

Developments on the CfD mechanism in Romania



On 10 April 2024, Government Decision no. 318/2024 approving the general framework for the implementation and operation of the contracts for difference support mechanism for low carbon technologies („GD 318/2024”) was published in Official Gazette of Romania no. 333, entering into force on the same date.

GD 318/2024 aims to establish the general framework governing the implementation and operation of the support mechanism through contracts for difference (“**CfD**”) for electricity generation using low carbon technologies.

Below is a selection of some of the most relevant aspects regulated under GD 318/2024:

1. Overview of the CfD support mechanism. State aid schemes versus ad hoc State aid.

Under the CfD support mechanism, operating aid is granted for the operation of low-carbon electricity generation capacities.

This type of aid is granted either (i) under State aid schemes or (ii) on the basis of ad hoc State aid (in this latter case, for power generation projects for which, due to the specificity of the technology, a competitive selection process cannot be applied). To this end, the Ministry of Energy will draw up CfD State aid schemes or grant ad hoc CfD State aid for the eligible generation technologies (*i.e.*, onshore wind, offshore wind, solar photovoltaic, hydro, nuclear, hydrogen, energy storage).

Ad hoc CfD State aid seems intended to be granted to electricity generation projects which, due to the specificities of the technology in question, one cannot apply a competitive selection procedure.

Any CfD scheme or ad hoc CfD State aid and any related CfD contract shall be subject to authorisation and subject to the State aid authorisation decision of the European Commission (“**EC**”) and any rights and obligations resulting from signing a CfD contract shall be postponed being exercised or provided until the State aid authorisation decision of the EC has been obtained following the notification of the CfD scheme or the ad hoc CfD State aid respectively. Where an EC State aid clearance decision has been obtained, the scheme and the CfD contract shall remain subject at all times to the EC State aid decision and shall be automatically suspended if and to the extent that such decision is suspended or revoked.

The actual project eligibility requirements for a CfD scheme will be further approved via order of the Minister of Energy that will also cover timeline, budgets, capacity requirements, tender procedure

2. Roles and responsibilities

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

The operating aid under the CfD mechanism is granted through difference payments for the power (subject of the CfD contract) produced, measured and delivered into the national energy system (“NES”), by the CfD counterparty (OPCOM) to the CfD beneficiary in cases where the reference price is lower than the auctioned strike price or by the CfD beneficiary to the CfD counterparty in cases where the reference price is higher than the strike price.

3. Strike price

In the case of a CfD scheme, the strike price for a CfD contract is determined by CfD auction, while in the case of ad hoc CfD State aid, the strike price for an ad hoc CfD contract is determined by negotiation.

The strike price for a CfD contract awarded through a CfD auction may not exceed the maximum strike price specified in the order initiating a CfD auction.

However, the CfD beneficiary shall not receive payment for the CfD difference for the quantity of electricity delivered into SEN in all periods where the price per settlement interval in the relevant wholesale market, or, as the case may be, the average price in the relevant wholesale markets used to determine the reference price corresponding to the delivered output, is negative.

The implementation and operation of a CfD scheme for one or more eligible power generation technologies will be approved by order of the Minister of Energy and the scheme will set out the eligibility conditions, deadlines, budgets, capacity targets and tendering procedure in accordance with the specific characteristics of each eligible generation technology concerned.

The funds for the CfD support mechanism will be ensured through the CfD levy collection mechanism applied to all final consumers (to be collected by electricity suppliers active on the Romanian retail electricity market and transferred to the CfD liquidity fund) and/or through non-reimbursable European Union funds (*e.g.*, the Modernisation Fund).

ANRE will approve the amount of the CfD levy no later than 20 December for the following year and no later than 20 June for the following semester of the current year.

As flagged by the market during the discussions on the draft legislation, the liability of the CfD counterparty for CfD fund illiquidity remains unaddressed.

4. Obligations of the CfD beneficiary

Pursuant to GD 318/2024, the CfD beneficiary has, amongst others, the following obligations:

(i) to demonstrate to the CfD scheme operator, by means of supporting documents, that the capacity proposed for the project consists of a completely new power generation capacity.

(ii) to report quarterly to the CfD counterparty on the status of planning, permitting, licensing, construction and commissioning of the project and other information required to be reported to the CfD counterparty under the CfD contract and to provide any additional information requested by the Ministry of Energy and the CfD counterparty.

(iii) to pay annually to the CfD counterparty the amount corresponding to the excess profit obtained from the bilateral contracts established by ANRE decision in the cases provided for by GD 318/2024.

5. Provisions regarding the first State aid scheme in the form of CfD

The first State aid scheme in the form of CfD targets electricity generation from renewable onshore wind and solar photovoltaics (“**First CfD Scheme**”).

With respect to the First CfD Scheme, CfD tenders will take place from the date of entry into force of GD 318/2024 and in 2025 on the basis of a CfD scheme for which the CfD liquidity fund will be replenished with amounts ensured by the Ministry of Energy from the Modernisation Fund which will be transferred to the CfD liquidity fund, subject to the State aid approval by the CE and funding of the CfD scheme from the Modernisation Fund by the Investment Committee.

The CfD beneficiary is under the obligation to deliver into SEN and sell only on the organised markets all quantities of electricity (delivered by the generation capacity) subject of a CfD contract, except for the quantities of electricity used for its own technological consumption of the internal services powered from the terminals of the CfD beneficiary's generators.

Where a CfD beneficiary sells all or part of its energy production under bilateral contracts concluded on organized markets, the following profit-sharing mechanism shall apply to determine the excess profit from these contracts to be returned to the CfD counterparty:

i. if, in a settlement interval, the price per megawatt-hour in a bilateral contract is higher than the reference price but lower than the strike price, the CfD beneficiary shall return to the CfD liquidity fund 50% of the revenues obtained under the bilateral contract, calculated as the product of the quantities of electricity sold under the bilateral contract and the difference between the bilateral contract price and the reference price.

ii. if, in a settlement interval, the price per megawatt-hour in a bilateral contract exceeds both the strike price and the reference price, and the strike price is higher than the reference price, the CfD beneficiary shall return to the CfD liquidity fund:

a) 100% of the revenues obtained under the bilateral contract, calculated as the product of the quantities of electricity sold under the bilateral contract and the difference between the strike price and the reference price.

b) 50% of the revenues obtained under the bilateral contract, calculated as the product of the quantities of energy sold under the bilateral contract and the difference between the bilateral contract price and the strike price

iii. if, within a settlement interval, the price per megawatt hour in a bilateral contract exceeds both the strike price and the reference price, and the reference price is higher than the strike price, the CfD beneficiary shall return to the CfD liquidity fund 50% of the revenues obtained under the bilateral contract, calculated as the product of the quantities of energy sold under the bilateral contract and the difference between the bilateral contract price and the reference price.

Any revenues obtained under bilateral contracts by the CfD beneficiary which are not required to be returned to

the CfD counterparty in accordance with the above shall not constitute excess profit from bilateral contracts and shall remain with the CfD beneficiary.

In respect of the guarantees of origin for the electricity thus produced, these will be issued in accordance with the provisions of Government Decision no. 1232/2011 approving the Regulation for issuing and tracking guarantees of origin for electricity produced from renewable energy sources and article 19 of Government Emergency Ordinance no. 163/2022 supplementing the legal framework for promoting the use of energy from renewable sources.

6. Further secondary legislation needed

In addition, it should also be noted that the annex to GD 318/2024 includes the CfD contract corresponding to the CfD scheme for onshore wind and solar photovoltaic technologies.

Further on, ANRE should prepare and approve/issue the relevant secondary legislation, such as:

- within 60 days from the date of entry into force of GD 318/2024, the methodology on the mechanism for determining the CfD levy for the collection of the revenues necessary for the CfD counterparty and the CfD scheme operator.
- within 180 days from the date of entry into force of GD 318/2024: (i) the methodology for calculating the excess profit from bilateral contracts, (ii) the methodology for calculating the reference price, and (iii) the methodology on the mechanism for determining the CfD levy for the collection of the amounts needed to cover any CfD deficit or other amounts needed to finance CfD schemes and ad hoc CfD State aid.

Considering the intended timeline, the above legislation will likely be issued in parallel with the tender process die the First CfD Scheme.

If you need any clarification in relation to the above, please do not hesitate to contact your usual contacts within Bondoc și Asociații or write us at office@bondoc-asociatii.ro.