



Introduction of the framework for a market-based support scheme for renewable energy

by the Energy Community Secretariat

September, 2024

PURPOSE STATEMENT

Assessment of the amendments to the regulatory framework regarding the auctions for the allocation of quotas for support to production of energy from renewable sources (“RES support”).

TABLE OF CONTENT

Background	1
Introduction	1
Implementing the first RES auctions in 2024	3
Impact on the markets and stakeholders in Ukraine	3
Compliance with Energy Community acquis	3
Financial viability of the RES support scheme	5
Conclusions and recommendations	6

Energy Community Secretariat

Am Hof 4, 1010 Vienna, Austria

Tel: + 431 535 2222

Fax: + 431 535 2222 11

Web: www.energy-community.org

Twitter: https://twitter.com/ener_community

LinkedIn: <https://www.linkedin.com/company/energy-community/>



Ukraine Energy Market Observatory

Assessment 15/24

Introduction of the framework for a market-based support scheme for renewable energy

Background

The regulatory framework for RES support allocation based on a quota mechanism was introduced in 2019 by the Resolution of Cabinet of Ministers of Ukraine ("CMU") No.1175¹. Nevertheless, no single auction has been conducted since then.

Resolution No.232 of 1 March 2024² made significant amendments to Resolution No.1175 in order to provide clarity regarding the implementation of the market-based support scheme in Ukraine, aligning with Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources ("REDII")³.

On 13 August 2024, the CMU adopted the National Renewable Energy Action Plan for the period up to 2030 and the plan of measures for its implementation (the "RES Action Plan")⁴. According to the RES Action Plan, the share of energy produced from RES in gross final energy consumption should be at least 27% in 2030. It provides that RES auctions will be conducted annually starting in 2024, with the first pilot auction scheduled for late 2024.

On 13 August 2024, the CMU also adopted Resolution No.757⁵ on conducting pilot auctions for the allocation of RES support quota in 2024.

Introduction

Resolution No.232, adopted following the passing of Law No. 3220-IX⁶, made the following amendments:

- Amendments to Resolution No.1175

Amendments to Resolution No.1175 specify that the auction procedure is now applied only for the allocation of support based on the market premium mechanism.

¹ <https://zakon.rada.gov.ua/laws/show/1175-2019-%D0%BF/ed20240305#Text>

² <https://zakon.rada.gov.ua/laws/show/232-2024-%D0%BF#n2>

³ Resolution 232 also amended Resolution of CMU No.420 of 23 May 2018

⁴ CMU Resolution No.761 of 13.08.2024, <https://www.kmu.gov.ua/npas/pro-zatverdzhennia-natsionalnoho-planu-dii-z-vidnovliuvanoi-enerhetyky-na-p-a761>

⁵ CMU Resolution No.757 of 13.08.2024 "Some issues of conducting pilot auctions for the allocation of support quota in 2024", <https://www.kmu.gov.ua/npas/deiaki-pytannia-provedennia-pilotnykh-auksioniv-z-rozpodilu-kvoty-pidtrym-a757r>

⁶ Law of Ukraine No 3220-IX dated 30 June 2023 "On making changes to some laws of Ukraine regarding restoration and "green" transformation of the power system of Ukraine"

In addition to the “auctions with land plots”⁷ these amendments allow for auctions concerning immovable property or its components (such as roofs and/or facades of buildings and other structures) of state and communal ownership for the installation of electric power facilities that generate electricity from solar radiation, referred to as “auctions with facilities”. These auctions entail specified technical parameters and conditions for connection to the electricity network. State authorities, local self-government bodies, etc. may submit to the Ministry of Energy their proposals on facilities (or parts thereof) to be allocated during the auction in order to install the solar PV. Such proposals shall include the conditions, particularly the costs, for the lease (rent) of such facilities to the auction winner, a survey of the facilities. The minimum term for the lease of the facilities shall be the duration of the support granted through the auction.

The annual support quotas for renewable energy auctions in the following year are defined by CMU, upon a submission made by the Ministry of Energy following a proposal of the transmission system operator (“TSO”). The National Energy and Utilities Regulatory Commission (“NEURC”) has been assigned a new responsibility, which includes providing a proposal (upon request of Ministry of Energy) for the maximum price offer for auction participants for the upcoming year, specifically for each renewable energy source, expressed in Eurocents per 1 kWh. Also, NEURC defines the standard contract for the provision of a service to support the production of electricity from alternative sources under the market premium mechanism⁸.

Moreover, the amendments offer the possibility of incorporating storage capacity into renewable energy projects.

In the auction process, the amendments include a provision to specify daily time intervals within which a business entity can obtain the right for support. Furthermore, auction criteria now encompass load profiles of the electric power plant or power station construction queue, determining the eligibility for support rights based on auction outcomes.

Instead of being part of the application criteria for auction participation, copies of documents certifying ownership or land use rights and connection agreements may be submitted by the auction winner within six months from the date of contract conclusion with the Guaranteed Buyer.

These amendments also outline criteria that determine when an auction participant is identified as a person affiliated with the state-aggressor.

- Amendments to Resolution No. 420

Resolution of CMU No.420 of 23.05.2018⁹ specifies the list of services of general economic interest as required by the Law of Ukraine “On State Aid to Business Entities”¹⁰. Resolution No. 232 added the new “service to support the production of electricity from alternative sources under the market premium mechanism” to the list to allow state support under such mechanism.

⁷ auction with land plots - an auction at which land plots with defined technical parameters and technical conditions for connection to the electric network are offered for the construction of renewable energy facilities;

⁸ <https://zakon.rada.gov.ua/laws/show/v0641874-19#Text>

⁹ <https://zakon.rada.gov.ua/laws/show/420-2018-%D0%BF#Text>

¹⁰ <https://zakon.rada.gov.ua/laws/show/1555-18#n41>

Implementing the first RES auctions in 2024

In mid-August 2024, CMU adopted Resolution No.757 defining the conditions for the first auctions on RES support quota allocation to be conducted in 2024. According to this decision an “additional annual support quota”¹¹ for business entities producing electricity from RES for the year 2024 has been established together with the maximum allowed bid price per type of RES (as presented in the table below)¹²:

Types of RES	Additional quota (kW)	The maximum price offer of the auction participant for the year 2024
Total, in particular:	110 000	
For solar energy	11 000	9 euro cents per 1 kWh
For wind energy	88 000	9 euro cents per 1 kWh
For other types of alternative energy sources (except for solar energy, wind energy, blast furnace and coke gases, and using hydropower — produced only by micro-, mini- and small hydropower plants)	11 000	12 euro cents per 1 kWh

The conditions also specify the locational requirements for the RES objects to be proposed on the auction, particularly that the 11MW of solar capacity shall be located on the left bank of the Dnipro River. No lots for “auctions with land plots” and “auctions with facilities” are proposed under pilot auctions scheduled for 2024.

According to the approved schedule, the pilot auctions for RES support quotas allocation are planned to take place in October 2024 for the solar capacity and November 2024 for the wind power capacity. It is expected that the first energy facilities commissioned as a result of these pilot auctions will start supplying electricity to the grid in 2025¹³.

The auctions will be organised by the Ministry of Energy, with the participation of the joint-stock company “Prozorro.Prodazhi” and the state enterprise “Guaranteed Buyer”.

Impact on market and stakeholders

A new type of “auctions with facilities” creates an opportunity for investors to utilize the existing objects of state or municipal property (e.g. schools, hospitals, industrial plants etc.) for installation of PV modules under the support scheme. The conditions for participating in the auction exclude several documents, e.g. on land ownership/usage and contract for connection to the electricity grid. This allows participation in the auctions of a greater number of participants, thus contributing to broader competition.

Compliance with Energy Community acquis

¹¹ The annual quota is defined each year by 1 December for the next year.

¹² <https://www.kmu.gov.ua/storage/app/uploads/public/66b/b73/a58/66bb73a581624359491349.pdf>

¹³ <https://www.mev.gov.ua/novyna/uryad-ukhvalyv-nyzku-rishen-dlya-rozvytku-rozpodilenoji-heneratsiyi>

RED II effected the important change that renewable energy support schemes shall avoid unnecessary distortions of electricity markets, thus moving away from the traditional feed-in tariffs (exception for small and demonstration projects) in favour of market-based support schemes such as a market premium mechanism. Article 4(3) of RED II thus provides that support schemes for electricity from renewable sources shall be designed so as to maximise the integration of electricity from renewable sources in the electricity market and to ensure that renewable energy producers are responding to market price signals and maximise their market revenues.

Under article 4(3) of RED II each Contracting Party, including Ukraine, is obliged to ensure that any support for electricity from renewable sources is granted in an open, transparent, competitive, non-discriminatory and cost-effective manner.

Article 4(6) of RED II further provides that where support from renewable sources is granted by means of a tendering procedure, Contracting Parties shall, in order to ensure a high project realization rate, establish and publish non-discriminatory and transparent criteria to qualify for the tendering procedure and set clear dates and rules for delivery of the project.

Article 4(8) of RED II specify the criteria under which the performance of support granted by auctions shall be assessed, including the ability of tendering procedures to achieve cost-reduction (paragraph a), achieve high realization rates (paragraph c), and limit environmental impact (paragraph e).

To offer greater clarity on the auction process within the European Union, the Commission recently released its Recommendation of 13 May 2024 on auction design for renewable energy, along with the accompanying Staff Working Document: Guidance to Member States on auction design for renewable energy¹⁴.

The Guidance stresses that to ensure a competitive bidding process, it is important for the criteria to be pre-defined in line with the objective of the process, and that these minimise risk of strategic bidding where bidders exercise market power to affect outcome of auction to obtain higher revenues. However, excessively stringent pre-qualification requirements or very low bid ceilings may limit competition and efficiency.

Although qualification criteria can take the form of a requirement announced in tender rules, to be complied with after the project is awarded, as part of the contractual agreement with auctioning authority, it is important that compliance with these criteria is checked upon expiry of the relevant milestones or deadlines and that the auction should include appropriate penalties in case pre-qualification criteria are not satisfied.

In line with the Energy Community acquis, and particularly RED II, the changes to the Ukrainian regulatory framework assessed in this Energy Market Observatory implement a market-based support scheme through a market premium mechanism. However, it is important that the detailed implementation of the support scheme, particularly through the detailed auction rules to be adopted and the actual conduct of the auctions, shall fully comply with the Energy Community acquis, particularly the aspects identified in this assessment.

The Regulation (EU) 2019/943 on the internal market for electricity¹⁵ in Article 18(1) states that charges applied by network operators for access to networks (including charges for connection to

¹⁴ https://energy.ec.europa.eu/publications/recommendation-and-guidance-auction-design-renewable-energy_en

¹⁵ As adapted and adopted by the Ministerial Council Decision 2022/03/MC-EnC

the networks, charges for use of networks, and, where applicable, charges for related network reinforcements) shall not include unrelated costs supporting unrelated policy objectives.

Furthermore, the Directive (EU) 2019/944 on common rules for the internal market for electricity (“Electricity Directive”)¹⁶ in Article 44(2)(b) provides that an independent system operator (“ISO”) may be designated only where it has demonstrated that it has at its disposal the required financial, technical, physical and human resources to carry out its tasks listed under Article 40 of the Electricity Directive.

The poorly designed public service obligations (PSO), which makes the renewable energy surcharge to be paid by final customers an integral part of the transmission tariff rather than a separate levy, creates a permanent threat to TSO’s (*Ukrenergo*) financial viability. *Ukrenergo* is constantly depending on the financial markets to cover costs that do not form part of the tasks of *Ukrenergo* under the Electricity Directive. Thus, the Secretariat in its Opinion 4/2021¹⁷, highlighted the need to develop a time-bound solution effectively eliminating the risks for *Ukrenergo*’s financial viability inherent in the current PSO.

Financial viability of the RES support scheme

The introduction of a market-based support scheme aligned with the RED II is a positive step forward for Ukraine’s renewable energy sector. However, for the scheme to reach its full potential and deliver optimal efficiency, existing challenges within the sector must be addressed.

In 2020, the Energy Community Secretariat, through its Dispute Resolution and Negotiation Center, mediated a settlement agreement between Ukraine’s renewable energy investors and the government. This agreement, which was later integrated into Ukrainian renewable energy legislation, aimed to address outstanding issues related to debts owed by the Guaranteed Buyer to renewable energy producers under the green tariff. While outstanding debts had been settled in the wake of the agreement, the Russia’s full-scale aggression against Ukraine exposed again the underlying problems in the sector, notably the lack of liquidity and the electricity market governance.

In response, the Energy Community Secretariat launched a post-mediation process to address unresolved issues, alongside new challenges brought by the war. This process aims to restore trust among key stakeholders and ensure the sector’s stability. As part of this effort, the Secretariat is collaborating with stakeholders to develop a roadmap outlining necessary actions and measures to strengthen the sector. The goal is to make Ukraine’s renewable energy sector a central pillar of its transition towards a green economy, driven by private investments.

Article 65(7) of the Electricity Market Law requires the *Ukrenergo*, through the Guaranteed Buyer, to compensate renewable energy producers for green tariff and for the difference between the feed-in premium and the market price at which they sell electricity, as well as cover part of the costs associated with imbalances. Since the renewable energy surcharge, used for this compensation, is included as a part of total revenue in transmission tariff, the *Ukrenergo*’s ability to fulfill these obligations depends on the tariff set by the NEURC, which is often inadequate. Moreover, Russia’s full-scale aggression against Ukraine has led to the destruction of generation capacities, decreased economic activity, and a reduction in electricity consumption, making it extremely difficult to predict

¹⁶ As adapted and adopted by the Ministerial Council Decisions 2021/13/MC-EnC and 2022/03/MC-EnC

¹⁷ https://www.energy-community.org/dam/jcr:8329300c-f30a-41f9-9a63-e8b07ff4b94c/ECS_Opinion_421_Ukrenergo.pdf

and allocate the necessary funds for the renewable energy surcharge. Altogether, these results in cash flow gaps for the Guaranteed Buyer.

That being said, as long as renewable energy producers continue to sign support agreements with the Guaranteed Buyer as specified in the Resolution, a similar issue to that of the green tariff will persist. Although producers under the premium model will sell electricity in the market, market prices are volatile and influenced by unpredictable regulatory decisions, such as adjustments to price caps. This makes it difficult for producers to calculate payback periods and for banks to deem the project 'bankable.' Therefore, securing a premium is crucial. Yet, the current reputation of the Guaranteed Buyer could limit participation in auctions, reducing competition and driving up prices.

To ensure the new support scheme operates effectively, it is essential to first address the existing issues with the Guaranteed Buyer.

Conclusions and recommendations

The changes to the Ukrainian regulatory framework assessed in this Energy Market Observatory mark a significant step toward implementing a market-based support scheme in accordance with the requirements of REDII.

However, to establish a fully functional market-based support scheme and meet the reform requirements outlined in the Ukraine Facility Plan¹⁸, the Energy Community Secretariat emphasizes the importance of:

- **announcing and conducting competitive auctions** by relevant institutions, in full compliance with the Energy Community acquis. This includes publishing auction rules adhering to key aspects identified in this Energy Market Observatory, such as the obligation for each Contracting Party, including Ukraine, to ensure that support for electricity from renewable sources is provided in an open, transparent, competitive, non-discriminatory, and cost-effective manner. To achieve a high project realization rate, Ukraine must establish and publish non-discriminatory and transparent qualification criteria for the tendering process, alongside clear deadlines and rules for project delivery.

Given the significant number of active donations, including those from the Energy Community Ukraine Energy Support Fund¹⁹, it is equally critical that these criteria are structured to prevent cross-subsidization.

By designing clear and equitable auction criteria, Ukraine can safeguard the integrity of the support scheme and promote efficient resource allocation. A well-prepared framework will be essential to avoid market distortions and uphold fairness for all stakeholders involved.

Regarding the approach of allowing for project documents to be submitted post-award, in line with the Guidance issued by the European Commission, the Energy Community Secretariat recalls that the obligation to submit such documents should be sanctioned by appropriate penalties if not complied with.

¹⁸ <https://www.ukrainefacility.me.gov.ua/en/>

¹⁹ <https://www.energy-community.org/Ukraine/Fund.html>

- **shortening the permitting procedures for renewable investments** in line with the EU rules and Energy Community acquis, by leveraging the Energy Community Policy Guidelines on the Permit-Granting and Planning of Energy Projects²⁰.
- **eliminating the causes of the Guaranteed Buyer's current debt to renewable energy producers** to ensure the new support scheme functions effectively. Potential solutions to resolving the accumulated debts owed to renewable energy producers and preventing future debt accumulation could involve separating the renewable energy surcharge from the transmission tariff and further liberalizing and reforming the electricity market.
 - **Further liberalizing and reforming the electricity market**
The electricity market should be reformed in alignment with the Electricity Integration Package²¹. Upon coupling with the single electricity market of the EU, market participants, including RES producers, will enjoy a common market framework, increased liquidity and a better financial perspective for investments.
 - **Separating the renewable energy surcharge from the transmission tariff**
The current tariff level does not sufficiently cover payments to renewable energy producers, resulting in the Guaranteed Buyer frequently being unable to meet full payment obligations.

To separate the renewable energy surcharge from the transmission tariff, a roadmap outlining the required legislative actions and implementation timelines should be developed and approved by NEURC.

While this decoupling is essential for ensuring compliance with the Energy Community acquis, renewable energy producers are concerned that it would deprive any future renewable support scheme from a relatively stable source of financing. Therefore, the new mechanism must ensure full payment obligations by all final consumers, reliable collection of funds and responsibility for non-payment.

In conclusion, while necessary, the reforms must be carefully planned to balance compliance with the Energy Community acquis and the financial stability of renewable energy initiatives. This is crucial for achieving the national RES targets, facilitating the green transition of Ukraine's energy sector, and supporting the post-war recovery of the national economy.

²⁰ https://www.energy-community.org/dam/jcr:5b309e3f-f519-4bd1-a808-c986d012b4cd/ECS_%20Policy_Guidelines_%20PP_RES_022024.pdf

²¹ <https://www.energy-community.org/implementation/package/EL.html>