

**Shared expert recommendations on main provisions of the Draft Law No. 8449-D registered on 05/12/2018 (Renewable Energy Auctions Law)**

Provision	Provision of the Draft Law	European Commission, Energy Community Secretariat, EBRD, IFC, World Bank (19 October 2018 letter to the Rada)	AURES II, DiXi Group, Low Carbon Ukraine - shared expert position
1) <b>Date of new support scheme introduction</b>	01 January 2020	The new support scheme should come into force as quickly as possible, with auctions introduced immediately following the entry into force of the amendments to the law. The first auction should be awarded no later than 31 December 2019, in order to allow for a transition period to ensure that all projects sufficiently advanced (see below) can still benefit from the tariff they were designed under.	<p><b>Recommendation:</b> New support scheme should be introduced as early as possible.</p> <p><b>Reasoning:</b> Since the current system is associated with high support costs, a new support system should be introduced as soon as possible. Given that the implementation of the law will take time, 01.01.2020 seems to be a reasonable compromise to start the auctioning system.</p>
2) <b>Final date to sign a pre-PPA to complete the launched RES projects using the “green” tariff scheme (regardless of the project size)</b>	<p>By 31 December 2019.</p> <p>Terms and conditions for the pre-PPA conclusion:</p> <ul style="list-style-type: none"> <li>- confirmed right of land ownership/use;</li> <li>- concluded grid connection agreement for the facility;</li> <li>- construction permit.</li> </ul> <p>Terms and conditions to obtain the “green” tariff: commissioning of the SPP facility during 2 years and of facilities of all other RES types during 3 years.</p> <p>The “green” tariff rate is determined by the date of facility commissioning.</p>	A 1 July 2019 cut-off to qualify for launching projects under the existing Green Tariff is reasonable, provided that the requirement to have a pre-PPA in place be complemented by more stringent criteria, such as having a grid connection and land secured in place.	<p><b>Recommendation:</b> We recommend to set the last date for signing a pre-PPA to the date of the law’s adoption plus 6 months.</p> <p><b>Reasoning:</b> This provision is a way to minimise the number of projects receiving FIT after 2020. This both helps to tackle financial risks for the system and to ensure an appropriate level of competition during the first auctions.</p>
3) <b>Auction design</b>	<p>One-stage static sealed-bid auction. The bidders shall submit closed bids containing the technical bid (capacity for which the bidder intends to obtain the right) and the price bid (electricity price per 1 kilowatt hour).</p> <p>The successful bidders are selected by the results of simultaneous opening of envelopes with and evaluation of technical and price</p>	An auction design relying on pay-as-bid (one-stage static auctions, with simultaneous openings of technical and price bids) appears to be reasonable.	<p><b>Recommendation:</b> Choose a simple auctioning design at the <b>beginning (until 2025)</b>. The following design elements should be stipulated in the Law and sufficient to allow for an efficient auctioning scheme for Ukraine:</p> <ul style="list-style-type: none"> <li>- One-stage price bidding</li> <li>- Sealed-bid</li> <li>- Pay-as-bid award</li> <li>- Bidders offering the lowest price will be awarded the subsidy (price only)</li> <li>- Fixed support period</li> <li>- PPA for the whole support period with fixed strike price (= auctioned level of support) (see contractual structure)</li> </ul>

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	bids. Price is the only criterion to select successful bidders.		<ul style="list-style-type: none"> <li>- Technology-specific</li> <li>- Location-neutral (except Chernobyl) / no wind-offshore auctions yet</li> <li>- Ceiling prices</li> <li>- Penalties for delays/ infringements</li> <li>- Pre-qualification requirements for participation</li> <li>- Qualification stage of the projects <i>after bids are opened</i></li> <li>- Support should be stated in EUR</li> <li>- Marginal project should be defined in detail in secondary legislation</li> </ul>
<b>4) Pilot auctions</b>	<p>The Cabinet of Ministers of Ukraine shall ensure conduction of a pilot auction (pilot auctions) during 6 months from the effective date of the Law.</p>	<p>It is very important to separate the concepts of pilot auctions from the Chornobyl Exclusion Zone project, which has very specific characteristics and will not be replicable under the wider auction scheme. The criteria should be clarified to note that 100 MW will be the aggregate capacity for each pilot auction. For the Chornobyl Exclusion Zone project and off-shore wind projects location-specific tenders should be conducted.</p>	<p><b>Recommendation:</b> We recommend to introduce pilot auctions as proposed. We recommend to auction capacities of 100 MW each for solar and wind onshore at the very beginning. Pilot auctions should be conducted as similar to the regular auctions as possible. This will allow to apply the experiences made in the pilot auctions in the regular auctions.</p> <p>In addition, we recommend to require by Law from the executive authorities to present a comprehensive monitoring report after the pilot auctions and then annually. The report should evaluate the outcome of the auctioning mechanism. Based on the evaluation, the report should contain recommendations for adjustments of the auctioning system.</p> <p>The objective of pilot auctions needs to be clearly stated and target provisions which are subject to implementation rules in the law, such as testing if the quota setting mechanism, auction procedures are adequate</p> <p>If pilot auctions are conducted, Chernobyl should not be a pilot case as conditions differ greatly to other locations/ auctions.</p> <p><b>Reasoning:</b> Low capacity levels will allow for competition. Capacities can be increased after the first experiences.</p> <p>Conducting pilot auctions without a clear evaluation target fails its purpose, thus we suggest to define pilot auctions as those with volumes defined in the Law and results of which should be taken into the methodology of defining 5-year volumes plan.</p>
<b>5) Auction frequency</b>	<p>2 times a year with deadlines on or before 01 April and 01 October</p>	<p>The date of the first auction to be specified as 1 October 2019. Auction frequencies twice a year appear to be reasonable.</p>	<p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>- The minimum of two rounds per year will ensure enough frequency to sustain the market active, and enable bidders to resubmit bids in case of not being awarded in a previous round. However as at this point, we do not know the exact volumes to be auctioned, it's not possible to specify more precisely the exact number of rounds. In any case, number of auctions conducted have to provide for effective competition level;</li> </ul>

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			<ul style="list-style-type: none"> <li>- That volumes to be auctioned on each round should not deviate more than 20% from previous and next round, except for pilot auctions;</li> <li>- Introducing a clear auction schedule;</li> <li>- Not to set the auctioning dates in a way that they overlap with auctioning dates of different technologies and with RES auctions in neighbouring countries;</li> <li>- The auctioning volume for each auction of one RES type should be similar for different auctioning dates within one calendar year.</li> </ul> <p><b>Reasoning:</b> A clear auctioning schedule will help the market participants to prepare all necessary documents in time and will allow for a stable RES market development.</p> <p>Using different auction dates for different technologies across the year in order to avoid too much work at one time for the auction organizer.</p> <p>Higher auctioning frequencies might be beneficial as required permits will be valid for several auctions. Hence, the sunk costs for bidders that are not rewarded in the first round are reduced. This might also have positive effects on competition.</p>
<p>6) Entities obliged to participate in the auctions</p>	<p><b>The following projects are obliged to participate in auctions:</b></p> <p><b>in 2020</b> – WPPs with the installed capacity &gt; 20 MW and all other RES types with the installed capacity &gt; 10 MW</p> <p><b>in 2021 and 2022</b> – WPPs with the installed capacity &gt; 20 MW and all other RES types with the installed capacity &gt; 5 MW</p> <p><b>from 01 January 2023</b> – WPPs (or one wind turbine) with the installed capacity &gt; 3 MW and all other RES types with the installed capacity &gt; 1 MW</p>	<p>Levels of 5 MW or 10 MW for solar and wind, respectively (declining to 1 and 3 in 2023) appear to be too high and constitute a risk of overcompensation, negative impact on competition and distortive effect to the transition of new projects to competitive bidding scheme.</p> <p>In any case, an assessment by the Anti-Monopoly Committee is an essential requirement to confirm the compliance of the scheme with the state aid obligations of Ukraine.</p> <p>In the EU market, thresholds below which competitive bidding processes do not need to be employed are set at the level of less than 1 MW for solar or 6 MW generation units for wind.</p> <p>In order to address potential circumvention risks of this requirement setting aggregated capacity limits for the generation units of different RES technologies should be considered (i.e. an aggregated capacity limit for onshore wind generation units, an aggregate capacity limit for solar PV units, etc).</p>	<p><b>Recommendation:</b></p> <p>1) <b>We propose not using a transition period</b> but introducing mandatory auctions for Solar starting at 1 MW and Wind starting at 3 MW as soon as possible, i.e. from the 01.01.2020. By transition period, we imply the stepwise reduction in the capacity thresholds, the ones foreseen in the draft law for 2023 onwards. By skipping the proposed transition period, these thresholds would come into force already in 2020. Lower thresholds can increase competition and reduce cost for GT support in the coming years. Furthermore, we oppose the 15% trigger rule (for further information please refer to point 11)</p> <p>2) <b>A clear definition of a single RES project needs to be stated.</b> We recommend to use the following criteria defining one RES project:</p> <ul style="list-style-type: none"> <li>a) single RES project is defined as placed within 1.5 km measured from the outside edge of respective installation, defined in detailed territory plan and connected to the grid at the same point</li> <li>b) single RES project may comprise of stages, defined by project documentation</li> <li>c) different construction stages of the project are not eligible for Green Tariff or any upcoming additional FIT mechanism</li> <li>d) aggregated capacity of the project, including for different stages, determines eligibility for a support scheme.</li> </ul>

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			<p>3) We recommend to redefine the threshold for onshore wind. In the current draft law it is stated that wind project &gt; 3MW / 1 turbine only is qualified to take part in auctions. However, we recommend to set the threshold at 3MW OR 3 wind turbines.</p> <p><b>Reasoning:</b> Since mainly the awarding method changes (compared to the old system), market participants do not need 3 years to get used to the new system. Most important for auctions is to allow for competition. This can be done by setting the thresholds for mandatory participation in auctions low and to allow participation for all RES plants that want to take part. Introducing low thresholds as soon as possible will reduce the problems of project developers fragmenting their projects to still make use of the “Green Tariff” instead of taking part in auctions.</p> <p>At the same time, clear definition of the RES project will mitigate the risk of dividing projects into smaller ones below the auctions’ threshold.</p>
<p>7) <b>Entities which may participate in auctions on a voluntary basis</b></p>	<p>All RES types</p>	<p>The mandatory participation of all types of renewable energy producers above a specific threshold is reasonable.</p>	<p><b>Recommendation</b></p> <p>Not all solar and wind plants (that means also the ones below the respective threshold) should be allowed to take part in auctions. Furthermore, we suggest introducing a separate auction for medium sized solar and wind projects. For instance, groups of up to 5 MW for solar PV and 20 MW for wind energy.</p> <p><b>Reasoning:</b> The main purpose of an auction is to create competition among market players. If the market players are different (strong vs weak), especially in terms of financial capacity (access to capital and economy of scale) and there is insufficient competition, then the strong players might bid higher and lean their bids towards the weaker bidders. Hence it would be better to have these diverse players compete in different segments, i.e. conduct separate auction rounds - to reduce the risk of such overcompensation of strong bidders.</p>

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<p><b>8) Technology specific RES auctions</b></p>	<p>All types of <b>RES technologies</b> reaching 15% of total electricity production from RES shall participate in auctions (based on the results of the previous year). <i>Currently, SPPs and WPPs reached the specified level.</i></p>	<p>We can agree with the proposal to introduce technology-specific quotas provided that no regional quotas are set and pre-qualification criteria include connection permit and secured land. With the little evidence in place, we do not support the proposal to allocate certain limit of each annual quota (20-25% of each annual quota to non-wind or non-solar technologies) at the level of primary legislation. Instead we recommend that in case if a specific allocation is made, it should be made by the Cabinet of Ministers and it should be required to be justified by considerations of grid stability, market and energy sources diversity and cost. Because renewable energy and power storage technologies and their costs are evolving very rapidly, mentioning a technological mix in primary legislation may lead to suboptimal results in several years; and changing primary legislation is a lengthy process.</p>	<p><b>Recommendation:</b> We highly recommend to apply technology specific auctions for different technologies only at the start of the auctioning scheme.</p> <p>The following technology-specific auctions should be introduced and listed in the law:</p> <ul style="list-style-type: none"> <li>- Wind onshore</li> <li>- Solar for all types</li> <li>- Additional location specific auctions for Chernobyl region</li> <li>- Underdeveloped technologies <ul style="list-style-type: none"> <li>▪ Biomass</li> <li>▪ Biogas</li> <li>▪ Small hydro</li> <li>▪ Geothermal</li> </ul> </li> </ul> <p>To account for technology-specific requirements, technology-specific rules for each auctioning type need to be defined.</p> <p><b>We recommend setting a minimum volume for each technology for the first 3 years of auctioning in the law (2020-2022)</b> in order ensure a balanced development of the different technologies and ensure investor certainty in the short to medium term for the market. An increased diversification of different technologies will reduce the overall balancing needs. In addition, setting technology-specific quotas enhances investor confidence.</p> <p>We follow the IRENA/EBRD/EnC position: “Technology-specific auctions should be used as an initial step – in particular, when required by: the need to achieve diversification; network constraints; and grid stability. Once RE auctions become well established, technology neutral auctions should be considered.”</p> <p>We recommend to consider technology-specific auctions at least until 2025. After that, the ministry may opt to add Wind-offshore or technology-neutral auctions. <b>Therefore, the 15% of generation share as a trigger for auction kick-off provision should be deleted.</b></p> <p><b>Reasoning:</b> Since different technologies have different generation cost, technology neutral auctions would lead to a strong concentration of Solar power plants.</p> <p>As there is no mature market for wind offshore tenders right now, this specific auction can be implemented later on. For the underdeveloped technologies listed above (biomass, biogas, geothermal and small hydro) the volume should be set carefully according to market studies in order to ensure enough competition</p>
<p><b>9) Support for the successful bidder</b></p>	<p>20 years</p>	<p>We support the proposal to extend the support duration for the winners of auctions to 20 years from the date of the plant’s technical commissioning, which will provide:</p> <ol style="list-style-type: none"> <li>1) a greater incentive and regulatory stability to investors;</li> <li>2) a more affordable renewable electricity price for Ukraine.</li> </ol>	<p><b>Recommendation:</b> We recommend considering a period of 20 years support.</p> <p><b>Reasoning:</b> Longer support periods allow to decrease the yearly aggregated costs of the support scheme as projects have more time to amortize.</p> <p>Longer support periods decrease exchange risk for Ukraine and decreases country related risks for bidder, thus allowing for lower strike prices.</p>

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<b>10) Quota size - approving authority, approval procedure</b>	<p>Annual quota size shall be approved by the Cabinet of Ministers of Ukraine.</p> <p>The Ministry of Energy and Coal Mining of Ukraine shall prepare submission on a quota size based on proposals of the transmission system operator and the State Agency on Energy Efficiency and Energy Saving of Ukraine.</p>	<p>We do not object the following proposal: The country-wide public support quota shall be established by the Cabinet of Ministers of Ukraine annually upon a submission from the Ministry of Energy. The submission of the Ministry should support reaching the mid- and long-term renewables goal. Moreover, drawing on the inputs of relevant stakeholders such as the transmission system operator, the submissions should reflect factors such as the capacity of the grid to absorb RES, and measures adopted, implemented and envisaged to increase the capacity of the grid and flexibility of the electricity system.</p> <p>Ministry of Energy shall prepare, within 6 months of this law coming into force and annually thereafter, a report that:</p> <p>(1) identifies the volume of renewable energy generating capacity required to meet the target for such capacity set out in the Government's energy strategy;</p> <p>(2) establishes and justifies indicative quotas for the volume of capacity to be auctioned for support in each of the next five years. Upon approval of the Cabinet of Ministers this report shall be published.</p>	<p><b>Recommendation:</b> We support the donors' position. There should be NO regional quotas.</p> <p>We recommend defining stringent reporting and call for tender rules:</p> <ul style="list-style-type: none"> <li>Public report on auctions results for the previous year (competition levels, deficiencies identified, remedies for the next auctions) [March 31st],</li> <li>justifications and rationale for next auctions volumes and suggested schedule [September 30th] and</li> <li>final resolution for volumes and schedule [December 1th].</li> <li>Auction rules should be published officially in both Ukrainian and English;</li> <li>calls for auction rounds have to be published officially in both Ukrainian and English 2 month prior to the auction (before opening for bids)</li> </ul> <p><b>Reasoning:</b> Annual quotas have to be in line with the long-term RES development targets of Ukraine, with the frequency of auctions and with the ten Years' Development Plan of the TSO.</p> <p>Quota sizes have to ensure (1) achieving RES targets of Ukraine, (2) have to be low enough to guarantee competition but (3) should be large enough for cost-efficient auction implementation.</p> <p>This conflict of objectives can be only overcome through learning by doing and ability to adapt quota sizes.</p> <p>Transparency of the process, through reporting rules and call for tender requirements, increases public acceptance and increase confidence of investors (bidders).</p> <p><b>Recommendation:</b> Deadline for announcement of each auction round results should be not more than 10 days after the bid deadline.</p> <p><b>Reasoning:</b> to avoid risk when the Guaranteed Buyer is not obliged to disclose the results for too long a period and to avoid the risk Cabinet of Ministers does not specify this period in secondary legislation.</p>
<b>11) Quota planning period</b>	<p>Quotas shall be set annually for 5 years</p>	<p>We recommend that the Ministry of Energy has an ongoing obligation to publish an annual statement (1) stating the progress achieved towards the long-term RE goal, (2) the then current trajectory expected to reach that goal, (3) a list of supported projects and their implementation status, and (4), a timetable for auctions (including identifying volumes and technologies) for the coming 3-5 years.</p>	<p><b>Recommendation:</b> We recommend that the Cabinet of Ministers prepares by the 1<sup>st</sup> December each year a five-year plan for the auctioning volumes on a rolling basis.</p> <p>In order to have a trade-off between investor certainty and policy flexibility, we suggest that first 3 years of each five-year plan are consistent and should not deviate significantly from the original announcement (not more than 20%)</p> <p><b>Reasoning:</b> Predictability and stability of the auctioned volumes is crucial for the market to build expectation and make decision for commence project development. Minimum of 3 years of stable forecast for volumes will provide a certainty for each type of technology, considering different project durations.</p>

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<b>12) Principles for quota sizing</b>	<p>The annual quota is allocated by 3 separate types:</p> <ul style="list-style-type: none"> <li>• wind</li> <li>• solar</li> <li>• other RES types (biomass, biogas, hydro-, geothermal)</li> </ul>	<p>1. We do not support the introduction of regional quotas if technology specific auctions are foreseen and if the auction bidders are required to secure grid capacity prior to bidding. We also do not support quotas set by administrative regions. However, the law should explicitly allow location-specific auctions for the Chernobyl Exclusion Zone project and off-shore wind projects. Such auctions of pre-selected sites will have separate procedures.</p> <p>2. We can agree with the proposal to introduce technology-specific quotas provided that no regional quotas are set and pre-qualification criteria include connection permit and secured land. With the little evidence in place, we do not support the proposal to allocate certain limit of each annual quota (20-25% of each annual quota to non-wind or non-solar technologies) at the level of primary legislation. Instead we recommend that in case if a specific allocation is made, it should be made by the Cabinet of Ministers and it should be required to be justified by considerations of grid stability, market and energy sources diversity and cost. Because renewable energy and power storage technologies and their costs are evolving very rapidly, mentioning a technological mix in primary legislation may lead to suboptimal results in several years; and changing primary legislation is a lengthy process.</p> <p>3. Reservation of a 40% share of quota allocations for projects smaller than 50 MW could be too high in view of importance of reaching the necessary scale for market development and cost reduction vis-à-vis support for distributed generation and smaller scale projects.</p> <p>4. To avoid speculative behaviour and reduce the risk of auction failure, we suggest to consider a restriction not allowing to increase annual quotas by transferring the non-awarded-quota/ not signed contracts to the following year.</p> <p>5. Award should be non-transferable either to another company or to another final beneficiary (via selling the company awarded) prior to the project being commissioned unless the acquiring entity can demonstrate (i) the same legal, technical and financial capabilities and (ii) the maximum 25% share of the annual quota in the relevant by a single ultimate beneficiary in a given auction is not breached following the proposed acquisition.</p>	<p><b>Recommendation:</b> We are in line with donors' position. In addition, annual auctioning volumes need to be derived for each auctioning type.</p> <p>We recommend defining quota sizes based on a transparent, unchangeable and public shared mechanism and based on market studies</p> <p>We recommend that volumes that have not been awarded within a technology-specific auction will expire and will <b>not automatically</b> be transferred to subsequent auctions. The volume not awarded can be compensated based on the decision of Cabinet of Ministers within the procedure of setting up a five-year plan for auctions.</p> <p>It is important to show a clear commitment for the announced volumes. This is required for sending a clear investment signal and giving the incentive to further develop projects in the long term. There can be a shift of volumes in time in a predictable manner. For more details look into the next point on details for five-year plan procedure.</p> <p><b>Reasoning:</b> Clear and transparent rules of quota sizing reduces the risk of strategic behavior. The automatic transfer of not awarded volumes bears the risk of strategic bidding and possibly low competition.</p>
<b>13) Auction platform</b>	Prozorro electronic auction platform	A trusted, cost efficient and technically-compliant platform fulfilling the highest transparency, objectivity and fraud	We agree to use the Prozorro electronic auctioning platform. This platform has proven to be a fully functioning solution.

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		resilience standards should be used for the future auction system and that a specific platform should not be identified in primary legislation. The most important requirements for an auctioning platform should therefore be set in the primary law. (During the discussions of the working groups in Rada it was clarified that the ProZorro system is adaptable to renewable energy support auctioning requirements, and it can be set-up and be fully functioning within the shortest period of time. Its mandatory use for public procurement is set out in primary law (Law “On procurement”), fulfils the above requirements and has passed the test of practical use in Ukraine).	
<b>14) Auction competition</b>	<p>Competition is a mandatory condition to conduct an auction.</p> <p>Capacity for which the bidders shall obtain the right for the support cannot exceed 80% of the aggregate value of the capacity proposed by all bidders</p>	A reduction in quota levels during auctions should be employed, and we suggest that the ratio of awards to demand not to be higher than 0.8.	<p><b>Recommendation:</b> Economic rationale suggest that the auction volumes should not be changed within the single auction. However, due to political reasons connected with the realities of the situation in Ukraine, we accept the donors’ argument to have the automatic volume reduction rule of 80% (provided there are strong pre-qualification criteria to secure submission of serious bids).</p> <p>We also stress that this <b>volume reduction rule shall be applied</b> not to total capacity proposed, but <b>to total volume qualified in each auction round for each technology</b> after checking all pre-qualification requirements.</p> <p>However, we suggest not transferring the non-awarded volume automatically to the subsequent auctions. This could create a volume “piling up” in future auctions and decrease competition even further. The non-awarded volume could be in the five-year planning framework. For more information on the economic rationale of volume reduction, please consult with the AURES II short brief.</p>
<b>15) Auction ceiling price</b>	“Green” tariff for corresponding RES technology on the auction date	<p>We suggest that each auction has the flexibility to set an objectively justified maximum price and to decide if that price will be published. If the maximum price is set at the Green Tariff level and disclosed, it may result in final auction prices at the level of the disclosed maximum price.</p> <p>However, the maximum price set for any auction should not be allowed to exceed the Green Tariff level.</p>	<p><b>Recommendation:</b></p> <p>We recommend setting a ceiling price that starts with the GT level for each technology, and then move to a dynamic mechanism to set the price based on the average of the highest successful bids of the last three auctions. In any case the ceiling price cannot exceed the GT in the respective year.</p> <p><b>Reasoning:</b> The auctioning should start with the GT as a reference value but should then transfer to a dynamic adjustment system, in order to reflect the actual market development and discourage over-compensation.</p>
<b>16) Measures to prevent high concentration on the RES market</b>	The maximum share of the annual quota to be awarded to one bidder with other related parties at two auctions (per year) shall not exceed 25% (inclusive)	Limiting the maximum share of each annual quota to 25% for a single participant appears reasonable. We suggest that this be coordinated with the Antimonopoly Committee of Ukraine, and that all bidders in an auction be required to disclose their ultimate beneficial owners. It should be clarified that “single participant” means the ultimate beneficial owner.	<b>Recommendation:</b> We support the proposed regulation. However, there is a risk in Ukraine that some players abuse administrative power to lock-out competitors. But the proposed solution will not fully solve this problem, as companies with the same ultimate beneficiary can circumvent this rule.



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17) Bid bond	<p>EUR 15,000 per 1 MW, where:</p> <p>EUR 5,000/1MW to participate in the auction</p> <p>EUR 10,000/1 MW in case of auction winning as the guarantee of obligation fulfilment</p>	<p>The level of the bank guarantee should be set at a per MW basis in order to deter speculative or frivolous bids. We recommend that the level be set at a minimum of EUR 15,000 per MW of capacity.</p>	<p><b>Recommendation:</b> The proposed bid bonds are quite low, compared to international bid bond levels. Therefore, we recommend the following technology-specific bid bonds in order to secure serious bidding and to increase the project realization rates:</p> <p>Wind onshore EUR 30,000 per 1 MW, where: EUR 5,000/1 MW to participate in the auction EUR 25,000/1 MW in case of auction winning as the guarantee of obligation fulfilment</p> <p>Solar and Solar Chernobyl EUR 20,000 per 1 MW, where: EUR 5,000/1 MW to participate in the auction EUR 15,000/1 MW in case of auction winning as the guarantee of obligation fulfilment</p> <p>Importantly, in case a project is awarded and does not transfer the second part of the bid bond, <b>the again available auctioning volume should not be transferred to the next bid</b>. Otherwise, this can lead to strategic bidding by developers with multiple projects, and can lead to higher prices.</p> <p><b>Reasoning:</b> Bid bonds help increase the likelihood of project realisation.</p>
18) Bidders qualification criteria	<p>Requirements are as follows:</p> <ul style="list-style-type: none"> <li>- confirmation of a right of land ownership/use;</li> <li>- concluded grid connection agreement for the facility.</li> </ul>	<p>We believe that certain basic technical requirements need to be fulfilled for a bid to be accepted, including:</p> <ol style="list-style-type: none"> <li>1. grid connection secured;</li> <li>2. initial environmental and zoning permission;</li> <li>3. lease, ownership or option over land; and</li> <li>4. minimum legal and technical criteria.</li> </ol>	<p><b>Recommendation:</b> minimum pre-qualifications criteria for RES facility to be qualified for the auction should follow international experiences and thus include:</p> <ul style="list-style-type: none"> <li>- declaration of beginning of construction or construction permit when required by the Ukrainian legislation;</li> <li>- grid connection permit;</li> <li>- confirmation of land ownership/use rights with appropriate land use designation for RES projects and zoning permission;</li> </ul> <p><b>Reasoning:</b> This list of requirements will ensure the highest quality of projects bidding in the auctions and ensure a high realisation rate of RES projects and eliminate risk of failing to secure all the permits required after the auction award.</p>
19) Contractual structure	<p>The Guaranteed Buyer undertakes to buy electricity from the producer at</p>	<p>There will be more than one agreement in existence, depending on whether the auction occurred in the period prior to the establishment of a liquid day-ahead market or after.</p>	<p><b>Recommendation:</b> We propose to follow the donors' position. In addition:</p>

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	<p>an auction price under the Power Purchase Agreement.</p> <p>Contractual payment: the final settlement for the billing period (month) shall be made within 20 days of the month following the billing one</p>	<p>Market participants awarded a purchase/sale agreement in the period prior to the establishment of a competitive and liquid day ahead market should be allowed to keep their initial contract (purchase/sale agreement) for the full duration of the support period.</p> <p>Market participants awarded support in the period after the establishment of a competitive and liquid day-ahead market will be granted a contract-for-difference, and will be selling power to the electricity market (which may include sales through one or more contracts).</p> <p>It should be made clear that participants already awarded a purchase/sale agreement will not be required to re-sign contracts-for-difference once the liquid day-ahead market has been established.</p> <p>In addition, we recommend that the law specifies the entity that will be responsible for determining that a <b>competitive</b> and <b>liquid</b> day-ahead market exists. The Anti-Monopoly Committee should be responsible for determination of existence of a sufficiently competitive market. The Regulator should be responsible for determination of existence of a liquid day-ahead market. Moreover, the law should specify the need for the criteria to be developed by which the competitiveness and liquidity of the market will be assessed (these criteria can include volume of trading, market churn, number of participants, their shares in the market etc).</p>	<p>PPA with a Guaranteed Buyer for the whole support period with the auctioned level of support as the fixed strike price is appropriate as long as not sufficient level of competition in a functioning and liquid electricity market has been reached in Ukraine;</p> <p>Once a liquid and competitive market is in place, transition to a market premium scheme should be introduced in order to facilitate market integration of mature RES technologies.</p>
<p><b>20) Local content surcharge for auctioning</b></p>	<p>Surcharge shall be applied to the auction price. Its rate shall correspond to the current Law (10% maximum at 50+% local content)</p>	<p>A clear, transparent and long-term process for planning the quotas and for granting the projects is the most effective measure to support local economic development and jobs. We strongly recommend against any proposed local content preferences as this in contradiction to WTO rules and Association Agreement and likely to lead to distortion of competition in auctions as well as to economic inefficiency and unnecessarily high cost of power.</p> <p>Due to declining costs of renewable energy technologies, the added value of renewable energy projects as well as the creation of jobs continues to shift from the technology components to the operation and maintenance of renewable energy projects. Typically, above 80% of jobs are in operation or maintenance.</p> <p>Experience also shows that such policies have had an adverse impact in the long-run for a number of reasons: 1) rules have</p>	<p><b>Recommendation:</b> We recommend to not apply a local content surcharge for auctioning since it distorts the prices as market indicators.</p> <p><b>Reasoning:</b></p> <ul style="list-style-type: none"> <li>- Contradiction with WTO and Association Agreement with the EU might pose a problem to such provision.</li> <li>- Uneven availability of “local content” suppliers possibly leads to a distortion of competition of bidders in auctions.</li> <li>- International experience shows that such mechanism may lead to increased bid levels.</li> </ul>

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21) <b>Responsibility for imbalances</b>	Full responsibility after recognition of the intra-day market to be liquid (the Regulator shall decide on liquidity); from 2024 by latest.	<p>been challenged under the WTO, creating uncertainty for project developers, 2) it limits the number of market players and therefore competition, 3) foreign companies might open local plants, but this does not directly lead to profits for local companies, and 4) it can lead to higher levelised costs of energy supply.</p> <p>We recommend that the balancing obligations are consistently set for auctioning process with a pre-condition of a liquid intra-day market being in place for start of the full balancing responsibility of renewables.</p> <p>Given the uncertainty around the future cost of balancing we also support the introduction of a reasonable cap for future participants to the auctions for the whole duration of their 20-year support to give them the necessary visibility to be able to invest.</p> <p>Separately from the Law, the capacity of key institutions involved in balancing can be enhanced by sharing the experience of EU Member States how to minimize the risks and costs for the grid operators and the Guaranteed Buyer.</p> <p>We recommend that the Regulator’s decision criteria be public and based on clear metrics such as trading volumes over the last twelve months, number and structure of participants, their shares in market segments, price volatility, etc.</p> <p>We recommend that the existing provisions allowing the aggregation of individual RES producers’ balancing responsibilities by the Guaranteed Buyer be maintained.</p> <p>The potentially large untapped potential for increasing the flexibility of the whole system (not only on the infrastructure and renewable producers’ side) along the supply and demand of the city system chain should be also analysed and used.</p>	<p><b>Recommendations:</b> We are in line with the donors’ position: To overhand the full responsibility to the plant operator, a fully liquid intra-day market needs to be in place. Any obligation for balancing should only apply to the projects awarded after a liquid intraday market is in place.</p> <p>We recommend that all new RES plants with an installed capacity exceeding 1 MW (revision in 2025), are required for being fully controllable by grid operator.</p> <p><b>Reasoning:</b> In order to formulate a bid price, investors have to base their calculations on clear market indicators. These reliable indicators can only be obtained from efficient liquid markets. At the same time, the rules for projects already awarded should not change within the support period as this puts the projects into the uncertainty. If the costs are not predictable ex-ante, investors might decide not to invest.</p>
22) <b>Term of Technical Conditions</b>	The term shall be specified for the Technical Conditions (currently, the Technical Conditions have no fixed term). Technical Conditions for the	Relying on provisions identical to draft law 6081 (technical conditions apply during 5 years as of the date of granting) appear reasonable. Cancellation of connection permits not used is an important element for freeing-up available but	<b>Recommendation:</b> We support the proposed term of technical conditions for the grid connection. This will help to create opportunity for new players to enter the market without significant barriers. In case of extension of the project realisation period, the

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<b>for the grid connection</b>	<p>SPPs shall be valid for 2 years and Technical Conditions for the WPPs and all other RES types shall be valid for 3 years.</p> <p>Technical Conditions issued to business entities which became entitled for the support by auction outcomes shall be valid for the term of fulfilment of such entities' obligations for the construction and commissioning of the facilities (2 years for the SPPs and 3 years for the WPPs).</p> <p>As for the transitional period:</p> <ul style="list-style-type: none"> <li>● Technical Conditions issued more than 2 years before the effective date of the Law: <ul style="list-style-type: none"> <li>- shall be valid no longer than 1 year for the SPPs and 2 years for all other RES types if construction permit is available</li> <li>- shall be declared null and void if no construction permit is available</li> </ul> </li> <li>● Technical Conditions issued less than 2 years before the effective date of the Law shall be valid no longer than 2 years for the SPPs and 3 years for all other RES types.</li> </ul>	<p>unused grid capacity (in addition to grid investments and electricity system flexibility increase along the supply – demand chain).</p>	<p>validity of the grid connection agreement should be automatically aligned with extended period.</p> <p>However, abrupt expiration of the validity of older grid connections agreements without obtained construction permits might be too harsh. We suggest providing for a short period for market to adjust and secure necessary permits, e.g. 3 to 6 months after the adoption of the draft law.</p>
<b>23) Penalties for delays</b>		<p>Specify the time from auction award by which project must reach commercial operations and the physical start of production, for example 18 months for solar and 36 months for wind.</p>	<p><b>Recommendation:</b></p> <p>Awarded bids should be cancelled if the RES plant is not put into operation within</p> <ul style="list-style-type: none"> <li>- 42 months (wind onshore);</li> <li>- 30 months (solar);</li> <li>- 42 months (for other technologies).</li> </ul> <p>In order to incentives in time realisation of the project and penalise delays, support period should start not later than within</p> <ul style="list-style-type: none"> <li>- 30 months from the date of signed pre-PPA (wind onshore);</li> <li>- 18 months from the date of signed pre-PPA (solar);</li> <li>- 30 months from the date of signed pre-PPA (for other technologies).</li> </ul>

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			<p>In case of commissioning before these dates, support period starts from the day of commissioning.</p> <p>In case of prolongation of project realisation period by the initiative of the project owner the support period should not be extended.</p> <p><b>Reasoning:</b> Delays are possibly questioning the RES development targets. Therefore, incentives should be set to increase the pressure for RES developers to be on time. However, external, involuntary delays need to be recognized and treated differently.</p>
24) Fee for taking part in auction			<p><b>Recommendation:</b> A participation fee of 500 € for each submitted bid has to be paid to the auctioneer.</p> <p><b>Reasoning:</b> This design element ensures the participation of only serious bidders and is based on international practice</p>
Additional provisions			<p><b>Recommendation:</b> In addition to irrevocable nature of bank guarantee, we suggest adding “conditional and permanent”.</p> <p><b>Reasoning:</b> unconditional guarantee can be released to the Guaranteed Buyer without any trigger checked by the bank. Addition of condition to the guarantee will protect the bidder from GB abusing its powers to seize the guarantee.</p> <p><b>Recommendation:</b> Add provision for responsibility of bidders in case of collusion according to Ukrainian Law. If there is a court ruling on collusion, the parties involved to be excluded from any future auction round.</p> <p><b>Reasoning:</b> to scare off potential colluders</p>

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