

CMS | Romania enacts CfD support scheme with first auction launched



As part of its EU commitment to promote decarbonisation and the development of low-carbon energy sources with a focus on renewable energy, Romania passed a legislative package containing a two-way Contracts for Difference (CfD) support mechanism, leading to the announcement of the first auction for solar and onshore wind technologies.

The Romanian CfD framework is made up of a legislative suite. The key legal provisions of the CfD framework are detailed below:

- Government Decision 318/2024 (GD 318/2024) on the approval of the general framework for the implementation and operation of the Contracts for Difference support mechanism for low carbon technologies, which was published in the Official Gazette on 10 April 2024 together with the template Contracts for Difference contract.
- Ministry Order no. 1120/2024 (Order 1120/2024) on the approval of the state aid scheme in the form of Contracts for Difference for the production of electricity from the renewable sources onshore wind and solar photovoltaic energy, which was published on 5 August 2024.
- ANRE Order 52/2024 approving the Framework Contract between the CfD counterparty and the CfD contribution payer for the collection of the CfD contribution and the Framework Contract between the CfD scheme operator and the CfD counterparty.

Furthermore, the implementation of the state aid scheme for renewables will be regulated for the first auction through Ministry Order 1290/2024 (Order no. 1290/2024) on the approval of opening the first tendering procedure for the state aid scheme in the form of CfD for electricity production from the renewable energy sources onshore wind and solar photovoltaic energy, and according to the tender procedure rules published on 6 September 2024.

General overview

In Romania, the CfD is designed as an agreement between the generator as a “seller” and the Romanian state as a “buyer” in a two-way support payment, which will be the difference between the strike price and market reference price. The generator is paid by the CfD Counterparty when the market reference price is below the strike price and the generator pays the CfD Counterparty when the market reference price is above the strike price. The total revenue of generators per unit of electricity is given by this formula: Actual Sale Price + (Strike Price – Market Reference Price).

The CfD scheme will support onshore wind and solar photovoltaic projects with a total capacity of 5,000 MW split

in two auctions:

- 1500 MW in a first auction in 2024; and
- 3500 MW to be awarded in a 2025 auction.

Roles and responsibilities

In terms of the roles and responsibilities of the stakeholders involved in the CfD mechanism, the CfD auction process will be managed by Transelectrica (operator of the CfD scheme) while the Romanian electricity and gas market operator (OPCOM) will act as CfD counterparty. In addition, the National Energy Regulatory Authority (ANRE) will be responsible for issuing the relevant secondary legislation, while the Ministry of Energy will have overall responsibility for the regulatory framework and the obligation to ensure that the CfD liquidity fund has at all times sufficient funds available to enable the CfD counterparty to fully meet its payment obligations towards the CfD beneficiary.

CfD scheme funding

The CfD scheme is supported by the Liquidity Fund, which is deemed to cover the payments under the CFD contracts. The Ministry of Energy will ensure the financing of the CfD Liquidity Fund, which in turn is funded from the Modernisation Fund. The CfD Liquidity Fund will be supplemented as necessary by CfD payments from power generators under the CfD Scheme when reference prices are higher than strike prices.

The administrative costs of the CfD Scheme will be financed by a specific CfD contribution to be borne by all final consumers through a levy imposed according to the provisions of ANRE Order 52/2024

Key terms of the CfD scheme

The term of the CfD will be for a maximum of 15 years from the payment start date.

Power generators are obliged to market the energy production covered by the CfD contract only on the Organised Electricity Markets. When the reference price of electricity is below the strike price, generators will receive a top-up payment for the difference. Where the reference price is greater than the strike price, the generator pays the difference to the CfD Counterparty. If either party fails to pay to the other party any sum owing under the CfD contract by the due date for payment, an interest rate will apply, calculated according to the provisions of Government Ordinance no.13/2011.

For the first tender in 2024, the maximum strike prices have been set at EUR 82/MWh for onshore wind energy and EUR 78/MWh for solar energy.

Bids must indicate the strike price (EUR/MWh), the generation capacity to be installed, and the target commissioning date.

CfD payments will be made for every MWh of electricity generated and delivered to the grid metered through the dedicated meter for the CfD awarded capacity. CfD beneficiaries will start receiving CfD payments from the payment start date. The payment start date is defined at length in the CFD contract as the date on which the CfD beneficiary has satisfied all requirements under the CfD contract in order to become eligible for CfD difference payments. The payment start date is proposed by the generator in a payment start date notice. The notice can be given any time until the target commissioning date or after up to the longstop date, but when giving notice the possible penalty brought on by shortening the period of the contract in case of exceeding the target commissioning date must be taken into account.

CfD beneficiaries will not receive CfD difference payments for any quantity of electricity delivered into the national energy system in any period in which the market value corresponding to that delivered quantity is negative.

Difference payments will be calculated in euros and converted to Romanian Leu prior to the payment to be made in Romanian Leu, using the monthly average of all daily Leu-Euro exchange rates published by the National Bank of Romania.

The strike price will be indexed every three years but only if the Eurozone Consumer Price Index at that time is higher by 10% or more compared to the CPI index applicable at the date of signing the CfD contract or the date of the last applied indexation. The first indexation will not take place earlier than 2027.

The reference price will be calculated as an average price of the electricity sold in the Day Ahead Market for the technology subject to CfD contract.

Tender rules

The selection process will develop in two stages. The first stage will include the opening of the technical offers where applicants will be selected based on a pass or fail basis. This stage will filter out most of the applicants that do not comply with the eligibility criteria (e.g. falling short due to experience, technical report, failure to submit the bid bond). In the second stage of the process, by opening the financial offers, the applicants will be ranked based on the level of their strike price. Further criteria will apply for the evaluation of marginal bids.

Eligibility requirements

The CfD framework provides for specific requirements for the applicant such as:

Applicant eligibility requirements (high level):

- must be an undertaking legally constituted in accordance with the law of the member state in which it is established.
- the applicant's main or secondary activity, as stated in the company's articles of association, is the production of electricity. If the applicant is a Romanian company, the main or secondary object of activity must correspond to division 35: "Production and supply of electricity, heat, gas, hot water and air conditioning", class CAEN 3511 - Production of electricity.
- the applicant is not in a state of insolvency or in default of payment, in accordance with the provisions of Law no. 85/2014 on insolvency prevention and insolvency proceedings, as amended and supplemented.
- The applicant has experience in the development, construction or operation of comparable projects in Romania or globally during the last 10 years. "Comparable Projects" refers to projects with the same technology (i.e. onshore wind and/or solar photovoltaic).
- the applicant is not bankrupt or being wound up, its affairs are not administered by the court, it is not the subject of an arrangement with creditors, an ad hoc mandate or any other arrangement with creditors, its business is not suspended, it is not the subject of proceedings concerning those matters, and it is not in any analogous situation arising from a similar procedure provided for in national or European legislation or regulations;
- the applicant has fulfilled its obligations to pay taxes, duties and social security contributions to the budgets of the components of the consolidated budget, in accordance with the legal provisions applicable in Romania or in the country where it has its registered office or where it was established.
- the applicant, its direct or indirect partners/shareholders, controlling entities, parents, subsidiaries and its legal representative, including any of their directors, officers, employees or agents, are not subject to or have not been subject to any international sanctions imposed by the United Nations, the European Union or any other authority

having jurisdiction over them.

□ the applicant is not a firm in difficulty as defined in point 20 of the Commission Communication (2014/C249/2001) on Guidelines on State aid for rescuing and restructuring non-financial firms in difficulty.

Project requirements (high level):

- The project must be implemented in the territory of Romania.
- The project's proposed installed capacity must entirely be comprised of new electricity generation capacity.
- The project's proposed installed capacity is equal to or greater than 5MW.
- The ATR should be submitted within six months from the signing of the contract. Failure to submit the ATR in this timeframe will result in the automatic termination of the CfD contract.
- The starting date of project works may not be earlier than 9 March 2023 or earlier than 20 July 2022. The deadline of 20 July 2022 applies to onshore wind and solar photovoltaic renewable electricity generation projects subject to this CfD scheme. The project must comply with the "Start of Works" principle, which means either the commencement of construction works related to the project, or the first legally binding commitment to order equipment or any other commitment that causes the project to become irreversible (as set out in a legally binding document).
- The target commissioning date must not exceed 36 months from the anticipated date of signing of the CfD contract.

Big bonds

Bid bonds are required for participating in the CfD auction at a value of EUR 20,000/MW for the installed capacity of the project, calculated at the exchange rate of the National Bank of Romania valid on the date of issue and for the good performance of the CfD agreement, if signed in value of EUR 75,000/ MW.

The bonds will be enforced if the selected bidder fails to sign the CfD agreement (for the participation bond) and in the default cases set out in the CfD agreement, such as failure to reach COD by the required deadline/delays in making CfD payments/commissioning less than 90% of awarded capacity (for the performance bond).

Auction timetable

The auction indicative timetable was announced on 9 September 2024, which is deemed the auction initiation date.

Key dates include:

- Interested parties can formulate questions and clarifications by 30 September.
- The responses to the questions and clarifications will be received on 18 October.
- The deadline for submitting funding applications will be 18 November 2024.
- Results for awards will be announced on 16 December 2024
- Deadline for signing the CfD contracts will be 20 January 2025.

For more information on this auction and how your business can participate in it, contact your CMS client partner or these CMS experts: **Varinia Radu** or **Ramona Dulamea**.