

LEVY ON EXCESSIVE REVENUES FOR ELECTRICITY PRODUCERS

On October 6, 2022 the European Council issued Regulation (EU) 2022/1854 (the “**Regulation**”) stipulating the framework for a levy on excessive revenues from electricity sales (the “**Levy**”). The individual member states are to determine the details regarding the Levy, including its final amount and the conditions under which it will apply to electricity. They can choose to make electricity producers exempt from the Levy if they operate at an installed capacity of up to 1 MW (Article 7(3)) or have market revenues acquired from electricity sales on the balancing energy market and compensation for redispatching and countertrading (Article 7(4)), or to apply the Levy on only 90 % of the market revenues exceeding the stipulated cap for market revenue (Article 7 (5)).

The conditions for applying the Levy in the Czech Republic are stipulated by the amendment to the Energy Act currently being prepared, published on November 11, 2022 in the electronic library of upcoming legislation and soon submitted to Parliament for expedited discussion due to legislative urgency (due to the energy crisis requiring a timely response and major impending economic damage) as Parliamentary Press No. 335 (hereinafter the “**Bill**”): <https://www.psp.cz/sqw/historie.sqw?o=9&t=335>

The Bill anticipates being in effect as of December 1, 2022, when the Levy should exclude excessive revenues from the sale of electricity generated:

- a. in power plants with an installed electrical capacity of **up to and including 1 MW**,
- b. in **power plants using promoted energy sources with registered promotion** according to the legislation regulating promoted energy sources **in the form of:**
 - i. **feed-in tariffs**,
 - ii. **auction bonus**,
 - iii. **green bonus for electricity in an hourly regime** at a source launched or modernized since January 1, 2022.

The annual green bonus, which has been widely used by photovoltaic power plant operators in recent years, remains somewhat unclear, as the Bill does not explicitly exempt these revenues from the Levy. In the commenting proceedings the Ministry for Industry and Trade said the following on this point: “**exempting producers’ revenues from support in the form of the annual green bonus has no basis in the regulation**”.

However, the Regulation does state that the Levy excludes “any support provided by member states”. If the Bill includes the exemption of feed-in tariffs, auction bonus and hourly green bonuses, in our opinion it should also include a specific exemption of revenues arising from the annual green bonus, which of course the Bill does not currently include.

We will be able to analyse the Bill’s ultimate impact only after it is passed in Parliament. However, producers would be well advised to defer decisions on the form of support for 2023 and signing the agreement with the purchasing electricity trader as long as possible in order to wait and see whether the final version of the Bill will be passed.

bpv Braun Partners s.r.o.
Palác Myslbek
Ovocný trh 8
110 00 Prague 1

Tel.: (+420) 224 490 000
Fax: (+420) 224 490 033
www.bpv-bp.com
info@bpv-bp.com

Our publications are prepared for general guidance on matters of interest only, and do not constitute professional advice. They do not and cannot take into account any specific circumstances, financial situation or needs of any reader; our readers should not act upon the information contained in this publication without obtaining independent professional advice first. No representation or warranty (express or implied) is given

as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, bpv Braun Partners s.r.o., its members, employees, cooperating attorneys and tax advisers do not accept or assume any liability, responsibility or duty of care for any consequences of the reader, or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.