

Vienna, 12 April 2021
DIV/O/DBU/11/12-04-2021

Renewable Energy Sector in Ukraine – Request for Meeting under the Memorandum of Understanding

Excellency,

I am addressing you in your capacity as signatory of the Memorandum of Understanding (“MoU”) signed in June 2020 between the state authorities of Ukraine and two associations of renewable producers. The MoU, mediated by myself on behalf of the Energy Community Secretariat’s Dispute Resolution Center, settled a dispute which had arisen in the wake of the Guaranteed Buyer’s increasing lack of capacity to honor the State’s obligation to compensate renewable producers under the feed-in tariff. By signing the MoU, the Government and other signing state authorities committed to ensure full and timely payment to the producers of renewable energy. This commitment was also reflected by the Law 810-IX.

The implementation of both, the MoU and the Law 810-IX, by the state authorities is delayed. Debt accumulated before August 2020 has only been paid partially by the Guaranteed Buyer, and the forecasts suggest that further significant deficits will occur during 2021 and beyond. Furthermore, there are no plans to auctions for new capacity in the near future. In this situation, there is a growing concern that Ukraine may miss out on significant investments in future technologies such as hydrogen and storage, in addition to future generation capacities. This would be particularly deplorable at a moment when green policy reforms and investments are reaching peak levels around the world and Europe embarked on a Green Deal.

The situation requires solutions for three issues that are mutually dependent: i) Settlement of payments and debts of the Guaranteed Buyer to renewables producers, ii) future development of the Ukrainian renewable energy sector, including implementation of renewable auctions and iii) adaptation of the elements of electricity market design currently distorting the market. Future reforms of the renewables support system and the electricity market design cannot be tackled without ensuring solvency of the Guaranteed Buyer, so as to restore investors’ confidence and avoid large scale litigations.

**ATTN. H.E. MR. DENYS ANATOLIYOVYCH SHMYHAL
PRIME MINISTER OF UKRAINE**

Copy: H.E. Mr. Yuriy Vitrenko, Acting Minister of Energy of Ukraine;

H.E. Mr. Valery V. Tarasyuk, Head of the Commission;
National Energy and Utilities Regulatory Commission of Ukraine.

The Energy Community Secretariat's Dispute Resolution and Negotiation Center has been addressed under Article 21 of the MoU by two of its signatories, the European-Ukrainian Energy Agency (EUEA) and the Ukrainian Wind Energy Association (UWEA). Within the framework of the MoU, we are ready to sound out, design and implement sustainable solutions acceptable to the Government, investors and Ukraine's international partners. According to a preliminary assessment and in line with our previous work, the agenda for our discussions can be broken down in three work streams and could include the following issues:

Restoring liquidity of the Guaranteed Buyer and its capacity to settle existing arrears and ongoing payment obligations. Issues and options discussed so far include:

- Providing new loans (e.g. from UkrEximBank) and state guarantees to the transmission system operator Ukrenergo to be used exclusively for repayment of the Guaranteed Buyer's debts to renewable producers
- Scope of further increase of the transmission tariff of Ukrenergo and/or identification of additional financing source to cover deficit on current payments
- Distribution of the revenues generated for receivables of renewable producers and Energoatom which ensure debt-recovery and safe operation
- Structural and corporate reform of the Guaranteed Buyer, sounding out possibilities for external guarantees and risk-mitigation measures
- Fixing of the Guaranteed Buyer's bankability and resolution of challenges associated with the ongoing Constitutional Court case before discussing further consensual restructuring of PPA

Reform of the support scheme mechanism to be allocated through auctions at the most cost-efficient price. This will be necessary to tap Ukraine's enormous potential in renewable energy for the power and the gas sector (hydrogen) alike. It requires changes to legislation and should be based on a clear roadmap with ambitious deadlines to be implementable as from 2022, and covering issues such as:

- Setting renewables targets and quota for the mid- and short term
- Changing the support scheme from feed-in tariff to feed-in premium
- Separation between the renewables surcharge and the transmission tariff
- Increase in the current carbon tax/price and potential earmarking of the revenues for additional support to renewables and other purposes
- Enhancing bankability of existing power-purchase agreements (PPA)
- Promotion of flexibility solutions such as battery storage

Reform of the electricity market design. The current design does not allow for renewable electricity to be marketed in a profitable manner and hence fails to reduce the financial burden on the Guaranteed Buyer. A clear roadmap with ambitious deadlines should be elaborated, covering issues such as:

- Removing price caps on the electricity market
- Reform of the current trading practices of the state owned generators (such as Energoatom and Centrenergo)
- Reform of the current Public Service Obligation (PSO), including price reform and abandoning the role of Guaranteed Buyer in supplying households with cheap electricity
- Reform of the balancing market and increasing transparency of calculation of the Guaranteed Buyer's imbalances

Against this background and with the involvement of Ukraine's other international partners, I kindly invite you to engage in the discussions for solutions. I would suggest to arrange a meeting involving all signatories of the original MoU within the coming days or weeks.

Looking forward to your reply and continued good cooperation,

Sincerely,



Dr. Dirk Buschle
Chair of the Energy Community Secretariat's Dispute Resolution and Negotiation Centre
Deputy Director/Legal Counsel