

Introducing Guarantees of Origin of Renewable Energy to Ukrainian Electricity Market

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A HANDBOOK FOR FOREIGN CLIENTS



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- Andriy Olenyuk

Partner, EVERLEGAL

Education: Georgetown University Law Center (LL.M., 2010); Lviv National University Law School, (Master's Degree, 2008). Mr Olenyuk is admitted to practice in Ukraine.

- Lidiia Vatutina

Associate, EVERLEGAL

Education: Taras Shevchenko National University of Kyiv (Master of Laws, 2021). Mrs Vatutina is admitted to practice in Ukraine.



Everlegal

Address:

4 Rylskyi Lane, Sofyiska Square, 6th Floor, Kyiv, 01001, Ukraine

UNIT. CITY, 3 Dorohozhytska Street, B10, 5th Floor, Kyiv, 04112, Ukraine

Tel.: +380 44 337 0016

E-mail: info@everlegal.ua

Web-site: www.everlegal.ua

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Introduction of guarantees of origin of electricity produced from renewable energy sources in Ukraine (“Guarantees of Origin”) is likely to take place in 2023 and the key players of the Ukrainian renewable energy sector have been waiting for it a long time.

What are the Guarantees of Origin?

The Guarantee of Origin is an electronic legal document used for the purposes of demonstrating to final customers the share or quantity of energy from renewable sources in an energy supplier's energy mix and in the energy supplied to consumers under contracts marketed with reference to the consumption of energy from renewable sources.

In accordance with EU legislation, energy from renewable sources is defined as “energy from renewable non-fossil sources, namely wind, solar, aerothermal, geothermal, hydrothermal and ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases”.

The Guarantees of Origin must contain the following parameters:

- 1 MWh standard size of the Guarantee of Origin;
- only one Guarantee of Origin can be issued in relation to one unit of electricity produced;

- maximum 12-month validity period commencing on the date of electricity production.

Corporate and individual buyers of electricity who wish to receive certification that the electricity they consume originated from renewable energy sources and its greenhouse gas footprint is non-existent may opt to buy the electricity together with the Guarantee of Origin and, in so doing, help to raise demand for renewable energy in the relevant jurisdiction.

Regulatory Background

Further to its obligations under the Treaty Establishing the Energy Community and the Association Agreement with the EU, Ukraine has been obliged to comply with, among other things, *Directive 2009/28/EU of 23 April 2009 on the promotion of the use of renewable energy (RED I)*. Ukraine became a member of the Energy Community as of 31 January 2011, while the deadline to implement Directive 2009/28/EU by the members of the Energy Community was 1 January, 2014.

Back in 2013, the Cabinet of Ministers of Ukraine made its first attempt to regulate the Guarantees of Origin in Ukraine by adopting Resolution No. 771 of 24 July, 2013 *On the Approval of the Procedure for Issuing, Transfer and Cancellation of a Guarantee of Origin of Electric Energy for Business Entities Producing Electricity from Alternative Energy Sources*.

Not a single RES producer has obtained any Guarantees of Origin under the mechanism set out by the above resolution. There are two probable reasons explaining this. First, renewable energy producers were enjoying state-guaranteed incentives under the feed-in tariff (“FIT”) or the “green” auction system (i.e., the “Guaranteed Buyer” was purchasing RES electricity on behalf of the state). Second, there was no need to trade “green” electricity on the Ukrainian RES market.

Regardless, the mechanism of issuance, transfer and cancellation of the Guarantees of Origin as envisaged in Directive 2009/28/EU has not been introduced in Ukraine to date.

Recent Developments

At this point, Ukraine undertook to implement in its legislation Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 *On the Promotion of the Use of Energy from Renewable Sources (RED II)*. In particular, Ukraine must re-establish the mechanism governing the issuance, circulation and application of the Guarantees of Origin by 31 December, 2022.

To this end, on 25 August 2022, the Ministry of Energy of Ukraine published the Law *On Amendments to Certain Laws of Ukraine Regarding the Introduction of the Register of Issuance, Transfer and Cancellation of the Guarantees of Origin of Electricity Produced from Renewable Energy Sources*.

The key provisions of the Law include the following:

- The Guarantees of Origin will be issued in the form of electronic documents confirming that a certain amount of electricity is produced from renewable energy sources.
- Ukrenergo, a national grid utility company, will be in charge of the issuance and the registration of issuance of the Guarantees of Origin in the register (“Register”) based on commercial accounting data and further issuance of Guarantees of Origin to renewable energy producers and/or consumers. The Register will contain information on the issuance, transfer and cancellation of Guarantees of Origin.
- The Guarantee of Origin will be issued free of charge.
- The renewable energy producers with assigned FIT or an entitlement to state support following the “green” auction will not be able to obtain the Guarantee of Origin. Instead, the Guarantee of Origin for the RES facilities of such producers will automatically be issued to the Guaranteed Buyer.
- The holder of the Guarantee of Origin will be able to transfer it, subject to prior consent of the RES producer/the RES consumer and Ukrenergo.
- The validity period of the Guarantee of Origin will be 12 months from the date of issue.
- The Cabinet of Ministers of Ukraine will need to further adopt a detailed procedure for the issue, transfer and cancellation of the Guarantee of Origin.

NEURC’s Position

The National Energy and Utilities Regulatory Commission (“NEURC”), the Ukrainian electricity market regulator, promptly published its own proposed amendments to the Law.

In particular, NEURC suggested the following:

-NEURC should be responsible for of the administration of the issuance, transfer and cancellation of the Guarantee of Origin

NEURC argues that it is better placed to administrate the circulation of the Guarantee of Origin, given that it is currently in possession of all the data necessary to validate the origin of electricity, such as the data on the electricity generation facilities, and is vested with certain powers and has certain legal instruments to this end.

-Balancing the financial model of supporting RES producers by revenues from the sale of Guarantees of Origin

NEURC has proposed to permit the Guaranteed Buyer and operators of the distribution system to sell Guarantees of Origin received together with the purchased “green” electricity via a specialist trading platform to be established by JSC “Market Operator”.

Certain Observations

Given the tough economic realities, lack of funding and growing debts of Guaranteed Buyer aggravated by the ongoing war by the Russian Federation against Ukraine, we expect that the introduction of the Guarantee of Origin will benefit producers of renewable energy and corporate buyers in Ukraine.

First, the trade in Guarantees of Origin by renewable energy producers will provide them with additional liquidity in a scenario where such renewable energy producers would choose to opt out of the applicable state support scheme and sell electricity to electricity traders or directly to end-consumers.

Second, the introduction of Guarantees of Origin will make long-term corporate power purchase agreements (“corporate PPAs”) more commercially attractive for corporate buyers of electricity. In the context of corporate PPAs, Guarantees of Origin are usually transferred from renewable energy producers to corporate buyers. In the hands of corporate buyers, the Guarantee of Origin can be used as confirmation that the electricity they consumed originates from renewable energy, thus making these buyers compliant with the applicable corporate ESG targets or national regulatory requirements. Furthermore, Guarantees of Origin are likely to solve the issue with constant debt of the Guaranteed Buyer owed to renewable energy producers and mitigate the associated financial risks borne by renewable energy producers.

Third, Guarantees of Origin are important instruments in light of the EU’s proposed Carbon Border Adjustment Mechanism (“CBAM”) (expected to become operational in 2026), synchronisation of the Ukrainian Power Grid with ENTSO-E and potential for Ukraine cross-border trade in electricity with the EU. The CBAM imposes a carbon tariff on the export of products that fall within the category of carbon-intensive products originating from non-EU countries which have less stringent climate policies than those in the EU. However, the carbon tariff will not apply to “green” energy exported to the EU. The Guarantee of Origin will help Ukrainian renewable energy producers to tap EU electricity market without excessive tariff barriers.

In Lieu of Conclusion

The implementation of the mechanism for the Guarantee of Origin is important for the Ukrainian renewable energy sector because it would further facilitate the development of renewable energy generation facilities in Ukraine and create opportunities for corporate buyers in Ukraine and beyond the borders of Ukraine to confirm the use of electricity from renewable energy sources in the production of goods and avoid additional costs connected with the CBAM and other taxes. At the same time, implementation of the mechanism of the Guarantee of Origin could turn out to be quite a lengthy project for Ukraine, which might take from one to three years to complete. Hence, the government should proceed with the adoption of the Law as soon as possible.