

Briefing

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OFFSHORE WIND - NEW DRAFT LAW

On the 29th of September 2023, the Ministry of Energy published an updated Draft Law on the necessary measures for the exploitation of offshore wind energy and amending and supplementing certain laws in the energy field (hereinafter "**New Offshore Wind Draft**").

The key revisions range from the conditions under which a legal entity could operate in the offshore wind industry in Romania, to the regulatory authority's added obligation to carry out a geographical plan about priority areas, as well as prohibited areas for future offshore wind power plants.

At the forefront of the changes is the removal of the specific support scheme based on contracts for difference ("**CfD**"). The previous draft provided that the Ministry of Energy would guarantee a support scheme for 3 GW of new offshore wind capacity based on contracts for difference. However, the New Offshore Wind Draft replaces the previous terminology related to CfDs, and simply uses the term support scheme for the construction and operation of offshore wind power plants.

At the beginning of August, the Government initiated a support scheme based on CfDs for two types of onshore technologies, i.e., wind and solar. However, in this initial version of the CfD Support Scheme, which has been submitted for authorization with the European Commission, offshore capacities were not included. Therefore, this could be one of the reasons why the legislator chose to eliminate any reference to CfDs from the New Offshore Wind Draft, together with keeping other options for incentives available for these types of projects.

The concessionaires may benefit from such a support scheme on the condition that the wind turbines are commissioned within 8 years of the date of conclusion of the concession agreement. In addition, in order to benefit from the state aid scheme, the perimeters to be concessioned must allow for the construction of wind capacities of at least 1 GW. The Ministry of Energy will conduct a study, scheduled to begin three months after the New Offshore Wind Draft comes into effect, to determine the perimeters that can be auctioned for wind projects, which will consider security restrictions in the Black Sea, wind potential, future activities in the Black Sea included in the Spatial Maritime Plan, as well as, various aspects related to the envisaged state aid scheme.

Along with the state aid scheme, *by 30 June 2025*, the Government will have to issue a decision, at the proposal of the Ministry of Energy, approving the concession procedures, and the amount of royalties and taxes, the list of perimeters that can be concessioned, and the timetable of the concession stages.

The New Offshore Wind Draft also provides for a number of shorter deadlines for authorities to prepare secondary legislation.

At the same time, with regard to the procedure for concluding the concession agreement with the public authority, the procedure of public tender or direct award (for the situation of a single bidder) has been replaced by the procedure of awarding concession contracts provided for in article 302 of the Administrative Code.

The New Offshore Wind Draft also provides an express derogation from the provisions of the Administrative Code, with respect to the possibility of the concessionaire assigning all or part of the rights and undertakings resulting from the concession agreement with the prior approval of the grantor.

Along with those mentioned above, the followings are also noteworthy novelties:

- At the end of the exploration period, the concessionaire will no longer have the pre-emption right to conclude the concession contract for the exploitation phase of the previously explored area;



- A definition of prohibited areas intended to protect the environment is introduced, such as perimeters included in Natura 2000;
- If in the previous draft, the non-resident subcontractors of the concessionaire were obliged to set up and maintain for the duration of the concession agreement a subsidiary based in Romania, according to the New Offshore Wind Draft, this obligation has been erased;
- A new section regarding security measures for offshore wind perimeters and offshore wind power plants has been introduced, providing several reporting obligations for the concessionaire. A newly established Commission for the security of offshore wind exploration and concession of offshore wind perimeters will establish a cooperation mechanism to prevent and combat security threats to Romania as regards offshore activities;
- The New Offshore Wind has also heavily amended the section dedicated to misdemeanors and penalties. The highest fine is now RON 5,000,000 for building or demolishing works without proper permitting.

Note should be taken that although the New Offshore Wind Draft has acknowledged some of the concerns raised by the actors in the industry, there are many aspects that will most likely be revised and discussed in the legislative procedure before entering into force. We will continue to follow the legislative process and provide new updates when necessary.

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