

CHAMBER OF DEPUTIES APPROVES AMENDMENTS TO ENERGY ACT AND ACT ON PROMOTED SOURCES

Energy legislation is set for big changes in 2022, so energy suppliers and RES operators should be ready. bpv BRAUN PARTNERS is holding a [webinar on October 5, 2021](#) to go over selected new developments in detail.

AMENDMENT TO THE ACT ON PROMOTED ENERGY SOURCES

The Amendment to the Act on Promoted Energy Sources involves several material changes from the standpoint of operators existing promoted sources. These are:

1) Introduction of a review of the ROI for sources put into operation in 2006-2015

Among other things, the Amendment to the Act on Promoted Energy Sources meets the Czech Republic's commitment to the European Commission (EC) to introduce proportionality checks for the subsidies provided (the "Review") to plants using renewable resources put into operation between 2006 and 2015 (the "Affected Plants").

The goal of the Review is to determine whether the Affected Plants have exceeded the approved IRR as a result of receiving operational subsidies alone or in combination with another form of promotion.

The Act on Promoted Energy Sources stipulates an IRR of **8.4 - 10.6 %** for all sources, with the specific IRR for individual sources stipulated by the government. The government is bound by this range, however, meaning it **cannot set an IRR of less than 8.4% for any source**. This would materially increase the IRR for hydro, wind, and especially solar power plants.

The Affected Plants will be divided for the purposes of the Review into several groups based on various criteria such as the type of renewable energy source ("RES"), when the Affected Plant was put into operation, installed capacity, volume of subsidies received, any other form of promotion received at the same time, etc.

The Ministry of Industry and Trade will inform the government of the results of the sector inquiry for power sources put into operation **between January 1, 2006 and December 31, 2010** within three months of the day the Act comes into effect, i.e. no later than March 31, 2022, only then can it be estimated in what timeframe it is possible to expect the commencement of individual reviews in particular.

The implementing legal regulations specifying how the Reviews will be conducted are currently awaiting approval.

2) (Re)introduction of the solar levy

The Amendment to the Act on Promoted Energy Sources also modifies the solar levy. Originally 10% (feed-in tariffs) or 11% (green bonus) for electricity generated in photovoltaic power plants (PPP) put into operation in 2010, as of January 1, 2022 the solar levy will be as follows:

Year PPP put into operation	Levy for feed-in tariffs	Levy for green bonus
2009	10%	11%
2010	20%	21%

CHAMBER OF DEPUTIES APPROVES AMENDMENTS TO ENERGY ACT AND ACT ON PROMOTED SOURCES

3) Modernization and modification of power plants and how that impacts promotion

The Amendment to the Act on Promoted Energy Sources also addresses modernization and modification of power plants and how that impacts promotion.

In the case of a modification of a production site, the existing right to aid is maintained in principle.

If a power plant is modernized (including complete or partial replacement of equipment or operating systems in the plant in order to replace installed capacity or increase efficiency or installed capacity), however, the Amendment anticipates new promotion for modernized plants in the form of green bonuses. The Amendment to the Act on Promoted Energy Sources stipulates special requirements for modernizing biomass and biogas plants.

These provisions take effect on January 1, 2022. More details are to be set in the implementing regulation.

4) Measures to achieve RES 2030 goals in the Czech Republic

The Amendment to the Act on Promoted Energy Sources also responds to the need to increase the proportion of RES in end consumption in the EU by 2030 with the following measures:

- a) **promotion for biomethane** produced in a power plant in the Czech Republic connected to the distribution or transmission grid
- b) promotion for **small sources under 1 MW** (or **6 MW for hydro power**) – to be provided in the form of an annual or hourly green bonus;
- c) **promotion in the form of auctions** for new sources, including **photovoltaic sources**, announced by the Ministry of Industry and Trade;
- d) **“maintenance” promotion for selected sources already in operation** (e.g. subsidies for electricity from RES to keep power and heat plants in operation after they are no longer entitled to the current operating promotion) in the form of green bonuses;
- e) new forms of promotion (e.g. for modernised plants);
- f) **transitional transformation promotion for heat in heat supply grids** – applies to heat generated in a heat plant using non-renewable energy sources. Promotion will be provided for the period beginning January 1, 2021.

CHAMBER OF DEPUTIES APPROVES AMENDMENTS TO ENERGY ACT AND ACT ON PROMOTED SOURCES

AMENDMENT TO THE ENERGY ACT

The Amendment to the Energy Act involves comprehensive changes in relation to customer protection, introduces new regulation on intermediaries, and specifies the payment obligations for distribution grid operators:

1) New regulation on intermediary activities and intermediary contracts

- as of June 2022 intermediaries are required to get authorization from the ERO to act as intermediaries. An intermediary can be a natural person or legal entity. After meeting certain conditions, intermediaries active on the market as of June 1, 2022 will have until the end of 2022 to acquire authorization. This authorization will be granted for five years with the option to extend repeatedly.
- Beginning on January 1, 2022, however, the following rules apply:
 - The intermediary is obliged to inform the consumer that it is acting as an intermediary.
 - An intermediary agreement made with a consumer must be made in writing and one hard copy must be given to the consumer. An agreement in electronic form will suffice only if the consumer consented to it in writing (i.e. on paper or in electronic form). The act also stipulates the minimum contents that constitute the essential features (Section 11m) of an agency agreement, including the requirement to specify the agreement the consumer wishes to enter, e.g. whether it concerns electricity or gas supply, whether it is made for a fixed term or indefinite period, the total price the consumer is willing to pay for electricity or gas supply, and the period of validity of the agency agreement.
 - Agreements made before January 1, 2022 must meet these content requirements by June 30, 2022 at the latest, or else such non-compliant contracts will be terminated by law.
 - If the intermediary enters into an electricity or gas supply agreement or bundled service agreement on behalf of the consumer, the consumer is entitled to give notice on the obligation under the agreement without penalty at any time up to 15 days after commencing energy supply.

2) Increased customer protection

With effect as of January 1, 2022 the Amendment to the Energy Act anticipates strengthening the rights of individual categories of customers in connection with agreements for supply or distribution of electricity and gas. Changes worth mentioning include:

- municipalities' right to prohibit door-to-door sales offering to enter into an agreement for the supply of electricity or gas – this prohibition is intended to prohibit door-to-door sales and protect older customers especially against their often questionable sales tactics.
- the supplier's obligation to disclose the duration of the commitment under the agreement immediately at the customer's request, any penalty that may apply for early termination, and the time frame in which the consumer is entitled to terminate the agreement. Especially in long-term contracts, customers often no longer have the original agreement and do not know when to act in order to terminate the agreement. Some suppliers abuse this fact and refuse to disclose to customers the information they need to terminate their agreements without penalty, making it more difficult or practically impossible for customers to switch to another supplier.

CHAMBER OF DEPUTIES APPROVES AMENDMENTS TO ENERGY ACT AND ACT ON PROMOTED SOURCES

- **customers' right to free billing statements** for electricity and heat in electronic form.
- **the supplier's obligation to inform a consumer or natural person engaged in business provably and by name** no later than thirty days before the change takes effect, in the manner set forth in the agreement. The notification must include information regarding the right to reject the change and give notice on the obligation under the agreement without penalty in the event of changes in contractual arrangements on the part of the supplier. A consumer or natural person engaged in business has the right to **give notice on the obligation** under the agreement at any time up to 10 days before the change in the price/agreement takes effect. **This time frame will also now apply even if a notice is sent in the meantime giving notice on the obligation on the part of the licence holder.** The notice of termination takes effect on the day before the price increase or other change in contractual conditions takes effect. The question remains, however, whether suppliers will be able to handle disconnecting a customer in such a short time on an administrative level. **If a supplier does not announce the change in the manner stipulated by law, the change will not have legal effect** – it will not take place.
- **agreements** on supply or distribution, or bundled services, made by the consumer **will now require written form as well as a provision on the option** to change the price and other contractual conditions.
- **the consumer has the right to give notice of termination without penalty on the obligation** under a supply agreement or bundled service agreement that was **made remotely** or outside the commercial premises of the relevant licence holder, at any time until 15 days before commencing electricity or gas supply. This deadline applies to sending; the notice does not have to arrive in that time.
- One very important change is the new regulation on automatic extension of agreements for the supply of electricity or gas. If the agreement includes an **extension of the obligation under the agreement without the express consent of the consumer**, the consumer is entitled to **give notice** on the obligation under the agreement without penalty **at any time until 20 days before the end of the duration of the obligation agreed in the agreement**, to take effect upon expiry of that time. This provision is a response to the fact that suppliers have a window (spot) stipulated in their terms and conditions in which consumers must inform the supplier that they do not wish to extend the contract, and if consumers do not do so within this window their request is disregarded. As this window is defined quite unusually, consumers often miss the window and remain bound to the same supplier.

Closely tied to the above is the new provision Section 11d, which states that if the period in the agreement with the consumer (including any potential extension of said agreement) **exceeds 36 months**, after this period passes the agreement will be considered an agreement made **for an indefinite period**, i.e. giving notice of termination will be easy. Existing agreements made for a fixed term will begin counting the maximum duration (36 months) as of January 1, 2022.

3) Payments for systemic services for end consumption of the (local) distribution grid

The Amendment to the Energy Act introduces a provision stipulating that an electricity market participant is obliged to pay the price for systemic services and the price for market operator activities, even if an agreement for electricity supply (or bundled services) is not made, for the volume of electricity taken for its own final use in the distribution grid it operates.

CHAMBER OF DEPUTIES APPROVES AMENDMENTS TO ENERGY ACT AND ACT ON PROMOTED SOURCES

According to the explanatory report, this change is aimed especially at local distribution grid operators that do not pay the price for systemic services if they are also a customer or producer connected to the local distribution grid they operate.

4) In the future heat supply will only be measured by devices with remote data transmission

Heat suppliers must ensure that heat supply is measured only by devices with remote data transmission by January 1, 2027 at the latest.

5) Transfer costs will now be borne, in specific cases, by the operator

The costs for relocation of low-voltage equipment in the built-up area should now be borne by the distribution grid operator, provided that (i) the relocation is performed based on a decision on removal of a structure where the distribution grid equipment is located, or (ii) the technical status of the distribution grid equipment does not allow its safe operation or (iii) is damaging the structure, if the owner of the distribution grid equipment does not remedy the situation.

6) New decree on billing for supply

Another new piece of legislation taking effect as of January 1, 2022 is Decree No. 207/2021, on billing for supply and related services in the energy industry. This decree makes several changes in relation to the mandatory information to be included in billing statements (e.g. the date on which the obligation under the contract terminates and the date when the product or price change occurs, if such a change is agreed, and a website with a comparison tool to compare electricity / gas offers from vendors operated or secured by the Energy Regulatory Office).

Both Acts are currently awaiting the President's signature.

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