



FINALLY, ROMANIA IS GETTING THERE! THE CONTRACTS FOR DIFFERENCE, ANOTHER STEP IN THE DECARBONATION PROCESS

The Ministry of Energy recently published for public consultation the draft Government Decision for the implementation and operation of the Contracts for Difference (CfD) support mechanism for low carbon technologies¹.

Through this enactment, the Romanian Government establishes the general legal framework governing the implementation and operation of the support mechanism through contracts for difference meant to foster priority investment in technologies for the production of energy from onshore and offshore wind resources, solar photovoltaic resources, hydro resources, nuclear resources, hydrogen and energy storage systems.

To this end, the underlying public authority shall prepare the CfD State aid or ad hoc CfD State aid schemes which may require authorisation by the European Commission. The CfD contracts shall be awarded by way of CfD competitive tender organised by Transelectrica S.A², whilst in case of ad hoc CfD State aid scheme, the same may be awarded for power generation projects for which a competitive selection process cannot be applied. The terms and conditions of ad-hoc CfD contracts will be determined by

¹ The draft is available at <https://energie.gov.ro/wp-content/uploads/2023/08/Hotararea-de-Guvern-CfD-7-august-Fin.pdf>. An English version of the same is available at <https://www.mprpartners.com/expertise/energy-natural-resources/?pub>

² The Transmission System Operator, <https://www.transelectrica.ro/en/web/tel/home>

direct negotiation and are subject to the European Commission's State aid approval decision.

The price for a CfD contract is determined by CfD tender, while for ad hoc CfD State aid, the price is determined by negotiation. The reference price is set by OPCOM³ in accordance with the formula from the CfD contract and the methodology issued by the market energy regulator⁴. OPCOM is also responsible for calculating and processing payments for the CfD difference to CfD beneficiaries based on the balance between the call price and the reference price from the CfD contract. CfD beneficiaries receive no CfD difference payment for the electricity injected in the National Electricity System if reference price corresponding to the respective production is negative.

Pursuant to the Information paper for tenderers⁵, the CfD scheme will involve two rounds of tenders, each with separate bids for eligible power generation technologies - onshore wind and solar PV - with a total capacity of 5,000 MW.

The total capacities targeted are as follows: (i) installed capacity of 1,000 MW for onshore wind power generation and 1,000 MW for solar PV power generation respectively, both following the first round of tenders to take place by the end of 2023; and (ii) installed capacity of 1,500 MW for onshore wind power generation and 1,500 MW for solar PV power generation respectively, both as a result of the second tender round to be held in the first half of 2025.

The key terms of the CfD scheme feature the following:

- the duration of support will be a maximum of 15 years from the start date of payment;
- beneficiaries will be able to market their energy production according to their commercial agreements;
- bids will indicate the call price (EUR per MWh), the generation capacity to be installed and a target commissioning date;
- CfD payments will be made for each MWh of electricity generated and delivered into the National Electricity System, metered through the dedicated CfD capacity allocation meter;

³ Electricity and Natural Gas Market Operator "OPCOM" S.A., <https://www.opcom.ro/acasa/en>

⁴ The National Energy Regulatory Authority, <https://anre.ro/en/>

⁵ It is available at https://energie.gov.ro/wp-content/uploads/2023/08/Nota-informativa-pentru-ofertanti_CfD-pentru-regenerabile_04.08.2023.pdf. An English version of the same is available at <https://www.mprpartners.com/expertise/energy-natural-resources/?pub>

- the reference price will be the monthly weighted average of the day-ahead market price (PZU); the price will be weighted for the same generation technology subject to CfD support;
- payment differences will be calculated in euro and converted into Romanian lei before payment is made in lei, using the monthly average of the daily Leu to Euro exchange rates published by the National Bank of Romania;
- the call price will be indexed annually in line with the Eurozone Consumer Price Index.

This information paper outlines also the key tender requirements, while further details will be provided in the tender opening order, as follows:

- it must be a legal entity established in accordance with the relevant legislation of the Member State in which it is headquartered;
- it must have, as a primary or secondary activity, included in the company's articles of association, the production of electricity, corresponding to classification code 35: '*Electricity and thermal production and supply, gas, hot water and air conditioning*' code CAEN 3511 - production of electricity.

On the other hand, the project must meet the following requirements:

- it must be implemented in Romania;
- the proposed installed capacity must consist of entirely new electricity generation capacity and use only eligible onshore wind or solar PV technologies to produce and deliver the generated electricity to the National Electricity System; the CfD scheme does not apply to projects that replace, expand or upgrade existing installed capacity;
- the proposed installed capacity of the project is equal to or greater than 5 MW;
- the project must at least have secured the authorisation for connection to the national grid and the target commissioning date must not exceed 36 months from the anticipated date of signing of the CfD, namely December 2023.

The funding of the CfD support scheme is provided through the CfD contribution collection mechanism applied to all final consumers – starting with January 1, 2024 - and/or through non-reimbursable EU funds.

Where a CfD contract includes provisions to address any additional costs stemming from changes in primary or secondary legislation, such costs will be covered by adjusting the call price in the CfD contract, but only to the extent that a significant

change has occurred, additional costs have incurred, or to the extent that such costs have been finally determined in accordance with the provisions of the CfD contract.

This article contains general information and cannot be considered qualified legal advice.



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