

Albanian authorities as a founder party of the Energy Community have the obligation to adopt supportive policies in the sector of renewable energies and therefore to take regulatory measures that create a sustainable framework able to attract investments and increase the security of supply through the exploitation of renewable energy resources. The above was first crowned with the parliamentary approval Law No. 138/2013 “On Renewable Energy Resources”, enacted particularly with the aim to fully align the internal framework of reference of the Directive 2009/28/EC. However, this law was not implemented in any moment in its entirety and only within a one-year period from its entry into force, the Ministry of Energy and Industry declared that it would review it. A review, which in any case should have come to supplement what was missing with the approach to enable the continuing operation in an economic way of the power plants currently in operation.

In 2015 MEI started the project to design a new Albanian Model Market, a project led by the company Nord Pool, Norway, where AREA as a representative of the producers of small hydropower plants was invited by MEI to be part of the steering committee, upon the recommendation of the representative of the Norwegian Government.

While the project was underway and the final draft was realized by the consultant only on the 23rd of June 2016, MEI rushed to propose for approval to the Albanian Government a transitory model of the energy market Decision no. 244, dated 30.03.2016 without the knowledge, consultancy and approval of the groups of interest. This resulted in the decision-making of the government on the arbitrary review of the long-term existing energy sale contracts between the renewable producer and KESH came without the prior approval of the business group and therefore in violation of the rules and principles of EU in the framework of the Energy Community. While in the final draft of AMM is stated that “Any change in the support schemes with retroactive effect will be agreed with the holders of these contracts”, in the Albanian version published by the government, is stated “Any change in the support schemes will be determined by the law on renewable energies.” With the Decision 244/2016, the Albanian Government, without any prior notice and in full absence of information in Article 11.2 sets out: “Any obligation imposed on licensees, in accordance with the legislation in force, related to renewable energy resources, will be considered public service obligation”. This definition is contrary to the law of RES in force and is therefore illegal. It carries a heavy bypass of the legal obligations set out by the Directive 2009/28/EC on renewable energy in the framework of participation in the Energy Community Treaty and the process of European integration. Designation in fact recognized in the Law no. 43/2015 “On the Energy Sector” where referred to the priority producers is

stated that they are part of a special regulated regime. So, they cannot be treated in the framework of the norms and rules of the market model but by a specific rules that is the Law No. 138/2013 "On Renewable Energy Resources"

Referring precisely to the law that regulates the relations for producers of electrical energy from renewable energy resources the so-called Priority Producers of electrical energy, in paragraph 1 of Article 14 of Law 138/2013, on the obligation to buy the electrical energy produced from renewable energy resources is determined: "The buyer of the electrical energy produced by the producers who have priority, if requested by the latter, is the Wholesale Public Supplier." Therefore, the buyer, according to the legal provisions in force, is WPS.

Bypassing here the excesses in many respects in the definitions of the areas of competence attributed by the DCM 244 and the distorted determination of the concept of public service obligation which have not found application in this form in any other EU country and in the WB region, and also the fact that the justifications set out in the Decision of ERE on the claim of establishing public interest are unsupported, as there is no benefit that receives the customer or wider the economic system, the whole results as a discrimination purpose for the investors of small HPPs because other operators of renewable resources, "surprisingly" are out the obligation to unilaterally transfer the contract, clarifying and deepening even more the element of discrimination.

The function given to OSHEE is not only in violation of the law but is also inconsistent with the owns functions of OSHEE which according to the Third Regulatory Package of Energy of EU transposed in the internal legislation, consist in the management of the distribution system, to: a) ensure the safe and reliable development of the distribution system; b) meet the requirements for distribution of electrical energy; c) maintain and guarantee the safe operation of the distribution system of electrical energy throughout the territory for which it was licensed.

On the foregoing, the problem is deepened when in practice within 31.12.2017, within which OSHEE will have to be separated from every other activity that has nothing to do with distribution. The above will reserve future problems at the time of any restructuring of OSHEE which as every other company, for operation purposes can be divided or organized in some regions to operate as a utility local and/or given under concession/PPP or even privatized.

"Retroactive changes by force of the energy long-term power purchase agreements of small HPP by the Albanian authorities infringe the European commitments and put at an inevitable bankruptcy risk the producers of renewable energy"

Meanwhile, according to the Policy Guidelines on the Reform on Support Schemes in EnC, published on December 21, 2015, is recommended as necessary the appointment of an ad hoc institution to manage the support schemes for renewable energy producers. The above is important to legally separate, from the beginning, the institutions appointed to manage the support schemes for renewable energy from any other activity that is carried out in the electrical energy market. This measure is necessary to ensure the financial management, and depending on the case, the insertion of an incentive mechanism to keep track of the balancing variable costs.

Openly and clearly contrary to the above, the Government with the DCMs 244/2016 has decided to unilaterally terminate the signed purchase contracts, by illegally transferring the operator charged with the obligation to purchase the electricity to an inappropriate operator and in violation to the European guidelines and recommendations, in this way directly threatening the heart of the legal security of the concession Contracts for the construction and operation of small HPPs, and their financial success.

The Albanian government is committed to the European Union institutions, lately in the framework of the meetings in June in Brussels, to improve the legal and regulatory framework, among other things in relation with the diversification of energy resources, reducing of the barriers to the business, effective implementation of the national plan for reducing the level of bad loans in the banking system, effective implementation of the latest changes of the legal provisions on the promotion of new investments, strengthening of the social protection and the measures of social inclusion, but in fact the result of the measures of the last three years has systematically condemned the Albanian and foreign investors who have contributed over these years in the increase of renewable energy production with more than 500 Mil. Euro.

MEI starting from the commitments undertaken in the framework of the meeting of the six Western Balkan countries of the Energy Community and to the engagement undertaken through the Charter of Sustainability in the Western Balkans on the 4th of July 2016 in Paris, an area of particular importance in the next program is the stakeholder involvement at an early stage of preparation and implementation of the reforms, so the installation of a continuous and constructive communication.

So regarding the process of the preparation of the Energy Market Model, although AREA Association has played an important role through a reasoned critical opponency within the Steering Committee, was not even been notified of the project of the DCM 244/2016 on the transitory model of the energy market. The presentation with this decision only from the official journal, for a participant in the drafting of the AMM is a strong blow to the

confidence of investors in the Government in Albania. Meanwhile, in only less than 4 Months the Albanian government come up with another decision on the approval of the AMM with the DCMs 519

Lastly, the new proposed draft law of RES, differently from what referred to the Secretariat of the Energy Community consists on a “reversal” of the existing law because it does not refer anymore any concrete prediction for feed-in tariffs for the existing power plants up to 15 MW, but in the contrary it imposes the transition with force from the PPA regime to the market one. This is openly an illegal intervention because the contracts signed by the government are not to support the difference in prices of the power exchange market that did not exist at the moment when these contracts were signed, but are of the type Feed-in. Under Article 8 Parg 3 and 4 of the draft proposed by MEI, the concessionaries will be subject to the exit to the market with force, that will have as an effect the final collapse of the production plants put in production from Albanian and foreign investors.

As on the above, regarding the retroactive revisions of the support schemes, the Policy Guideline released by the Secretariat, with ipso iure affect, recommends “Avoidance of any retroactive changes to the support schemes that alter the return of investments made so far as they undermine the legitimate expectations of investors.” Than all of the above confirm the total lack of grounds of the decisions of the preceding three years of the Albanian government in the European provisions in force that regulate the sector and the acquis communautaire.

As per the latest updates on the new energy law brought up in the meeting “Renewable Energy Coordination Group dhe Joint IRENA - EnC Workshop on cost effective renewable energy in SEE” Vienne

Policy Guidelines on Reform of the Support Schemes for Promotion of Energy from Renewable Sources by the Energy Community Secretariat, PG 05/2015/21 Dec 2015.

The commentary was originally published on Energetika.NET website. To find more see the “pdf” material Albanian Infringements of EU Acquis on PPAs Risk Bankruptcy of SHPPs.

source: areasso.org