

LEGAL REGULATIONS REGARDING THE STATUS OF ELIGIBLE PRODUCER

REGLEMENTĂRI JURIDICE PRIVIND STATUTUL PRODUCĂTORULUI ELIGIBIL

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Abstract. *The rational use of the energy, climate change, the continuously increased dependence on petrol and other fossil fuels, the constant increase of energy costs, determine the contemporary society to focus on developing the ways and procedures directed towards the proper functioning of the existing mechanisms related to energy production and consumption [2]. As a priority, the emphasis is both on developing the energy obtained from alternative sources, as renewable energy represents a viable, sustainable and future solution, and on improving the institutional framework for achieving these goals.*

The use of renewable energy sources, by encouraging the more active involvement of small producers in the energy market, constitutes a certain and efficient way to stimulate the development of energy production from these sources. For these reasons, both the legislator and the regulatory authority have developed those measures and decisions that, at first sight, facilitate the process of more active involvement of small producers in renewable energy production, by obtaining the status of eligible producer, but unfortunately, this status is accompanied by the existence of some factors that hinder the development of these mechanisms, in this case the approval of fair and justified tariffs. Of course, the legal regulation of the status of eligible producer is necessary given that small producers are the driving force that directly contributes to increasing the share of energy obtained from renewable sources. Taking into account these aspects, the purpose of the paper is to identify the guiding legal elements underlying the regulation and confirmation of producer status.

Encouraging the use of renewable energy sources, at the level of small producers, by ensuring a safe, reliable and efficient operation of the power system of the Republic of Moldova, as well as the need of promoting the energy from renewable sources, requires the use of a varied investigation tool. This was necessary in order to be able to provide an objective, clear and complete picture of the subject matter. From this point of view, the methodological support was constituted by both quantitative and qualitative methods, namely: the analytical method that allowed us to analyze the work of researchers in the field, as well as the legislative framework, logical methods - induction and deduction, the method of comparative analysis, including the institutional method.

In the context of performed research we can mention that the efficient management and the development of renewable energy through the involvement of eligible producers is one of the key priorities of any democratic government. This is a priority for the Republic of Moldova, as our country continues to promote and implement national strategies in the field of renewable sources, strategies that have been and are being implemented in the context of some difficult economic phenomena that are in a weaker process of development at present.

Key words: eligible producer, legislative measures, potential, renewable energy, regulation, regulatory framework.

JEL CLASIFICATION: K 330, Q 200, Q 280

Emphasizing the role of the energy obtained from renewable sources is gradually achieved, in the context in which this potential will serve as an important factor in developing the competitiveness

on the electricity market. In the medium to long term, these alternative energy sources are expected to be competitive, rational and efficient in the context of the demopolisation of the internal market in electricity.

The national sector of renewable energy sources tends to develop and expand its scope as Republic of Moldova, as a member state of the European Energy Community, intensifies and attaches special importance to investments in renewable energies. It is well known that at the national level, concerns in this direction are pursued in accordance with the policies that are applied throughout the European Union.

Thus, the potential of renewable energy sources, discovered at the beginning of this decade on the background of industrial restructuring and technology development, is recognized by our country, in the context of implementing the European commitments assumed by the Republic of Moldova on the energy sector.

In order to prioritize and develop this sector in accordance with the objectives of the Energy Community, the Government approved on February 5, 2013 the Energy Strategy of the Republic of Moldova until 2030. The objective of this document is the integration of the Republic of Moldova in the European energy system. The strategy highlights the country's priority issues, aiming at [4]:

1. identifying quick solutions and formulating objectives to ensure a balance between internal resources (both currently used and expected), on the one hand, and the needs of the country, on the other hand;
2. the objectives of the European Union and the Energy Community compared to the national objectives, international commitments on treaties, agreements and programs (including neighborhood) to which Moldova is a party [8].

So, at present, the way we produce energy is at the heart of efforts to address climate change. The diversification of the energy mix and the energy sources we can rely on constitutes an issue that generates multiple discussions in the context in which the energy obtained from renewable sources is a way to recover the economy not only at national level, but also at European and global level.

The diversification of the ways for obtaining the energy from renewable sources encounters many difficulties in the context in which the research and the production of the facilities necessary to produce renewable energy, but also the implementation of the legislative framework, has not seen a spectacular development. Regardless of this, the potential of renewable energy is growing as more investments are attracted in this sector and more people are trying to promote clean energy, thus obtaining the status of eligible producer.

In order to support this sector of activity and to increase the quality and sustainability of alternative energy development projects, the National Agency for Energy Regulation has developed and adopted a regulatory framework in this field. This is primarily the adoption of the Law on the promotion of the use of energy from renewable sources no. 10/2016. Although Law no. 10/2016 was adopted by the legislator in February 2016, for a regulatory framework of implementation was reserved a term of two years [1].

With the implementation of the law, a package of legal norms and rules have been adopted, which are necessary in the process of developing renewable sources. Although the new legal framework is not complete, it contains norms which regulate the establishment of clear, fair and non-discriminatory rules on organizing and conducting tenders for eligible producers. It also contains rules by which were simplified the real possibilities for small producers to get access to the support schemes granted by the state, in case they are the beneficiaries of medium or long-term projects in the field of renewable sources. The completion of the regulatory framework with new legal instruments was also

necessary in the context in which the administrative procedures for obtaining the status of eligible producer were not clear enough, presenting a number of technical and legislative difficulties. In this regard, it was necessary to simplify these procedures and to explain to the actors involved in the field - how they can obtain this special status.

With the simplification of the procedures for granting the status of eligible producer, the calculation methodology for energy obtained from renewable sources was developed and approved. In addition to the fact that the methodology clearly establishes the tariff price for electricity obtained from alternative sources, it also establishes the costs of connecting to transmission and distribution networks.

Among the regulations related to the status of eligible producer and the operation of these subjects, we can mention:

- Methodology for determining fixed tariffs and prices for electricity produced by eligible producers from renewable energy sources [7];
- Regulation on guarantees of origin for electricity produced from renewable energy sources;
- Regulation on the organization of tenders for the granting of the status of eligible producer;
- Regulation on the confirmation of the status of eligible producer.

Among these regulations, the Regulation on the confirmation of the status of eligible producer is of particular importance because it comes to remove the deficiencies related to obtaining and confirming the status of eligible producer. As a legal basis for the adoption of the Regulation of July 5, 2019 served article 36 paragraph 2 of the Law on the promotion of the use of energy from renewable sources no. 10 of 26.02.2016, in the wording of Law no. 34 of 16.03.2018 [6]. The implementation of the Regulation will ensure the observance and application of the provisions of the Law and will create the normative regulatory framework necessary for the confirmation of the status of eligible producer [5].

Given the fact that the Law on the use of energy from renewable sources is a relatively new one for the Republic of Moldova, some mechanisms to support renewable energy producers became operational only with the adoption of this Regulation.

Analyzing the Regulation on the confirmation of the status of eligible producer, we can say that it is unique in its way because it establishes objective, transparent and non-discriminatory procedures, conditions and criteria for small producers who finance, build power plants using renewable energy sources, with a power installed higher than the capacity limit set by the Government, to obtain through open tenders, the status of eligible producer. The regulation comes to complete the provisions stipulated in art. 35-36 of the Law on the use of energy from renewable sources.

Under the new provisions, the status of eligible producer can be granted by the regulatory authority on a first-come, first-served basis. The statute shall be granted in compliance with all the provisions established by the cited regulation, in case an application has been submitted regarding the application for confirmation of the status of eligible producer [10].

By identifying the requirements for granting this status, within the proper procedures of status confirmation, establishing the responsibilities of the involved parties and some performance guarantees, the Regulation concerning the confirmation of the eligible producer status also sets out the obligations for individual entrepreneurs or legal entities that obtain this status, but also under what conditions this status might be drawn back. The conditions for withdrawing the status of eligible producer are also set out in the Regulation on the organization of tenders for the granting of the status of eligible producer.

From the analysis performed we note that this regulation did not clearly delimit the rights of the eligible producer in the context of the provisions of Article 37 of the Law on the use of energy from renewable sources, an article which also provides a series of responsibilities. As can be seen from the existing legal provisions, the producer has more responsibilities than rights. This legal situation shows that the market for renewable energy is not so developed due to existing barriers, the monopoly established for years and due to economic uncertainties regarding the recovery of investments made by small producers in this field.

Therefore, in order to increase the confidence rate in this sector of activity, and to be offered a clarity regarding the position of the eligible producer on the energy market, in particular its real possibilities to supply the energy obtained from renewable sources, the Regulation concerning the confirmation of the eligible producer status comes to facilitate the access of small producers to the energy market, by eliminating some bureaucratic barriers. These actions contribute to attracting foreign investment and, respectively, to the development of the national economy.

In this sense, the new regulation also comes to regulate those requirements that are imposed upon eligible producers, regarding the capacity of technologies which are used for generating renewable energy. We must understand that the use of renewable energy sources, in particular the production of the energy from renewable sources must correspond with the European requirements in the context in which the eligible producer wishes to obtain the certificate of operation which will subsequently allow the conclusion of the energy purchase contract with the power supplier, generating in this way the increase of the competitiveness in the energy market.

In order for this competitiveness to be more active, it is necessary to ensure more active involvement in support of alternative energy producers. The actors involved in the capitalization of renewable sources, talk about the "Support Scheme". Support scheme under European law means any instrument, scheme or mechanism applied by a Member State or a group of Member States, which promotes the use of energy from renewable sources by reducing the costs of that energy, by increasing the price at which it can be sold or by increasing, through obligations relating to energy from renewable sources or otherwise, the volume purchased by this type of energy [9].

This definition is proposed by researchers, to be taken over by our institutions demonstrating in this way, the increased interest that is shown for the use of renewable energy, thus generating support for small producers, increasing the share of energy obtained from renewable sources in the total energy produced and that of energy consumed.

In the Republic of Moldova, in the context of establishing those three priority directions of the energy market development, namely: the promotion of the energy efficiency and the use of the energy from renewable sources, ensuring the security of power supply and the development of competitive energy markets, there are used two support schemes: the feed-in tariffs, determined and set by the regulation authority and the fixed prices established as a result of auctions organized by the Government, which will not exceed the price ceiling. These are established in the context in which the energy market of our country has the characteristics of an emerging market with an underdeveloped competitive environment.

At the same time, the non-uniform character of the development of renewable energy demonstrates the weak capacities of eligible producers in attracting investments that will contribute to the production of electricity, based on the use of wind, solar and gas.

Although the use of these types of energy is expanding, their share in total renewable energy is very small. From this point of view, there is a low presence of the business environment in the renewable energy sector, even if legislative measures are taken to attract them in this field.

An important moment in the regulation of the status of the eligible producer is also the approval of the Contract for the purchase of electricity from renewable sources, also adopted on July 5, 2019.

Contract regulation is necessary to ensure the predictability of contractual obligations, transposing and implementing the guarantees offered by law to the eligible producer. The power purchase contract from renewable sources shall regulate transparently and explicitly the legal and commercial relations between the central power supplier designated by the Government and the producer of the electricity from renewable sources, which was offered the status of eligible producer based on the tender conducted in accordance with the Regulation on conducting tenders for granting the status of eligible producer, approved by the Government or the confirmation procedure specified in the Regulation on confirmation of eligible producer status.

The regulator has in principle developed a regulatory framework that supports small producers, setting objective, transparent and non-discriminatory conditions to make renewable energy more attractive to them. Thus, the development and the implementation of an appropriate regulatory framework increases the investors' confidence to contribute to the efficiency of the national energy sector. In this way, a significant increase in demand for the energy, which is obtained from renewable sources, is anticipated in the conditions in which the strategies adopted in the field of energy efficiency, register slow but ascending results.

Also, the effective implementation of the regulatory framework in the field of energy contributes to establishing a clearer role for renewable sources and that of the eligible producer in their recovery. In this regard, researchers come to bring new energy solutions to stimulate market demand for renewable energy.

New solutions are inviting in the context in which the market for alternative sources is constantly developing and the new innovations in the field, impose the need to regulate them. These actions are indispensable in order to ensure a fully functioning emerging market, in which the vulnerability of the eligible producer to technical, economic and legislative uncertainties can be eliminated.

Emphasizing the fact that the Republic of Moldova remains dependent on important energy resources, unfortunately our country does not take concrete steps to demopolize the energy market, and the lack of offers that would significantly influence the competitiveness in this sector it is not caused by the fact that the capacity of eligible producers is still very small. The main causes limiting the diversification of power supply options constitute the lack of sufficient capacities of local power generation and the lack of a local competitive electricity market, as well as the impossibility of procuring the electricity from the EU market due to the lack of physical and sustainable interconnections with the European power system.

As we can see, the involvement of eligible producers in the energy market includes a number of problems and challenges. First of all, it is determined that the performed investments are very few and the state does not provide enough incentives to develop the capacity of small producers in order to increase their energy potential. Secondly, the marketplaces are too small as they are powerful tools for finding low-cost resources. And last but not least, the existing regulatory framework limits the potential of eligible producer in actions. The argument comes in the context that, although the Republic of Moldova has a regulatory framework regarding the status of eligible producer, sometimes it is not enough because small producers, due to "legislative imperfections", face bureaucratic issues when they have committed with all technical and legislative conditions and want to obtain the status of eligible producer.

Even if we place special emphasis on capitalizing on renewable energy sources and small producers, the market generally tends to favor traditional sources, rather than alternative and flexible resources, which are based on supply and demand [3].

CONCLUSIONS

Many of legal and regulatory requirements for energy efficiency are addressed only on paper, as they are improperly implemented. From this point of view, the small producers of renewable energy are in a state of uncertainty in the context in which they want to increase their productivity and then to develop it at maximum.

For this reason, in the energy field, the state should have not only a legislative, regulatory role, by tracing the strategic directions of the Moldovan energy sector development, but should design and implement the sectoral policies of the development, ensuring the security of energy supply.

These aspects are important in the context in which the development of the energy sector by developing the alternative energy, is directly related to the activity carried out by small producers. From this point of view, their promotion is necessary because through these actions are created economic activities, new jobs, and respectively, are boosted the real possibilities of eligible producers to contribute to the increase of the energy stability and security of the Republic of Moldova. Supporting the small producers of renewable energy by obtaining the status of eligible producer will contribute to the increase of the competitiveness on the emergent market, fact that will determine lower prices for electricity. At the same time, the eligible producers are the ones who directly contribute to the reduction of greenhouse gas emissions by the fact that they capitalize on those alternative sources that are less or not at all polluting for the environment.

In view of these circumstances, the completion of the regulatory framework on the status of the eligible producer is inevitable as it is the one that influences the demand and supply in the market for the purchase of electricity.

Thus, in order the energy obtained from renewable sources to present a viable solution for the future and to ensure the energy security, there must be simultaneously fulfilled two conditions: the energy to be produced from renewable sources and the decision factors of the involved authorities, researchers and people from business environment to succeed to act synergistically to overcome the technological and cost barriers, including the existing legislative barriers, especially regarding the storage and the conversion of renewable energy obtained from small producers.

In order to achieve these objectives, we propose the following recommendations:

- The development of a legislative framework that shall offer the eligible producers a much more extended scope, obtaining the possibility to promote the renewable energy through other technologies, others than those stipulated in the Regulation on the confirmation of eligible producer status;

- At the same time with the completion of the regulatory framework, it would be appropriate to develop new local energy efficiency plans and programs that will support local producers. At the same time, the development of training and development programs will significantly contribute to increasing the capacity of the eligible producer to obtain renewable energy. By implementing these legislative and technical actions, it will be determined an efficiency of the energy management by the fact that the eligible producers will be able to correctly interpret the legal rules that directly regulate their activity in the energy field;

- Ensuring the legislative framework for stabilizing domestic electricity consumption and promoting the use of green energy;

- Limiting the factors that influence the pricing of the energy supplied by small producers and ensuring fair competition between local energy producers, regardless of how renewable energy is obtained;

- Solving the problems relating to some categories of eligible producers in order to stabilize the internal consumption of electricity from renewable resources, which have a privileged position on the market both through the system of power procurement and for their involvement in subsidy programs;

- The contractual freedom must also be respected, even if it complies with the legal provisions. Freedom means ensuring that eligible producers are able to freely negotiate the trade commitments with the trading partners or with the energy supplier to whom the renewable energy is to be delivered. In this way, we can predict that these contracts will certainly have more economic advantages. The argument results from the fact that the investment projects that come to support renewable energy producers are frequently supported by long-term contracts negotiated between the parties, balancing the risks and benefits.

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