

## THE GOVERNMENT OF ROMANIA



### DECISION

#### **on the approval of the general framework for the implementation and functioning of the Contracts for Difference support mechanism for low carbon technologies**

Having regard to art. 6 letter d) from the Electricity and Natural Gas Law no. 123/2012, with subsequent amendments and additions,

By virtue of art. 108 of the Romanian Constitution, republished, and art. VII para. (1) of the Government Emergency Ordinance no. 32/2024 amending and supplementing Government Emergency Ordinance no. 27/2022 on the measures applicable to final customers in the electricity and natural gas market for the period from April 1, 2022 - March 31, 2023, as well as for the amendment and completion of some normative acts in the energy sector and the adoption of some measures in the energy sector,

**The Government of Romania adopts this decision.**

**Art.1** This decision establishes the general framework governing the implementation and functioning of the Contracts for Difference support mechanism for the production of electricity using low carbon technologies.

#### **Art.2 Definitions**

For the purposes of this decision, the terms and expressions below are defined as follows:

1. **ad-hoc CfD state aid** - the support mechanism approved by a state aid authorisation decision issued by the European Commission for eligible generation technologies which cannot be subject to a CfD auction;
2. the National Energy Regulatory Authority, hereinafter referred to as **ANRE**, has the meaning given to it in art. 3 paragraph 3 of Electricity and Natural Gas Law no.123/2012, with subsequent amendments and additions;
3. **CfD beneficiary** - the legal person, registered for fiscal purposes in Romania, who has entered into a CfD contract with the CfD counterparty;
4. **new electricity generation capacity** - newly installed electricity generation capacity using new equipment that has not been previously commissioned/operational as at the date of the funding request, subject to any further specifications and detailed rules to be provided in the relevant CfD

- scheme and CfD auction initiation in order to determine the criteria for a project to qualify as new electricity generation capacity;
5. **funding request** - a request submitted by an applicant to the CfD scheme operator within a CfD auction;
  6. **CfD** - a common acronym derived from the English expression "contract for difference", used for to define the concepts used in the Contract for Difference support mechanism;
  7. **bilateral contract** - any bilateral contract on purchasing electricity, concluded on any organised market place (*Romanian: contracte bilaterale încheiate pe piețe organizate de energie electrică la termen*);
  8. **ad-hoc CfD contract** - a CfD contract awarded pursuant to ad-hoc CfD state aid, which is negotiated with the CfD beneficiary by the competent ministry with the support of the CfD counterparty, for the production of energy through eligible generation technologies for which a competitive selection process cannot be applied;
  9. **CfD mandate agreement** - the agreement between by which the competent ministry as the mandator empowers the CfD counterparty as the mandatary, to enter CfD contracts; the mandate contract establishes the rights, the obligations and roles of the parties in the CfD schemes and CfD contracts;
  10. **contract for difference** or **CfD contract** - a private law contract concluded between the CfD counterparty and a CfD beneficiary, on the basis of which CfD difference payments are made, in accordance with the relevant CfD scheme;
  11. **CfD counterparty** - Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A.;
  12. **CfD levy** - a sum, expressed in Lei/MWh, payable by final consumers, which must be collected by electricity suppliers active in the Romanian electricity retail market and transferred to the CfD liquidity fund in accordance with the methodology provided at art. 7 letter d) and/or other regulations issued by ANRE for this purpose, approved by ANRE’s president order;
  13. **eligibility criteria** - the requirements that the applicant and the project must cumulatively meet in order to participate in the relevant CfD scheme, as specified in a CfD ministry order and detailed in a CfD auction initiation order;
  14. **target commissioning date** - the date submitted by the applicant as part of the CfD auction, or agreed as part of an ad-hoc CfD state-aid, by which the project will achieve commercial operation and be commissioned such that it can lawfully generate and inject electricity to the national energy system pursuant to a commercial operation licence granted by ANRE;
  15. **CfD shortfall** - the scenario in which the funds available in the CfD liquidity fund are insufficient to enable the CfD counterparty to discharge its payment obligations to CfD beneficiaries in full when these become due and payable in accordance with the provisions of the CfD contracts;
  16. **CfD liquidity fund** - is set up at the disposal of the CfD counterparty, to ensure the financial resources necessary for the implementation of the CfD mechanism, where the amounts are collected and the transfers managed by the CfD counterparty are made. The sources of financing of this fund are provided by European non-reimbursable funds, by the payment differentials made by the CfD beneficiary to the CfD counterparty and by the CfD levy;
  17. **Modernization Fund** has the meaning given to it in art. 2 letter t) of the Government Emergency Ordinance no. 60/2022 regarding the stability of the institutional and financial framework for the implementation and management of the funds allocated to Romania through the Modernization Fund, with subsequent amendments and additions;

18. **electricity supplier** has the meaning given to it in art. 3 point 47 of Electricity and Natural Gas Law no.123/2012 with subsequent amendments and additions;
19. **performance bond** - a letter of guarantee issued under the law by:
  - a) a Romanian bank; or
  - b) an international financing institution or international bank registered in the European Union and the European Economic Area authorised to operate on the Romanian territory with a minimum credit rating of BBB by internationally recognised financial rating agencies;provided by the CfD beneficiary in favour of the CfD counterparty for the purpose of securing that the CfD beneficiary complies with certain key obligations under the CfD contract;
20. **bid bond** - a financial instrument, accepted by the CfD scheme operator and meeting the requirements applicable to the CfD auction, provided or procured by an applicant in favour of the CfD scheme operator for the purpose of securing the applicant's obligation to participate in the CfD auction in accordance with the rules of the CfD auction and, if successful, to enter into a CfD contract upon being awarded the contract through the CfD auction;
21. **financial bond** - a letter of guarantee issued under the law by a credit institution registered in the European Union and the European Economic Area, authorized to operate on the Romanian territory and provided by an electricity supplier in favour of the CfD counterparty, as specified in the methodology issued by ANRE, which is intended to secure the supplier's payment obligations in respect of the CfD levy;
22. **guarantees of origin** defined in accordance with the provisions of art. 3 point 49 of Electricity and Natural Gas Law no.123/2012 with subsequent amendments and additions;
23. **settlement unit** defined in accordance with the provisions of art. 4 para. (1) letter a) of the Procedure for the determination and use of the residual consumption profile, approved by ANRE's President Order no. 232/2020;
24. **undertaking** - a single legal entity or several separate legal entities which may be considered to form one economic unit for the purposes of the application of State aid rules, as defined by the Communication from the Commission on the notion of State aid as referred to in art. 107(1) of the Treaty on the Functioning of the European Union (2016/C/262/01);
25. **CfD auction** - a competitive process administered and coordinated by the CfD scheme operator pursuant to and in accordance with a CfD scheme and the CfD tender rules approved by ministry order, for the purpose of awarding CfD contracts to applicants who are successful in the competitive process;
26. **CfD support mechanism** - the support mechanism established by this decision, which is further implemented and applied to eligible generation technologies either through CfD schemes where CfD contracts are awarded to applicants through CfD auctions, or through ad-hoc CfD state aid where ad-hoc CfD contracts are negotiated and awarded directly to beneficiaries;
27. **competent ministry** - the Ministry of Energy, in accordance with the provisions of art. 3, paragraph 66 of Electricity and Natural Gas Law no.123/2012 with subsequent amendments and additions;
28. **metering operator or OMEPA** - the internal structure within the transmission system operator which performs the function of measurement operator for measurement points under the responsibility of the transmission and system operator as well as processing data measured on the wholesale electricity market;

29. **transmission system operator** defined in accordance with the provisions of art. 3 point 71 of Electricity and Natural Gas Law no.123/2012 with subsequent amendments and additions;
30. **CfD scheme operator** - Compania Națională de Transport al Energiei Electrice “Transelectrica” S.A.;
31. **CfD auction initiation order** - an order issued by the competent ministry that establishes the commencement and parameters of a CfD auction under a CfD scheme, including but not limited to the eligibility criteria, capacity targets, maximum strike price, tender rules and other ancillary or consequential matters which may be specified in such order pursuant to this decision and the relevant CfD scheme;
32. **CfD ministry order** - an administrative act issued by the competent ministry to approve a CfD scheme for one or more eligible generation technologies;
33. **organised market places** defined in accordance with the provisions of art. 3 paragraph 82 of Electricity and Natural Gas Law no.123/2012 with subsequent amendments and additions;
34. **CfD difference payments** - payments made pursuant to a CfD contract:
  - a) by the CfD counterparty to a CfD beneficiary, representing the value of the product between:
    - (i) the value of the difference between the strike price and the reference price, in situations where the reference price is lower than the strike price; and
    - (ii) the quantity of electricity measured and delivered by the project of a CfD beneficiary into the national energy system and sold on organised market places; or
  - b) by a CfD beneficiary to the CfD counterparty, representing the value of the product between:
    - (i) the value of the difference between the reference price and the strike price, in situations where the reference price is higher than the strike price; and
    - (ii) the quantity of electricity measured and delivered by the project of a CfD beneficiary into the national energy system and sold on organised market places;
35. **strike price** - a price per megawatt-hour that is used to calculate CfD difference payments under CfD contracts;
36. **maximum strike price** - the highest allowable strike price in respect of a CfD auction, administratively established as the maximum limit which an applicant cannot exceed within a CfD auction, and which may be informed by certain factors such as, without limitation, the level of project costs (development, construction, financing, operation and maintenance), the expected yields, the outcome of previous CfD auctions, and evolution of market conditions;
37. **reference price** - the price per megawatt-hour based on the electricity wholesale markets that is used as a benchmark to calculate CfD difference payments under CfD contracts by comparing it to the strike price, and which is calculated by ANRE in accordance with the formula set out in the CfD contract and the methodology developed and approved by ANRE for this purpose;
38. **bilateral contracts excess profit** - the value calculated by ANRE, pursuant to art. 12 (7) a), b) or c) and based on the methodology issued by ANRE for this purpose pursuant to art. 13 paragraph (1), corresponding to the excess profits obtained by a CfD beneficiary from selling through bilateral contracts the electricity generated by the production capacity subject to the CfD contract.
39. **project** - the proposed or planned electricity generation facility employing eligible generation technology, including all associated infrastructure, equipment, and assets required for its design, construction, operation and maintenance, but excluding all assets which form part of the distribution

or the transmission network, and which will be auctioned into a CfD auction under a CfD scheme or be subject to ad-hoc CfD state-aid and whose capacity will become subject to the CfD contract

40. **CfD register** - a database established, maintained and updated by the CfD counterparty, which records details regarding all CfD contracts awarded, including, at a minimum, information which will be published about the CfD beneficiaries such as their respective projects, strike prices and reference prices
41. **tender rules** - the general and specific rules regarding, without limitation, the eligibility criteria for applicants and projects, the required form and content of funding requests, the evaluation and selection of projects, as well as the steps relating to the conclusion of CfD contracts with qualified applicants who are successful in the CfD auction and any other information necessary for the conduct of the tendering procedure
42. **CfD scheme** - one or more support mechanisms established by this decision, and as further implemented under a CfD ministry order issued by the competent ministry, which facilitates the awarding of CfD contracts to eligible generation technologies, with the aim of promoting the development of renewable energy sources and reducing greenhouse gas emissions
43. **applicant** - the undertaking that submits a funding request to participate in a CfD auction, in accordance with the requirements and procedures specified in the CfD scheme and the relevant CfD auction initiation order;
44. **eligible generation technology** - electricity generation technology that uses:
  - a) onshore wind;
  - b) offshore wind;
  - c) solar photovoltaic;
  - d) hydro;
  - e) nuclear;
  - f) hydrogen;
  - g) energy storage;
45. **Days** – calendar days.

### **Art.3 The operating framework of the CfD support mechanism**

- (1) For the technologies specified at art. 2 point 44, the competent ministry may develop CfD schemes or ad-hoc CfD state aid that will require authorisation by the European Commission and therefore the timing of any associated CfD auctions is subject to such authorisation.
- (2) In case of CfD schemes, the CfD contracts are granted to applicants through their participation in, and subject to the outcome of, a CfD auction carried out pursuant to a CfD scheme.
- (3) In case of ad-hoc CfD state aid, the competent ministry, with the assistance of the CfD counterparty, may grant ad-hoc CfD contracts in respect of electricity generation projects for which, due to the technology specific, a competitive selection process cannot be applied. The terms and conditions of ad-hoc CfD contracts will be established through direct negotiation and are subject to obtaining the state aid authorisation decision from the European Commission following notification of the ad-hoc CfD state aid.
- (4) A CfD contract is entered into between the CfD counterparty and a CfD beneficiary, and determines CfD difference payments between the CfD counterparty and a CfD beneficiary.

- (5) In case of CfD schemes the strike price in respect of a CfD contract is determined through a CfD auction, and in case of an ad-hoc CfD state aid the strike price in respect of an ad-hoc CfD contract is determined through negotiation.
- (6) The strike price in respect of a CfD contract awarded through a CfD auction cannot exceed the maximum strike price specified in the relevant CfD auction initiation order.
- (7) ANRE calculates and establishes the reference price in respect of a CfD contract in accordance with the formula set out in the CfD contract and subject to the methodology developed and issued by order of the president.
- (8) The CfD counterparty is responsible for calculating and processing CfD difference payments in accordance with the terms of the CfD contract and applicable legislation, whereby such payments may be made by either the CfD beneficiary or the CfD counterparty, in each case to the other party, depending on the difference between the strike price and the reference price, as provided for in the CfD contract.
- (9) CfD beneficiaries do not receive CfD difference payments for any quantity of electricity delivered into the national energy system in any period in which the price per settlement unit in the applicable wholesale market (or, where applicable, the average of the prices in the relevant wholesale markets) used for determining the reference price, corresponding to that delivered quantity, is negative.
- (10) Any CfD scheme or ad-hoc CfD state aid and any related CfD contract is subject to, and any rights and obligations shall not as a matter of law become effective until, the obtaining of the state aid authorisation decision from the European Commission following notification of the CfD scheme or ad-hoc CfD state aid. Where the state aid authorisation decision from the European Commission has been obtained in respect of a CfD scheme or ad-hoc CfD state aid and related contracts, the scheme and the related contracts shall at all times remain subject to the European Commission's state aid decision and shall be automatically suspended if, and to the extent that, such decision is suspended or revoked.
- (11) Where the competent ministry identifies any non-compliance with respect to state aid, the competent ministry undertakes all the necessary steps to remedy the non-compliance, or where this is not possible, to recover the aid granted, including related interest, calculated according to Chapter VI "Repayment, recovery, suspension or provisional recovery of de minimis aid ordered by the European Commission" of the Government's Emergency Ordinance no. 77/2014, approved by Law no. 20/2015, with subsequent amendments and additions, as well as the other European Union legislative provisions in force.
- (12) In the event of any dispute between the CfD counterparty and the beneficiary arising out of or in connection with the CfD contract, including any question as to its existence, validity or termination, as well as the specific performance of the obligations contained therein, it shall be submitted to and finally settled by arbitration in accordance with the commercial arbitration rules of the Court of International Commercial Arbitration of the Romanian Chamber of Commerce and Industry ("CIC").

#### **Art.4 The attributes of the competent ministry**

The attributes of the competent ministry are the following:

- a) issuing CfD ministry orders for the implementation of the CfD schemes, which will be published in the Official Gazette of Romania, Part I;

- b) issuing CfD auction initiation orders under CfD schemes, which will be published in the Official Gazette of Romania, Part I;
- c) issuing decisions regarding the applicants who will be awarded CfD contracts pursuant to a CfD auction;
- d) administering and monitoring the CfD schemes and ad-hoc CfD state aid;
- e) elaborating the methodology for the maximum strike price;
- f) ensuring that the CfD liquidity fund has at all times sufficient funds to enable the CfD counterparty to discharge its payment obligations to CfD beneficiaries in full as these become due and payable in accordance with the CfD contracts;
- g) ensuring that, if the CfD liquidity fund is supplied with the amounts secured by the competent ministry from the Modernization Fund or another source of non-reimbursable European funds for this purpose, such amounts are transferred to the CfD liquidity fund promptly, subject to state aid approval from the European Commission;
- h) issuing decisions to recover illegal or abusively used state aid in relation the CfD schemes or ad-hoc CfD state aid;
- i) entering into a CfD mandate agreement, as the mandator, with the CfD counterparty, as mandatary.

#### **Art.5 Attributes of the CfD scheme operator**

The attributes of the CfD scheme operator are the following:

- a) administering and conducting the CfD auction process;
- b) evaluating the eligibility of the applicants who submit a funding request in a CfD auction and the eligibility of their projects in accordance with the eligibility criteria;
- c) notifying applicants whether they are successful or unsuccessful in a CfD auction;
- d) evaluating the funding requests received in a CfD auction;
- e) publishing notices regarding the outcome of CfD auctions;
- f) enforcing, where permitted under the CfD auction initiation order, any bid bond established by an applicant and transferring any amounts obtained from such enforcement to the CfD liquidity fund.

#### **Art.6 Attributes of the CfD counterparty**

(1) The attributes of the CfD counterparty are the following:

- a) entering into CfD contracts with applicants who have been successful in a CfD auction, or with the beneficiary of the ad-hoc CfD state aid;
- b) keeping record of and adjusting the strike price in accordance with the provisions of the CfD contracts;
- c) receiving metered output data in respect of CfD beneficiaries' projects from the metering operator in accordance with the CfD contract;

- d)** enforcing the performance bond and transferring any amounts obtained from such enforcement to the CfD liquidity fund, according to the provisions of the CfD contract;
  - e)** calculating and making CfD difference payments to the CfD beneficiary or, where applicable, collecting CfD difference payments, either to the CfD beneficiary or from the CfD beneficiary, as applicable, and managing such transactions through the CfD liquidity fund;
  - f)** establishing and administering the CfD liquidity fund;
  - g)** preparing and delivering to the competent ministry monthly and yearly forecasts, based on forecasts received from CfD beneficiaries estimating the quantities of electricity that their projects will deliver into the national energy system in accordance with the CfD contracts, regarding the CfD difference payments and other expected payments to be made or received by the CfD counterparty under CfD contracts, and also forecasting the funds available in the CfD liquidity fund for these payments;
  - h)** establishing and maintaining the CfD register which includes, but not limited to, information about projects that are related to the CfD Contracts, strike prices, and reference prices and publishes information about the CfD beneficiaries;
  - i)** elaborates and submits to ANRE for approval a procedure for the establishment of financial bonds, corresponding to the payment of the CfD levy, by the electricity suppliers;
  - j)** entering into contracts with electricity suppliers who are required to collect the CfD levy, for the purpose of ensuring the collection of the CfD levy in accordance with any government decision adopted for this purpose and in accordance with the methodology and rules approved by ANRE, and subsequently transferring the respective sums to the CfD liquidity fund;
  - k)** enforcing the financial bond provided or procured by the electricity suppliers who are required to collect the CfD levy, in instances of non-compliance with the CfD levy payment obligation, and transferring any amounts obtained from such enforcement to the CfD liquidity fund;
  - l)** preparing and delivering to the competent ministry monthly and yearly reports regarding the status of the implementation and performance of the CfD schemes, covering such matters as the competent ministry may deem necessary or desirable in this respect;
  - m)** entering into a CfD mandate agreement, before signing CfD contracts, as the mandatary, with the competent ministry, as the mandator, under which it assumes to represent the competent ministry in CfD contracts under CfD schemes or where ad hoc State aid is granted, as appropriate;
  - n)** collecting from CfD beneficiaries on a yearly basis the bilateral contracts excess profit amounts notified to the CfD counterparty by ANRE in accordance with art. 7 letter j) and art. 13 paragraph (6).
- (2)** In order to establish and manage the CfD liquidity fund, the CfD counterparty opens one or more separate accounts at the State Treasury.

## **Art.7 Attributes of ANRE – the National Energy Regulatory Authority**

The functions and responsibilities of ANRE include the following:

- a)** elaborating and issuing and publishing in the Official Gazette of Romania, Part I, within 180 day from the date of entry into force of this Decision, an order setting out the methodology for calculating the reference price for the quantities of electricity that CfD beneficiaries have



produced, delivered to the national energy system and sold on organised market places using the capacity of their projects which is subject to the CfD mechanism, in accordance with the formula set out in the CfD contract;

- b)** calculating and approving each month, by decision of the president of ANRE, the value of the reference price;
- c)** resolving disputes between the CfD counterparty and CfD beneficiaries relating to billing statement and invoices under CfD contracts;
- d)** elaborating, issuing and publishing in the Official Gazette of Romania, Part I, an order setting out the methodologies of the CfD levy mechanism for the collection of:
  - (i)** the necessary revenues for the CfD counterparty and the CfD; and
  - (ii)** the necessary sums required to cover any CfD shortfall or other sums required to finance CfD schemes and ad-hoc CfD state aid;
- e)** elaborating, issuing and publishing in the Official Gazette of Romania, Part I, orders setting and approving the values for the CfD levy pursuant to the methodology for the CfD levy mechanism for each of the cost items set out in letter (d);
- f)** elaborating, issuing, and publishing in the Official Gazette of Romania, Part I, an order setting out the proforma contract between the CfD counterparty and electricity suppliers governing the collection of the CfD levy and the transfer of collected amounts to the CfD liquidity fund;
- g)** elaborating, issuing, and publishing in the Official Gazette of Romania, Part I, an order setting out the methodology to be used by the CfD counterparty for calculating the quantum of the financial bond, as well as its method of constitution, period of validity and enforcement;
- h)** performing, if case, reviews of the reference price, including of the methodology specified at letter a), and issuing a decision on necessary amendments to the same:
  - (i)** where ANRE considers that the reference price is no longer reflective of market prices, resulting in over-compensation of CfD beneficiaries and increasing costs to consumers;  
or
  - (ii)** where ANRE has been notified by more than 50% of CfD beneficiaries, which are subject to the same reference price, that they consider that the reference price is no longer reflective of market prices, such that it is systematically under-compensating them,

in order to reduce the risk of such over-compensation or under-compensation, as applicable.

## **Art.8 Obligations of the CfD beneficiary**

The obligations of a CfD beneficiary include the following attributes:

- a)** providing the performance bond in favour of the CfD counterparty;
- b)** complying with the terms and conditions of the CfD contract;
- c)** obtaining all necessary approvals, authorisations, licences, and permits required for the development, construction, and operation of the project, including the planning permissions, building permits, environmental permits, grid connection agreements, balancing agreements and any other documents required by relevant laws, regulations or contractual obligations including those specified in the CfD auction and in the CfD contract;

- d) evidencing, with support documents, set out through the order of the competent ministry provided at art. 4 letter a), to the CfD scheme operator that the project's proposed capacity comprises entirely new electricity generation capacity;
- e) commissioning and putting the project into commercial operation, as well as fulfilling any other requirements under the CfD contract to become eligible for CfD difference payments, on or before the target commissioning date;
- f) reporting to the CfD counterparty on the quantity of electricity that is expected to be generated and delivered to the national energy system by the project, in accordance with the provisions of the CfD contract;
- g) reporting each quarter to the CfD counterparty on the status of the planning, permitting, licensing, construction and commissioning of the project, as well as other information required to be reported to the CfD counterparty under the CfD contract and providing any other additional information requested by the competent ministry and the CfD counterparty;
- h) paying to the CfD counterparty the amounts on a yearly basis the bilateral contracts excess profit amount notified to the CfD counterparty by ANRE in accordance with art. 13 (2).

#### **Art.9 CfD ministry orders for CfD schemes**

- (1) A CfD ministry order provides for the application and implementation of this decision and a CfD scheme to specific eligible generation technologies, specifying parameters such as eligibility, timelines, budgets, capacity targets, and auction procedures, as suited to the specific characteristics of the relevant eligible generation technology.
- (2) Where a CfD scheme is implemented or amended, the competent ministry has the obligation to consult with stakeholders, including the CfD counterparty, CfD scheme operator, CfD beneficiaries, potential CfD applicants, ANRE, and to comply with the public consultation procedure.

#### **Art.10 Financing the CfD support mechanism**

- (1) The financing of the CfD support mechanism is ensured by the CfD levy collection mechanism applied to all final consumers and/or through non-reimbursable European Union funds.
- (2) In order to ensure the necessary funds for the CfD liquidity fund to finance:
  - a) the CfD schemes and any ad-hoc CfD state aid, including any CfD shortfall, ANRE implements the CfD levy collection mechanism by adopting, within 180 days of this decision, the methodology specified at art. 7 letters d) item ii); and
  - b) the revenues for the CfD counterparty and the CfD scheme operator, ANRE implements the CfD levy collection mechanism by adopting, within 60 days of this decision, the methodology specified at art. 7 letter d) item i).
- (3) In order to ensure the necessary funds for the CfD liquidity fund, the budget for a CfD scheme can be established using non-reimbursable European Union funds, namely the Modernization Fund or other identified sources, which, if obtained, will feed into the CfD liquidity fund in relation to specified CfD schemes.
- (4) Any non-reimbursable European Union funds shall be kept by the CfD counterparty in separate accounts and shall be applied only for the purposes of the CfD schemes for which they were authorised by the European Commission.

- (5) The budget allocation and financial operations carried out in order to use the non-reimbursable European Union funds shall be made in accordance with the provisions of the applicable legal framework for the management of these funds.
- (6) The competent ministry together with the CfD counterparty, based on the concluded CfD contracts, annually analyses the budget allocated to each CfD scheme and prepares a budget forecast for the next 4 years, which shall include a risk assessment of a CfD shortfall occurring in that timeframe.
- (7) The CfD counterparty prepares and delivers to the competent ministry monthly reports detailing its payment obligations under CfD contracts and the amounts available in the CfD liquidity fund for such payments.
- (8) The CfD counterparty notifies the competent ministry and ANRE until 1 of November each year regarding the necessary amounts that need to be collected through the CfD levy over the following year and no later than 20 of May of the current year regarding the necessary amounts to be collected through the CfD levy for the next semester.
- (9) The value of the CfD levy will also include the annual revenues of the CfD counterparty and the CfD scheme operator in performing the administrative duties assigned to them under this decision and any order of the competent ministry responsible for approving a CfD scheme or a CfD auction initiation order, and the CfD counterparty and the CfD scheme operator shall each submit to ANRE their respective costs and any other information necessary to substantiate the sums that will be included in the CfD levy.
- (10) ANRE approves the CfD levy by order no later than 20 of December for the next year and no later than 20 of June for the next semester of the current year.
- (11) The CfD levy is revised according to the methodologies specified at art. 7 letter d) in June each year and, where a deviation of more than 2% from the value set in December of the prior year is identified, ANRE issues an order under art. 7 letter e) with the new value within timelines provided at paragraph (10).

#### **Art.11 Change in law and termination payments**

- (1) Where a CfD contract includes provisions which are aimed at addressing any additional costs or additional savings for the CfD beneficiary or the CfD counterparty that are generated by changes in primary or secondary legislation, such costs or savings shall be reflected through a corresponding adjustment of the strike price in the CfD contract, but only to the extent that the relevant party has agreed that a relevant change in legislation has occurred and/or that the additional costs or savings have arisen, or, in case of disagreement between the parties to the CfD contract, only to the extent that it was established as a result of a dispute settlement procedure by a mediator or following arbitration in accordance with the terms of the CfD Contract.
- (2) Where a CfD contract provides for a payment to be made to a CfD beneficiary as a result of the early termination of the agreement by the CfD counterparty in certain circumstances, the sums necessary to enable the CfD counterparty to make such payment shall be provided by the competent ministry from the state budget or, to the extent necessary to supplement funds from the state budget (if any), also through the CfD levy.

**Art.12 Provisions that apply for the first CfD state aid scheme in the form of contracts for difference for the production of electricity from renewable sources of onshore wind and solar photovoltaic energy**

- (1) The provisions of this art. apply specifically to the first CfD scheme for onshore wind and solar photovoltaic eligible generation technologies.
- (2) CfD auctions will be held starting from the date of entering into force of this decision and in 2025 on the basis of a CfD scheme for which the CfD liquidity fund is supplied with the amounts secured by the competent ministry from the Modernization Fund, and which will be transferred to the CfD liquidity fund promptly, subject to state aid approval from the European Commission and approval of the CfD scheme funding from the Modernisation Fund by the Investment Committee. In the event of forecast or actual depletion of the financial resources allocated from the Modernisation Fund, the relevant Ministry shall decide how to cover the CfD shortfall and shall notify the Commission of any changes to existing aid within the meaning of art. 4 (1) of Regulation 794/2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of art. 108 of the Treaty on the Functioning of the European Union.
- (3) In order to ensure the revenues of the CfD counterparty and the CfD scheme operator to carry out the provisions of this Government Decision and the first scheme in the form of Contracts for Difference, ANRE shall implement the mechanism for collecting the CfD contribution by adopting, within 60 days from the date of this Decision, the methodology referred to in art. 7 letter d) item i).
- (4) A CfD beneficiary must deliver to the national energy system and sell only on organised market places all quantities of electricity generated by the capacity of their project which is subject to a CfD contract, excluding any electricity used for own technological consumption supplied from the CfD beneficiary's terminals.
- (5) The CfD beneficiary is expressly prohibited from selling outside organised market places any quantity of electricity generated by the capacity which is subject to the CfD contract, in order to prevent a potential opt-out from the CfD scheme, and compliance with this prohibition will be annually verified by the ANRE, subject to applicable sanctions.
- (6) If ANRE identifies any infringement of this prohibition, it will notify the competent ministry, the CfD beneficiary and the CfD counterparty on this issue. If, following the CfD beneficiary's observations, ANRE's opinion remains final, the competent ministry shall issue a decision to voluntarily exclude the CfD beneficiary from the scheme, which will result in the termination of the CfD contract for breach, the payment of any amounts arising from such termination as provided in the CfD contract, and the repayment to the CfD counterparty of any CfD difference payments received by the CfD beneficiary in the respective year corresponding to any such quantities sold outside organised market places.
- (7) In cases where a CfD beneficiary sells the output of the project, in whole or in part, through bilateral contracts, the following bilateral contracts excess profit applies to determine the bilateral contracts excess profit which must be returned to the CfD counterparty:
  - a) if, in respect of a settlement unit, the price per megawatt-hour in a bilateral contract is above the reference price but below the strike price, the CfD beneficiary shall return 50% of the revenues obtained under the bilateral contract calculated as a product between the quantities of electricity sold under bilateral contract and the difference between the bilateral contract price and the reference price to the CfD liquidity fund;

- b) if, in respect of a settlement unit, the price per megawatt-hour in a bilateral contract is above both the strike price and the reference price, with the strike price being higher than the reference price, the CfD beneficiary shall return to the CfD liquidity fund:
    - (i) 100% of the revenues obtained under the bilateral contract calculated as a product between the quantities of electricity sold under bilateral contract and with difference between strike price and the the reference price; and
    - (ii) 50% of the revenues obtained under the bilateral contract calculated as a product between the quantities of electricity sold under bilateral contract and the difference between the bilateral contract price and strike price;
  - c) if, in respect of a settlement unit, the price per megawatt-hour in a bilateral contract exceeds both the strike price and the reference price, with the reference price being higher than the strike price, the CfD beneficiary shall return 50% of the revenues obtained under the bilateral contract calculated as a product between the quantities of electricity sold under bilateral contract and the difference between bilateral contract price and the reference price to the CfD liquidity fund.
- (8) Any revenues obtained by the CfD beneficiary under bilateral contracts, and which must not be returned to the CfD counterparty in accordance with the provisions of art 7 letters a), b) and c), will not constitute a bilateral contracts excess profit and will remain with the CfD beneficiary.
- (9) Guarantees of origin are issued according to GD no. 1232/2011 approving the Regulation on the issuing and tracking of guarantees of origin for electricity produced from renewable energy sources and according to the applicable legislation in force and according to art. 19 of Government Emergency Decision no. 163/2022 to complete the legal framework to promote the use of energy from renewable sources, and for amending and supplementing some normative acts, with subsequent amendments.

#### **Art.13 Provisions regarding the methodology for the calculation of excess profit from bilateral contracts**

- (1) Within 180 days of the date of this decision, ANRE elaborates and issues an order approving the methodology regarding the calculation of bilateral contracts excess profit, which will be published in the Official Gazette of Romania, Part I.
- (2) Until 31 March of each year, in respect of the previous year, ANRE calculates and approves through a decision the bilateral contracts excess profit for each CfD beneficiary, which shall be paid to the CfD counterparty and returned to the CfD liquidity fund by the CfD beneficiary which obtained any such bilateral contracts excess profit.

#### **Art. 14 Annex**

The CfD contract for the CfD scheme for onshore wind and solar photovoltaic technologies is set out in Annex<sup>\*)</sup> which forms an integral part of this Decision.

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\*) - The Annex is published in the Official Gazette of Romania, Part I, No 333 bis, which can be purchased from the Center for Public Relations in șos. Panduri nr. 1, bloc P33, parter, sectorul 5, București.

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Prime Minister

**Ion-Marcel CIOLACU**

Countersigned by:

Energy Minister,

**Sebastian-Ioan Burduja**

Secretary General of the Government,

**Mircea Abrudean**

Minister of Investment and European Projects,

**Adrian Căciu**

Minister for the Environment, Water and Forests,

**Mircea Fechet**

Minister of Finances

**Marcel-Ioan Boloș**

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**Annex 1**

**CfD contract in respect of the auctions specified in art. 12**

*[To insert]*