

LEGAL ALERT

SUPPORT TO RENEWABLE ELECTRICITY IN PORTUGAL

On 10 November, the European Commission published the decision, notified to the Portuguese Government on 4 May, 2016, not to raise objections to the transitory scheme (covering 2015 and 2016) aimed at supporting deployment of new installations generating electricity from renewable sources, submitted on 27 April 2015, pursuant to article 108(3) of the Treaty on the Functioning of the European Union (“TFEU”).

Expected beneficiaries include all new renewable generation capacity, excluding large hydro plants (with installed capacity larger than 10MW), cogeneration and self-consumption and small production units, which are not eligible to apply for this remuneration scheme.

According to the above mentioned decision, the measure, to be enacted through a new Decree-Law, establishes three remuneration mechanisms:

- i) remuneration based on the market price of electricity and on a variable market premium that corresponds to the difference between the tender strike price, which results from discount proposals to the "indicative auction price", and the reference electricity market price;
- ii) subsidy equivalent to the average market price, which refers to a floating price based on the average pool price of electricity in the previous 12 months and can never be higher or lower than two reference values (floor and cap) – for 2016, the floor and cap are set at 45 EUR/MWh and 85 EUR/MWh respectively;
- iii) subsidy equivalent to the long term market price, which is a fixed remuneration set according to a long term market price benchmark based on market prices of forward/future wholesale electricity contracts traded at Mercado Ibérico de Electricidade (MIBEL) – remuneration under this mechanism is expected to be set at approximately 65 EUR/MWh for 2016.

The remuneration mechanism based on the market price of electricity and on a variable market premium is awarded exclusively to larger generators selected through tender procedures public tender for the attribution of grid power in the public service electricity grid and allows the generator to choose between selling the energy in the power market (e.g. on MIBEL or through bilateral agreements) and receiving the variable market premium from the responsible body or selling their power to an entity under the control of the State that will act as an off-taker of last resort, with a penalty or discount compared to the market price of electricity.

Smaller generators – with an installed capacity of less than 500 kW or, for electricity from wind energy, an installed capacity of 3 MW or 3 generation units – will be eligible to apply for either the subsidy equivalent to the average market price or the subsidy equivalent to the long term market price. The Guidelines on State aid for environmental protection and energy 2014-2020 (“Guidelines”), approved by the European Commission, exempt these smaller generators from the cumulative conditions applicable, from 1 January 2016, to all new aid schemes and measures – namely, the granting of aid a premium in addition to the market price whereby the generators sell electricity directly in the market.

Regardless of the procedure for the attribution of grid power, the remuneration obtained will be available for a 15 year period, after which generators may sell electricity at market price in an organized market or through bilateral agreements with end costumers or suppliers.

The Commission, having assessed that the notified measure (in all its three variants) constitutes State aid in the meaning of Article 107(1) TFEU, considers that the notified scheme pursues an objective of common interest in a necessary and proportionate way without unduly affecting competition and trade, and that therefore the aid is compatible with the internal market on the basis of the Guidelines.

The remuneration scheme was notified until 31 December 2016, having been analyzed by the Commission under the terms of the Guidelines, that establish a transitional phase covering the years 2015 and 2016, during which aid for at least 5% of the planned new

electricity capacity from renewable energy sources should be granted in a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria. As the Portuguese Government estimates that the aid allocated with tenders will exceed the aid for small installation receiving a feed-in tariff, the Commission therefore concludes that the scheme complies with the provisions of paragraph 126 of the Guidelines until 1 January 2017 (i.e., that in a transitional period covering the years 2015 and 2016, aid for at least 5% of the new capacity from renewable sources is granted with competitive bidding processes).



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