

As a follow up to our last News Alert, we would like to inform you about the enactment of the Government bill on promoted power resources (hereinafter referred to as the “**New PRPA**”) by the Czech Parliament. The new law entirely abolishes the preceding Act providing for the promotion of power generation from renewable power resources (hereinafter referred to as the “**PRA CZ**”). The New PRPA, according to the wording of the Senate amendments, is to come into effect (except for the listed provisions which come into effect on the day of promulgation of the Act), on **1 January 2013**; however, the impact of the Act is such that it is worth discussing it now. Since the New PRPA refers, in many aspects, to secondary legislation, the contents of which have not been yet discussed in public or publicised and a correct application of the text, which is still unclear in certain aspects, is still to be founded, the summary provided below may be considered only as a preliminary introduction of the New PRPA for information purposes.

1. Key changes introduced by the New PRPA

The New PRPA preserves the existing system of promotions insofar as the feed-in tariffs and Green Premiums will still apply; what changes are the promotion mechanisms and the persons participating in the promotion system. The Senate also intervened in the wording by its amendments and rejected the re-introduction of the power generation support in the so-called island systems as presumed by the wording originally adopted by the Assembly.

1.1. “Solar tax (levy)”

The “Solar tax” imposed on the solar plants launched into operation between **1 January 2009 and 31 December 2010**, i.e. 26 % from the feed-in tariff and 28 % from the Green Premium, remains unchanged, as well as the original 3-year tax period – tax payers pay the “tax” under the PRA CZ until 31 December 2012 and then, in the course of **1 January 2013 through 31 December 2013**, the tax will be paid under the New PRPA. However, the question how this will be affected by the pending constitutional complaints regarding the “solar tax” is still to be answered.

1.2. Promotion period

Since the PRA CZ currently in force guarantees, *i.a.*, a 15-year period of stable revenues from renewable power resources and thus stipulates the minimum 15-year promotion period by fixed feed-in tariffs, the NEW PRPA clearly defines that the promotion period should apply through the “life“ of the power plant stipulated in the implementing provisions in force as of the date the power plant was launched into operation (i.e. 20 years applicable to the existing power plants according to the ERO regulations in force).

1.3. Limitation of the choice between feed-in tariffs and Green Premiums

This option will be available in the future only to operators of those power plants which do not exceed the installed output of up to **100 kW** inclusive. If a power plant launched into operation after 1 January 2013 has an installed output exceeding 100 kW, the promotion will be provided only in the form of Green Premiums. In fact, this means that the operator of a new power plant with an output over 100 kW will be forced to search for power dealers who will guarantee power purchasing (and the operator thus bears the risk of losing the purchase deal). The dealers will also pay the operator the agreed price of power, whereas the hourly Green Premium will be newly paid by the **market operator** (see below).

1.4. Feed-in tariffs

In the future, the feed-in tariffs will not be paid to the power producers by the network operators but by so-called **mandatory purchasers**, i.e. the buyers who must purchase power generated from renewable resources by law. The mandatory purchases will be defined either by law or by the Ministry; in the meantime, it is the so-called last-instance supplier (i.e. the respective regional power dealer). If the power producer intends to offer power to a mandatory purchaser in the future, the producer must notify the purchaser of this intention within a deadline stipulated by an implementing provision.

The ERO stipulates the amount of feed-in tariffs as usual, i.e. for one year; the only thing that changes is the calculation mechanisms. Once the price is stipulated for one year, it will be automatically increased by 2% each year. The mandatory purchaser then receives compensation from the **Power Market Operator** (OTE, a.s.).

The costs incurred by the power market operator for purchasing power generated from renewable power resources are expected to be compensated by the operators of the regional distribution system, transmission system and from the state budget. We have to wait to see whether or not the regulation will be sufficiently transparent. It is obvious that the Czech legislator does not intend to impose the duty on the mandatory purchaser to deal and sell the power generated from renewable resources on the energy stock exchange, as is planned for example under German legislation.

1.5. Green Premiums

Green Premiums will be granted in the future either as an annual Green Premium (for power plants up to 100 kW) or as an hourly Green Premium (for facilities with an output exceeding 100 kW). Plants with an installed output exceeding 100 kW will have to be equipped with measuring systems as to monitor the hourly rate of power generation.

Producers will receive the Green Premium from the market operator. If the producer fails to provide the market operator with the measured or calculated values of produced power, the title to receive Green Premium does not occur. Further details should be addressed in the amended implementing provisions.

2. Limits applicable to new power plants under the New PRPA

2.1. National Action Plan (“NAP“)

The future system of promoting power generating from renewable resources has been stipulated in the National Action Plan, which defines binding time horizons for the achievement of the ratio of power generated from renewable resources to total power production. By being mentioned in the New PRPA, the NAP thus becomes a *de facto* generally binding regulation – especially if it must be drafted by the Ministry of Industry and Trade and approved by the Czech Government.

At present, the NAP draft anticipates that by 2020 the ratio of the power generated from renewable resources to total production will reach 13.5%. The NAP also defines individual objectives for each technology. The NAP is to be reviewed once in two years, whereas the ERO is to publish information about the achieved values of power generation from renewable resources by 30 May each year.

If the NAP binding objectives are achieved in a certain type of resource (e.g. photovoltaic resource) in a year, the ERO will not stipulate any promotion for the new plants of that kind launched into operation for two years after 1 January. It may be assumed upon the data available that the promotion of new photovoltaic resources will cease from 1 January 2014 at the latest.

Chart 1 – Preliminary plan of the values of the total installed output produced by photovoltaic systems for each year until 2020 according to the National Action Plan

Year	2005	2006	2007	2008	2009	2010	2011	2012
Installed output [MW]	1	1	3	54	460	1650	1660	1665
Year	2013	2014	2015	2016	2017	2018	2019	2020
Installed output [MW]	1670	1675	1680	1685	1690	1690	1695	1695

Chart 2 – Preliminary plan of values of the total installed output produced by wind power plants for each year until 2020 according to the National Action Plan

Year	2005	2006	2007	2008	2009	2010	2011	2012
Installed output [MW]	29	44	114	150	193	243	293	343
Year	2013	2014	2015	2016	2017	2018	2019	2020
Installed output [MW]	393	443	493	543	593	643	693	743

2.2. Regulation of the promotion

Although PRPA preserves the 15-year period of simple investment return as one of the criteria the ERO must take into account when stipulating the amount of feed-in tariffs, it also offers the choice to reduce the feed-in tariffs on a year-on-year basis by more than 5% for new plants generating power from renewable resources, which in a year the feed-in prices are being defined as achieving a simple investment return shorter than 12 years. The existing feed-in tariff defined by the ERO for the following calendar year must not be higher than 115% of the feed-in tariff in force in the year in which the new feed-in prices are being defined.

Regardless of the type of the plant (solar, wind, or biomass), the ERO is obliged to define the total amount of power promotion so that the feed-in tariff or Green Premium reaches the

maximum amount of CZK 4,500/MWh in the year in which the plant is launched into operation (after **1 January 2013**).

3. Consequences of the New PRPA for existing plants

3.1. Promotion amount

Even following 1 January 2013, the ERO must define the feed-in tariffs and Green Premiums for existing plants so as to adjust their amounts to the existing regulations (i.e. PRA CZ). The limitation regarding the efficiency of plants and those arising from the NAP as well as the upper limit of promotion (CZK 4,500/MWh) do not apply. Of course, the operators of the so-called “island systems“ must get connected to the network by 31 December 2012 (in such case, they will receive a standard promotion granted in 2011); otherwise, they will not be eligible to any promotion whatsoever.

3.2. Power plants with installed output exceeding 100 kW

As stated above, only the operators of power plants with an output **up to 100 kW** will be able to use the fixed feed-in tariffs in the future. The question is – should this regulation apply also to those plants launched into operation before the effect of the New PRPA? Although the wording of the transitional provisions seemingly allow for multiple interpretations, we may conclude that the operators of existing plants with an output exceeding 100 kW should be eligible for a promotion as even they have explicitly stipulated the right to change the promotion from Green Premiums to feed-in tariffs starting from 1 January 2013. However, the option to change the type of the promotion repeatedly (e.g. each year) has no support in law.

3.3. Cessation of contracts on the power supply and agreements on Green Premiums; impact on financial institutions

We see a fundamental interference of the PRPA in private law in the fact that the contracts on the power supply (on the promotion by feed-in tariffs or Green Premiums) executed between the transmission system operators or regional distribution system operators and the respective power producer should expire directly by law on 31 December 2012.

Although the rights and obligations of the network operators (ČEPS, ČEZ, E.ON, PRE) should be mandatorily assumed by the mandatory purchasers, or the OTE, respectively, the transitional provisions of the New PRPA say nothing about the consequences of the cessation of contracts for the continuous security of the banks and other financial institutions. In fact, should contracts on the power supply expire by law, the claims that usually serve as collateral established in favour of a bank would also cease to exist or, as the case may be, they would not longer occur. Since the right of lien ceases to exist (without replacement) upon the expiry of collateral (i.e. the subject matter of the security), the absence of a corresponding transitional provision in the PRPA (e.g. on the pledge of claims against OTE

or mandatory purchaser, respectively), establishes fundamental questions: will banks lose their most valuable securities? Should they execute new contracts right away? Who will pay for the additional administration, and who will compensate financial institutions for damages if the debtor refuses to conclude a replacement security?

3.4. Automatic registration of the promotion form

Plants generating power from renewable resources launched into operation before the effect of the New PRPA, which, before then, either used Green Premiums or fixed feed-in tariffs, will be registered as operators using a corresponding type of promotion within 30 days following the effect of the New PRPA. The registration remains valid until the operators select another type of promotion within the deadlines stipulated by law.

However, by 5 January 2013 all measured or calculated data on the volume of power generated by 31 December 2012 must be submitted to the transmission system operator/distribution system operator so that the system operators could pay for the power.

4. Negative prices of power

In theory, another prospective interference in the existing system of promotion of power generated from renewable resources¹ could be considered the launch of the so-called “marginal situations” and the “negative price” arising therefrom.

In the event of the “marginal situations” occurring on the power market², which means a typical excess of power supply over power demand, and, as a result, the so-called negative hourly price is achieved, the producer using power promotion by feed-in tariff is obliged to pay the negative hourly price to the purchaser for the volume of power supplied in the given hour. This measure should motivate the producers to a more active participation in the regulation of power supplies into the system, or to select promotion via Green Premiums where they of course have to arrange for the sales by themselves (and transfer the prospective market responsibility to a dealer). The question remains, however, whether or not there will be enough such dealers on the market who will be willing to do so, or whether a situation occurs where producers would rather switch off their plants (in addition to the switching off of the plants by the dispatcher’s management in the case of a threat to the stability of the distribution networks).

¹ based the principle idea embedded in the European regulations stating that renewable resources should be given priority over conventional resources.

² The time unit for the sale of power generated from renewable resources is 1 hour, which is in *ex definitio* traded on the daily power market. In exceptional cases, the so-called negative prices of power occur – e.g. in September 2008 on the European Energy Exchange (EEX) negative bids were allowed up to EUR 3,000/MWh. In Germany, overnight from the 3rd to 4th October 2009, a low price of EUR 500/MWh occurred due to low purchasing and high power supplies from wind plants between 2 AM and 3 AM. The question is whether or not this will remain exceptional or such situations will be more frequent with an increased OTE’s share in production resources in Europe.

The New PRPA also stipulates that if the supply and demand on the power market do not comply, no title is established to the promotion of the power generated from renewable resources in the respective hours – i.e. both feed-in tariffs and Green Premiums.

5. Promotion of biomethane

A sideline in the New PRPA is a comprehensive amendment introducing the promotion of biomethane, which so far has had no tradition in the Czech Republic. Biomethane is promoted in the form of Green Premiums and, as opposed to other promoted power resources, has no upper limit of promotion stipulated by law.

6. Disposal of old solar panels

The New PRPA also amends the Waste Act no. 185/2001 Coll. The key change here is the obligation of the operator of the solar plants, which launched solar panels in the Czech market before 1 January 2013, to dispose of the panels after the promotion termination. Since it is not certain that the plant operators will have sufficient funds to dispose of the panels, as of 1 January 2014 an entity selected by the state will collect an annual fee from the plant operators so as to fund the disposal. The disposal of panels launched into the market by 1 January 2013 is guaranteed by the manufacturer who is also obliged to submit a receipt of funding. The details will be addressed by secondary legislation.

7. Conclusion

If the New PRPA will be signed by the President in its current wording, it will, in our opinion, constitute a radical interference of the state into existing private law relations, which is in direct variance with the principle of legal surety. This step may have potentially negative consequences not only for the operations of financial institutions but also for their willingness to fund future projects in the field of renewable resources. Given the complexity of the issue, the secondary legislation under preparation and the non-existence of the judicature and thus no established interpretation, we must point out that the information contained in this News Alert is only preliminary, is not binding and does not provide a full description or interpretation of all changes in the New PRPA.

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