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GUIDANCE NOTES

EFET INDIVIDUAL POWER PURCHASE AGREEMENT FOR CORPORATES AND UTILITIES

BULGARIAN MARKET

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STATUS: 31 May 2022

These Guidance Notes have been prepared in relation with the Individual Power Purchase Agreement for Corporates and Utilities ("**CPPA**"), issued by EFET on 26 June 2019 and with latest update as of 4 November 2021. The Bulgarian Guidance Notes are designed to inform the CPPA users where:

(i) CPPA is governed by Bulgarian law; and/or

(ii) The Facility (electricity generation plant of the Seller) and/or the electricity consumption unit of the Buyer are located in Bulgaria and connected to the Bulgarian power system; and/or

(iii) Specific Bulgarian market practices affect the use of the standard CPPA in Bulgaria whilst the CPPA may be governed by different laws.

Comments are provided in the table below. Issues raised in the comments may be addressed in an *ad hoc* appendix or in the Election Sheet (in the Section specified as per the table). This analysis does not include review of tax provisions under the Bulgarian tax law perspective.

In addition, these Guidance Notes are prepared on the basis of the understanding that the Parties to a CPPA are both acting in their capacity as energy wholesale market participants, respectively as industrial or commercial end customers of electricity, and that the power supply under the CPPA does not qualify as supply of household customers.

Reference	Comment
General notes	
1. The Seller	Pursuant to the general rule of Art. 100, Par. 4 of the Bulgarian Energy Act ("**EA**"), all electricity generators, including RES-generators, with a total installed capacity of 500 kW and above, are obliged to sell their output on the organized electricity exchange, i.e., on the Independent Bulgarian Energy Exchange ("**IBEX**"). This group of RES-generators in principle does not prove eligible to become a party to the CPPA, even by means of using the spot market long term platform (1 year max., could be facilitated for longer contractual periods by means of separate agreements), since IBEX requires for its participants to use IBEX's own contract templates only. Pursuant to Art. 100, Par. 5 of the EA, the RES-generators (regardless of their capacity) put into operation after 1st January 2019 are exempted from the aforementioned general rule. Thus, these RES generators are eligible to trade over-the-counter and to step into the CPPA on the Seller's side. It deserves also mentioning that existing RES generators commissioned before 1 January 2019 and with installed capacity equal or above 500 kW use financial PPAs (like the ISDA Master Agreement) for delivery period of 1 year. This is possible because the obligation all RES-generation to be sold on IBEX can be fulfilled either by the RES generator himself or by his balancing group coordinator (Balancing Responsible Party) (Art. 100, Par. 6 of the EA). Hence balancing group coordinators offer all of the RES generation on IBEX as required by the law, but have financial PPAs with the RES generators (or with third parties) to fix price and delivery period. These financial PPAs actually work like a contract for difference. Under Bulgarian law (Art. 39, Par. 4, item 1 of the EA), electricity generators shall have a license for electricity generation issued by the Bulgarian energy regulatory authority (the Energy and Water Regulatory Commission ("**EWRC**")), unless the total installed capacity of the power plant is up to 5 MW.
2. The Buyer	On the Buyer's side can be a market participant entitled to purchase electricity at freely negotiated prices outside IBEX – e.g., electricity traders or end customers. Electricity traders shall have a license for the respective activity issued by the EWRC (in practice electricity traders often also hold the balancing group coordinator license – see below Section 6 as listed below on Balancing Responsible Party). The transmission system operator ("**TSO**")[1] and the distribution system operators ("**DSO**") are obliged to buy the electricity they need to cover their grid-losses at IBEX only (Art. 100, Par. 4 of the EA), i.e., they are not eligible to become a party to the CPPA.
3. Prerequisites for fulfilment of the CPPA	Electricity generators, including RES-generators, are obliged to conclude grid-access contracts with the TSO, or the respective DSO. Grid-access contracts provide for the rights and obligations of the parties in connection with the dispatch and provision of ancillary network services (Art. 84, Par. 2 of the EA, Art. 30 of the Energy from Renewable Sources Act ("**ERSA**")). These contracts are a prerequisite for fulfillment of the power purchase agreements (Art. 84, Par. 3 of the EA). In accordance with the applicable law and the network operators' practice, the contract for sale and purchase of generated electricity and a contract for balancing with a balancing group coordinator are entered into subject to a written confirmation (certificate) by the respective network operator, declaring the readiness of the RES-facilities to be connected to the network, upon payment of connection fee and before the issue of an order for putting the facilities under voltage by the network operator.

[1] The Bulgarian TSO is Electricity System Operator EAD (ESO).

Reference	Comment
	Where an end-customer is a Buyer, the end-customer needs to conclude access and transmission contracts with the TSO, or the respective DSO, (depending on to which grid its site is connected).
4. Delivery of electricity	According to Bulgarian law, the Buyer shall accept physical delivery from the Seller for all quantities of electricity produced and delivered by the generation facility, but only in accordance with the agreed and registered day-ahead and/or intraday schedules, rather than the metered output.
5. Quantities	When Parties aim at trading the maximum generation amount, it is common practice on the Bulgarian power market to include relevant requirements for the achievement of minimum operational performance levels, that can be established in the CPPA on monthly and/or yearly basis for the respective facility.
6. Balancing Responsible Party	Under Bulgarian law the imbalance risk (i.e., deviations between the net contracted position as registered with the TSO and the net measured amount) shall remain solely with the respective market participant, unless the responsibility has been delegated by the latter to a balancing group (circle) coordinator (Art. 57, Par. 1, items 1 and 2 of the Electricity Trading Rules (adopted by the EWRC and promulgated in State Gazette, as amended)). It is common practice for the Bulgarian electricity market generators and end-customers to enter into agreements with balancing group coordinators to operate their imbalances. Electricity traders act as balancing group coordinators and it is common for end-customers to appoint the electricity trader to perform the role of balancing responsible party. RES-generators have the same option: i.e. they can transfer the balancing responsibility to an electricity trader (where it has also the capacity of a balancing group coordinator) which buys out their output. On its turn, the balancing group coordinator also supplies electricity to the RES-generator to cover the consumption needs of the power plant. The power plant as an energy consumer is responsible to cover its monthly energy need. Usually this is done through a supply contract with electricity trader, which falls under the same regulations as for end customers. In consequence, the generator pays for its consumption the price for electricity, network fees, excise duty and obligation to society fee (see Section 7 below for more details), as well as VAT. Following the last amendments to the Electricity Trading Rules (of December 2021), there is no more possibility for the coordinators of standard and combined balancing groups to transfer their balancing responsibility to other balancing group coordinators (i.e., aggregation of more balancing groups and joint financial settlement of imbalances between them is currently impossible under Bulgarian law). Where Parties to the CPPA are a RES-generator and an electricity trader which is neither a balancing group coordinator, nor an end-customer, it would be recommendable for the Parties to specify the balancing group coordinator(s) which carry their imbalance risks.
7. Levies, charges, electricity tax	Electricity generators are subject to the general tax regulations. In addition to this, contributions to the Electricity System Security Fund in the amount of 5 percent from the revenues from the electricity sold (excluding VAT) are due monthly by the electricity generators, including from RES. RES-generators and green hydrogen generators, put into operation after 1 January 2021, do **not** owe any contribution to the Fund. Electricity generators pay a fee for reactive power for the reactive power discharged to the network.

Reference	Comment
	If the RES-plant is a license holder, it is obliged to pay annual license fee to the EWRC amounting to EUR 1023 (fixed component) and 0.055% of the company's annual income from electricity generation (variable component). Excise duty tax applicable for RES, incl. RES below 5 MW, when selling electricity to end clients (industrial (commercial) and household). Electricity generators (incl. from RES) shall also pay a grid access fee to the TSO, as determined by the EWRC. End-customers shall pay the 'obligation to the society fee', as determined by the EWRC. This fee is aimed to reimburse the costs arising for the energy companies from their obligations to society – such as purchase of electricity generated by using local primary energy sources, purchase of electricity for a preferential price (like RES), obligations related to security of supply, environmental protection, and energy efficiency (Art. 30, Par. 1, item 17 and Art. 34 and Art. 35 of the EA). However, end-customers and traders purchasing electricity under bilateral contracts concluded with RES generators put into operation after 1 November 2019 shall **not** pay the obligation to the society fee for the quantities of electricity purchased. The generator transfers to the end-customers or traders the Guarantees of Origin under Art. 34 of the ERSA for the produced electricity (Art. 35a, Par. 3 of the EA). In consequence the electricity produced by RES-generators put into operation after 1 November 2019 is exempt from the obligation to the society fee.
8. Certificates	The legal status of Guarantees of Origin under Bulgarian law (incl. regarding transfer) needs to be taken into account. Since the Bulgarian certificate issuing body, namely the Sustainable Energy Development Agency ("**SEDA**"), has not gained full membership in the Association of Issuing Bodies ("**AIB**") yet, in the context of a CPPA, all RES Guarantees of Origin issued by SEDA need to be reviewed in the context of National Certificate Scheme as set out in the CPPA. Following the ERSA (Art. 33-35), a "Guarantee of Origin" is an electronic document which serves as evidence before an end-user (purchaser for own use) that a certain share or quantity of the energy supplied is produced from RES. Guarantees of Origin shall be issued to producers for produced standard amount of energy of 1 MWh, which shall be valid for a period of 12 months from the production of the respective unit. The use of the guarantees is limited to prove to an end-customer that a certain share of electricity in the overall energy mix of its electricity supplier has been generated from RES, or that a certain quantity of electricity has been generated from RES, in case of the guarantees being transferred independently from the generated electricity (following the amendments to the ERSA of 2018, Guarantees of Origin (incl. of EU origin) can be transferred regardless of the electricity for which they were issued, although only once to an end-customer – Art. 34, Par. 7 of the ERSA). The amount of RES-energy corresponding to Guarantees of Origin transferred to a third party by the electricity supplier shall be subtracted from the share of RES-energy its energy mix. The power of the SEDA under Art. 20 of Ordinance РД-16-1117/14.10.2011 on terms and conditions for issuance, transfer, abolishment, and recognition of guarantees of origin for RES energy to deny the validity of European Energy Certificate System ("**EECS**"). Non-compliant Certificates need to be accounted for and respectively reflected in Section C of the CPPA Individual Terms (Amendments to Part II (General Provisions)). Bulgarian Guarantees of Origin, issued by the SEDA, are not eligible for transfer by a Cancellation Statement (as opposed to EECS Certificates), but only by the explicit SEDA registry transfer procedure. Apart, in case of imported EECS Certificates under Art. 3.3(b) of the CPPA Individual Terms into the Bulgarian market, the above pointed power of the SEDA to deny validity requires the setting up in the CPPA of a definite Seller's liability in terms of said validity of certificates under Bulgarian law. Same applies for the opposite case (i.e., export of

Reference	Comment
	issued by the SEDA Guarantees of Origin, since, as mentioned, the SEDA is not a member of the AIB yet). With regard to the option under § 12.3 of the CPPA General Terms for the Buyer to accept Certificates without the corresponding electricity, it should be accounted for that following the above cited national regulations a Certificate shall be eligible for transfer independently from the electricity only once and to end customers only. This should be also potentially reflected in Section C of the CPPA Individual Terms. It is also to be noted that the interpretation of the above cited Art. 35a, Par. 3 of the EA regarding the supply of wholesalers and end customers by RES power plants, commissioned after 1 November 2019, forcing the generators to transfer the Guarantees of Origin but without containing any rules regarding the price of such transfers, could potentially lead to a situation in which the transfer price of all corresponding Guarantees of Origin is valued as zero (i.e., the Guarantees of Origin are transferred, but there is no explicit agreement regarding the price), which should also be taken into account in the Individual Terms of the CPPA.
Comments in relation to specific provisions of the CPPA	
Part I (Individual Terms)	
Section A, § 2.1. Contract Quantity	On the Bulgarian market physical deliveries correspond only to scheduled quantities registered with the Market Operator (i.e., the Bulgarian TSO) on the day-ahead and/or intraday market segments. Parties selecting physical delivery for 2.1(a) and 2.1(b) of the CPPA Individual Terms should respectively modify the definition of "Metered Output" and/or include relevant clarification in Section C to make clear that delivery shall address only volumes nominated on the respective market segments via approved by the Market Operator schedules. Financial mechanisms to settle any differences (i.e., when actual production exceeds scheduled quantities and vice versa) shall be defined, if payment for each generated unit of electricity is still aimed by the Parties.
Part II (General Provisions)	
§ 5 Forecasting and Outages	It is common practice in the Bulgarian power market for the provision of forecasts and Planned Outage Schedules to coincide in terms of format and content intended and indeed already presented by the relevant generator to the TSO/DSO with respect to its obligations under the Electricity System Operational Rules (adopted by the EWRC and promulgated in State Gazette, as amended).
§ 6 Metering	When metering takes place on Bulgarian territory, the applicable law assigns the obligations thereof to the respective grid operator (TSO/DSO) only (holding also titleship of the Metering Devices), rather than to the Parties to the CPPA (the exception applies only when the generator supplies a customer via direct power line). Thus, it is common practice when contracting power purchase for the Parties to: • refrain from taking any responsibilities with respect to metering accuracy, reliability, etc.; • when a Party requires a Metering Device testing it should do so solely at its own expenses, notwithstanding the granting of all relevantly required assistance from the other Party; • meter adjustments are assigned to be ruled by the grid operator, following strict and detailed procedures, as prescribed by the Electricity Metering Rules (adopted by the EWRC and promulgated in State Gazette, as amended).
§ 15 Non-Performance Due to Force Majeure	The Force Majeure provision is generally valid and enforceable under Bulgarian law. Although Bulgarian law (Art. 306 of the Commerce Act) provides legal regulation of the Force Majeure, we believe that the parties to a contract are basically free to determine

Reference	Comment
	in the contract the concrete events which will be regarded as Force Majeure, and, respectively, such events that should not be considered force majeure in their relations. Art. 306 of the Commerce Act in its entirety (emphasis added) provides as follows: *Art. 306. (1) A debtor in a commercial transaction shall not be liable for failure to perform due to force majeure. Where the debtor was already in default, he may not invoke force majeure.* *(2) A force majeure shall be an unforeseen or unavoidable event of an extraordinary nature which has occurred after the conclusion of the contract.* *(3) The party who cannot perform due to force majeure shall notify the other party in writing within a reasonable time about the nature of the force majeure, and its potential consequences for the contract. In case of failure to notify, compensation shall be due for the damages resulting from such failure.* *(4) The performance of obligations and the related counter-obligations shall be suspended for the duration of the force majeure.* *(5) Should the duration of the force majeure be such that the creditor loses his interest in the performance, he shall be entitled to terminate the contract. The debtor shall also have the same right.* In this regard, the termination following Long Term Force Majeure (§18.5(d)) should be mentioned. It provides for a defined 12-month long period to allow termination of the CPPA. Bulgarian market practices usually envisage shorter termination period of duration of the Force Majeure. Parties to the CPPA are free to agree whether to keep this period as per the template of the CPPA, or to adjust/reduce it, taking into account the particular project, the term of the CPPA and other relevant factors. Furthermore, although economic/financial hardship is directly excluded from the Force Majeure events (§15.1(g)), it should be noted that under Art. 307 of the Commerce Act economic hardship could nevertheless be used as means to amend or even terminate the contract, however, only if brought to court (or arbitration, as the case may be), provided the relevant jurisdiction acknowledges the occurrence of circumstances, which the Parties have not been able and obliged to foresee at the time of contracting, while the further preservation of the contract contradicts justice and good faith.
§ 18.4 Automatic Termination **§ 18.5(b) Winding-Up / Insolvency / Attachment**	Automatic Termination upon the occurrence of a Material Reason described in §18.5(b) should be permissible and enforceable under Bulgarian law. Please refer also to the statements made in relation to the application of Automatic Termination in the Bulgarian Legal Opinion on the EFET General Agreement Concerning Delivery and Acceptance of Electricity. This Legal Opinion can be procured via secretariat@efet.org.
§ 18.5 Definition of Material Reason	The Material Reasons (other than due to insolvency, for them (i.e., the Material Reasons under §18.5(b)) please refer to the previous comment), as defined in §18.5, and the Early Termination for such Material Reasons (§18.3), do not contradict mandatory legal provisions and should be considered enforceable under Bulgarian law.
§ 19 Calculation of the Termination Amount	This mechanism of calculation of Gains, Costs and Losses in case of termination of a contractual relationship is not explicitly regulated by Bulgarian law. In the practice, it is known mainly to the energy market participants from the EFET General Agreement Concerning Delivery and Acceptance of Electricity. The Terminating Party has certain discretion to determine the Termination Amount which might lead to objections on the part of the other Party and, in case of insolvency

Reference	Comment
	proceedings, on the part of the insolvency receiver and/or the other creditors, respectively. It cannot be therefore predicted what the courts' position in regard to the Termination Amount calculated by the Terminating Party would be. In any case the Terminating Party must be prepared to prove the exact amount of the damages suffered (i.e., the Termination Amount and all its elements – Costs, Gains and Losses, as defined under §19.2). For more details, please refer to the Bulgarian Legal Opinion on the EFET General Agreement Concerning Delivery and Acceptance of Electricity. This Legal Opinion can be procured via secretariat@efet.org.
§ 21 Limitation of Liability	Under Art. 94 of the of the Obligations and Contracts Act ("**OCA**"), all arrangements which *a priori* rule out or limit the debtor's liability for intentional default or gross negligence shall be null and void. This rule cannot be derogated by an agreement between the Parties and this needs to be accounted for, as gross negligence is not explicitly mentioned in §21.4 of the CPPA (but it is mentioned in §21.1). I.e., to be valid and enforceable under Bulgarian law, §21.4 should be supplemented and gross negligence should be explicitly pointed out therein too (by using Section B of Part I (Individual Terms) of the CPPA). Regarding the consequential damages and the loss of profit (§12.3) the following should be taken into consideration: Under Bulgarian law (Art. 82 of the OCA), the defaulting party's liability is limited only to the direct damages, foreseeable at the time of the obligation's occurrence, except for the cases where the debtor has acted in bad faith (i.e. has acted with gross negligence or with intentional default), in which case all direct damages are to be covered. Therefore, it can be concluded that under Bulgarian law consequential damages are not covered by the duty to indemnify the damages caused. It is also confirmed by Bulgarian legal doctrine and court practice that consequential damages are an antonym of direct damages and that thus consequential damages shall not be compensated. According to Art. 82 of the OCA, the compensation encompasses the losses incurred and the loss of profit. I.e., under Bulgarian law, the loss of profit is classed as part of the damages together with the losses incurred. The division of the damages to direct and indirect (consequential) is on a different plane. As stated, subject to compensation are only the direct damages. Therefore, the limitation/exclusion of liability for loss of profit shall be assessed on the grounds of the cited Art. 94 of the OCA and the liability for loss of profit may be thus generally excluded/limited, except in cases of intentional default or gross negligence.
§ 31 Governing Law and Dispute Resolution	1. Choice of law If the Parties to the CPPA have their seats (registered offices) in two different jurisdictions (for instance in Bulgaria and Germany), and the Parties have explicitly agreed in § 31.1 / Section B of Part I (Individual Terms) that their relations under the CPPA shall be governed by law other than Bulgarian law (e.g., by German or English law), and Bulgarian courts are competent to examine a dispute under the CPPA, Bulgarian courts would apply any governing law. Bulgarian courts would not apply any law if its provisions are manifestly incompatible with Bulgarian public policy and/or contradict to special mandatory rules of Bulgarian law. Assessment whether there is such incompatibility / contradiction shall be made in each particular case taking account of all concrete circumstances.

Reference	Comment
	If both Parties have their seats (registered offices) in Bulgaria, it is recommendable the Bulgarian law to be chosen as governing law for the CPPA. 2. Choice of jurisdiction / arbitration If the Parties to the CPPA have their seats (registered offices) in two different jurisdictions (for instance in Bulgaria and Germany), and the Parties have explicitly agreed in § 31.2 / Section B of Part I (Individual Terms) that their relations under the CPPA shall be referred for resolution to a foreign court, respectively arbitration, such foreign court, respectively arbitration should be competent to examine and adjudicate on a dispute under the CPPA. On the contrary, if both Parties to the CPPA are Bulgarian entities, they may not agree that a foreign court, respectively arbitration (i.e., arbitration having its seat outside Bulgaria) will be competent to resolve their disputes. With a view to that, in such cases respective choice of Bulgarian arbitration / courts should be made. (There is still one exception - if both Parties have their registered seat in Bulgaria but one of the Parties has the place of its real management in a foreign country, agreeing on foreign arbitration should be permissible.) For more details on these matters, please refer to the Bulgarian Legal Opinion on the EFET General Agreement Concerning Delivery and Acceptance of Electricity. This Legal Opinion can be procured via secretariat@efet.org. It is furthermore recommendable, if the CPPA is signed in a bilingual version (e.g., English – Bulgarian), to be explicitly stipulated that in case of discrepancies the English version shall prevail (because English is the language of the 'original' version of the CPPA).