in the field RES and AS.

Bulgaria has joined the Kyoto protocol from 15.08.2002 of the UN Frame Convention of Climate Changes from 12.05.1995. It envisages trade amongst the joining parties with “units of decreased harmful emissions”, realized through investment projects in field of energy efficiency. As a result it is possible to sell the so called “carbon credits” on the market, where respective results will be achieved through considerably larger amounts of investment. There for investing in this field is sustainable in view of marketing policies.

In conclusion we would like to draw your attention to the fact that such endeavours are related to considerable legislative and administrative work as well as certain technical requirement for the equipment involved.