

# Energy Disputes

in Bulgaria

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### Bulgaria



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## GENERAL

### Development

Describe the areas of energy development in the country.

The Bulgarian energy market is dominated by electricity. Bulgaria has a diverse electricity mix, including nuclear, thermal and renewable power plants (water, wind, solar and biomass power plants). In 2019, the largest share in electricity generation was provided by the nuclear power plant – 40 per cent; the next share, of 36 per cent, came from coal power; energy from water-renewable sources represented 8 per cent; whereas the same 8 per cent came from wind, solar and biomass. Annual gross production in 2019 amounted to 36,894,618MWh.

In 2019, the quantity of natural gas distributed by the licensed transmission company Bulgartransgas on the domestic market was 30,464 908m<sup>3</sup>, while 75,392m<sup>3</sup> were from local production.

Major developments in the energy sector are concentrated on gas infrastructure. Bilateral agreements and projects have been reached and have been developing at a different pace at the borders of Bulgaria–Greece (ICGB), Bulgaria–Serbia and Bulgaria–Macedonia. The ICGB interconnector is in the lead with a construction permit and appointed through public procurement pipe manufacturer. The European Commission qualified ICGB as a major new gas infrastructure within the meaning of article 36(1) of that Directive.

The Bulgarian government presented to the European Commission the preliminary results of the feasibility study of the Balkan hub project (gas trading platform). According to experts, the project is commercially feasible and qualifies as a project of common interest for the EU. Therefore, opportunities to attract private investors, as well as international financial institutions such as the European Investment Bank, the Juncker Plan and pension funds, are deemed to be available. Currently, a project company has been incorporated and the results of the feasibility study have been announced.

### Role of government

Describe the government's role in the ownership and development of energy resources. Outline the current energy policy.

The Bulgarian state has a role in the ownership and development of energy resources through the incorporated holding company Bulgarian Energy Holding. In the electricity segment, the following companies are state-owned: the public provider National Electricity Company, the transmission operator Electricity System Operator, the nuclear power plant Kozlodui (Kozloduy NPP JSC), and the coal-based plant TEC Maritsa Iztok 2. The state has strictly followed the unbundling rules under the Third Energy Package and the transmission operator is duly certified as an independent system operator. In the gas segment, the following companies are state-owned – the public provider Bulgargas and the transmission operator Bulgartransgas. The European Commission fined Bulgargas and the gas infrastructure subsidiary Bulgartransgas for failure to grant access to third parties to the gas infrastructure in Bulgaria between 2010 and 2015, which is a breach of EU antitrust rules. After the sanction period ended, the Bulgarian energy regulator introduced stricter market rules to guarantee third parties' access to the gas infrastructure. The regulator approved a pricing structure for access and transmission through the gas network owned by the state-owned Bulgartransgas on all entry points or zones and exit or zones, based on the necessary annual revenues of the company. The pricing model was adopted in compliance with Commission Regulation (EU) 2017/460 of 16 March 2017 for establishing a network code on harmonised gas transmission tariff structures.

The objective of the Bulgarian government has been to further expand the liberalisation of the energy market and to integrate it with neighbouring European markets, and steps to this end this are being taken. Proposed measures by the World Bank were implemented in Bulgarian legislation for cogeneration and renewable energy services producers to

sell electricity on the energy exchange market. The day-ahead and intraday energy markets were implemented by the independent energy exchange, which, pursuant to the European Commission's recommendation, was transferred from the state-owned Bulgarian Energy Holding to the Stock Exchange. On the way to market coupling, the Bulgarian Independent Energy Exchange signed bilateral memorandums with neighbouring system operators to introduce separate export zones as an interim stage to full market integration.

### COMMERCIAL/CIVIL LAW – SUBSTANTIVE

#### Rules and industry standards

Describe any industry-standard form contracts used in the energy sector in your jurisdiction.

The regulated segment of the electricity and gas market comes under strict legislation to ensure consumer protection by provision of transparent information on applicable prices and on standard terms and conditions in respect of access to and use of energy services. The distribution and supply operators in electricity and gas provide services under well-known prior standard terms.

On the renewable and cogeneration production market, standard contracts for compensation with premiums are concluded between the producers and the Energy System Security Fund. This new method of promoting renewable and cogeneration production was implemented in 2018 after a recommendation by the World Bank in cooperation with the Bulgarian Energy Ministry. Producers with an installed capacity of 1MW and above sell electricity on the energy exchange market, and the difference between the prognosis market price determined by the national regulator – the Energy and Water Regulatory Commission – on an annual basis and the feed-in tariff is compensated by the fund under the contract for compensation with premiums.

The Bulgarian Energy Regulator has adopted rules on electricity and gas trading that envisage the main types of contracts on the market and their subject matter. The Rules not only predefine the main essentialia negotii of the contracts, but also provide contract freedom to the parties regarding certain aspects such as price, penalty clauses, etc. The market for balancing energy is predominantly regulated by strict rules regarding financial guarantees and technical security. Coordinators of the balancing groups are obliged to adopt fair and well-known prior standard terms to allocate the costs for generated imbalances within the balancing group in which they register as coordinators.

What rules govern contractual interpretation in (non-consumer) contracts in general? Do these rules apply to energy contracts?

The general rule of contractual interpretation under Bulgarian law is imperative and applies to all contracts, including energy contracts. The imperative provisions of the Obligation and Contracts Act envisage the criteria for interpretation according to the will of the parties. The contractual provisions shall be interpreted according to their interrelation and each of them shall be interpreted in the meaning ensuing from the contract as a whole, considering the subject of the contract, usage and good faith. In the case of a discrepancy between standard terms and conditions supplied by one of the parties and the individually agreed terms, the latter shall prevail.

Describe any commonly recognised industry standards for establishing liability.

In energy disputes the general rules of liability apply, requiring the negligence of the defaulting party. In civil and commercial court proceedings negligence is presumed, thus placing the burden of proof on the defendant who must rebut the presumption. There are three forms of fault: wilful misconduct, gross negligence and negligence. The standard of care in commercial relations is set as the due diligence of the reasonable professional. In general, the court

is entitled to release the defendant from liability or reduce the compensation, provided the non-performance was due to circumstances inflicted by the claimant or when the claimant could have limited or avoided the damage by acting with due diligence.

The Bulgarian Energy Act provides for certain hypotheses under which energy companies are excluded from liability for damages. The provisions are strict and imperative and envisage extraordinary circumstances under which temporary limitation or interruption of production or supply of electricity or gas is allowed (eg, to preserve the health and life of people, to avoid environmental pollution, emergency accident or to preserve the technical security and balance of the transmission system). Transmission and distribution network operators are also entitled to temporarily limit consumers' access if they have breached the prescribed connection scheme rules, have manipulated the measuring devices or have breached any technical security rules until the violation is remedied. In such cases of interruption of supply, operators are excluded from liability of damages as regards consumers.

### **Performance mitigation**

Are concepts of force majeure, commercial impracticability or frustration, or other concepts that would excuse performance during periods of commodity price or supply volatility, recognised in your jurisdiction?

The Bulgarian Commerce Act (CA) regulates force majeure as an unforeseen or unavoidable event of an extraordinary nature that has occurred after the conclusion of the contract, thus it excuses non-performance. Commodity price or supply volatility cannot be deemed force majeure pursuant to the legal definition given by article 306 CA.

Commercial frustration is also regulated by the CA and gives the contract parties the right to ask the court to terminate the contract or adapt the contract to the new economic circumstances. The cumulative prerequisites that must be met for the court to terminate or adapt the contract are the following:

the performance of the contract is still pending and possible;  
occurrence of such circumstances that the parties could not and were not obliged to foresee; and  
the performance of the contract shall be contrary to fairness and good faith (eg, will significantly breach the equivalence of the considerations given under the contract).

The prerequisites are very strict and the courts are quite reluctant to apply commercial frustration except in extreme circumstances. Therefore, they will not be deemed fulfilled in cases of commodity price or supply volatility.

### **Nuisance**

What are the rules on claims of nuisance to obstruct energy development? May operators be subject to nuisance and negligence claims from third parties?

Generally, pursuant to article 109 of the Bulgarian Property Act, the owner may seek termination of any unjustified act that prevents him or her from exercising his or her right. However, the Bulgarian Energy Act regulates in detail the right of easements (eg, the right of passing by construction workers and equipment) and remuneration in case of construction, expansion or maintenance of energy projects in fair balance between the rights of owners and developers. If the owner and the developer cannot agree on the right of remuneration, the municipal authority will appoint evaluation by an independent appraiser and set the amount of the remuneration for the granted easement. Both parties are entitled to appeal before court the amount of the remuneration.

Pursuant to the Bulgarian Environmental Protection Act, the environmental authorities are obliged to conduct public discussion in environmental impact assessment procedures and to publicise its decision regarding the assessment of

investment projects, including in the energy sector. The investor and the nature conservation organisations are entitled to appeal before the administrative court the decision on an environmental impact assessment as a prerequisite for the realisation of the investment project.

### **Liability and limitations**

#### **How may parties limit remedies by agreement?**

Under Bulgarian law, limitation or exclusion of liability clause in any contract, including commercial contracts, is deemed null and void, provided that the clause limits or excludes in prior liability for wilful misconduct or gross negligence. The rule is set in article 94 of the Bulgarian Obligations and Contracts Act and is considered imperative by the legal doctrine and court practice. Court practice states that the rule applies towards commercial (business-to-business) contracts.

In the case of consumer contracts, consumer protection rules apply, implementing EU legislation. Under the Bulgarian Consumer Protection Act, limiting or excluding liability for injuries to the life, body or health of consumers is not permitted. If such contractual clauses are either included in standard terms or individually agreed upon in consumer contracts (eg, in energy supply contracts for households), they are deemed null and void.

Any limitation or exclusion of liability clauses in energy contracts must comply with the general prohibitions as set out above for the clause to be valid and enforceable under Bulgarian law. For example, in a contract for provision of energy services, liquidated damages may be envisaged in an agreed lump-sum amount (eg, double or triple the amount of the contractual value) in the case of non-performance due to negligence. Provided that the contract is commercial (business to business), neither party can claim a reduction in the liquidated damages owing to the excessive amount. Provided that the contract is civil (business to consumer), the consumer can claim against the company for a reduction in the liquidated damages due to the excessive amount.

#### **Is strict liability applicable for damage resulting from any activities in the energy sector?**

Bulgaria is a contracting party to the Vienna Convention on Civil Liability, which sets minimum standards to the legal regime for civil liability for nuclear damage, including envisaging strict liability of the operator of the nuclear installation. The Convention standards are implemented in the Bulgarian Act on Safe Use of Nuclear Power. Pursuant to article 132 of the Act, operators are obliged to maintain insurance or other financial security up to an amount of 96 million lev to cover damage caused by a nuclear accident.

The transmission and distribution operators do not bear strict liability in the case of limitation of the production of renewable energy, but are obliged by law to specifically include in the access contracts the right to and amount of liquidated damages owed to renewable energy producers in these cases.

## **COMMERCIAL/CIVIL LAW – PROCEDURAL**

### **Enforcement**

**How do courts in your jurisdiction resolve competing clauses in multiple contracts relating to a single transaction, lease, licence or concession, with respect to choice of forum, choice of law or mode of dispute resolution?**

The court is entitled to rule on its own jurisdiction. Where the court finds that the case is not under its jurisdiction, it shall forward it to the competent court. In this event, the case shall be considered pending before the competent court

from the day of submission of the claim.

The competence of the court is not precluded by an arbitration agreement, and the defendant must raise an objection that the dispute is subject to an arbitration agreement. Provided that the defendant does not object within the time frame for the submission of a reply to the statement of claim, the jurisdiction of the court is established and the arbitration agreement is deemed waived.

Choice of forum clauses is restricted by imperative rules of jurisdiction. The parties are entitled by a written agreement to refer a monetary dispute to a different local court only if the jurisdiction is not defined by an imperative provision of the law. (For example, disputes regarding rights in rem, are envisaged to be reviewed by the competent court at the place of the property and the jurisdiction cannot be altered by the parties.) In the case of a dispute with cross-border implications, in Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters applies.

The court settles the dispute in conformity with Bulgarian law. In the case of a dispute with cross-border implications in EU member states, Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) applies. If the parties have not agreed upon the choice of applicable law, the general rule applies that the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has its residence.

### Are stepped and split dispute clauses common? Are they enforceable under the law of your jurisdiction?

Stepped clauses are seen in practice, especially in multinational energy projects contracts (eg, for development of interconnection infrastructure), most commonly, envisaging first negotiation or mediation process, and if the latter fails, then the dispute is referred to arbitration or litigation.

Split clauses are not regulated under Bulgarian law and are not seen in practice, thus there is no court practice on the matter. The parties may, for example, choose certain aspects of their contractual relations to be disputed before court (eg, because they are non-arbitral, such disputes in respect of any rights in rem or possession of real estate) and others to be disputed before the arbitral tribunal (eg, payment of contractual penalty). Strictly speaking, this is not a split clause that provides both the court and arbitration jurisdiction with a mechanism allowing one or both parties the right to determine the procedure once a dispute arises.

### How is expert evidence used in your courts? What are the rules on engagement and use of experts?

Where special knowledge in the field of science is necessary to clarify and assess certain facts of the case, experts are appointed by the court at the request of the party or ex officio. The experts must be independent and impartial, thus not related to the parties, otherwise are subject to recusal. The court appoints only listed experts approved by a commission pursuant to article 401 of the Judicial Act or reputable academics by recommendation of a university or academic institution (eg, the Technical University in the city of Sofia).

### What interim and emergency relief may a court in your jurisdiction grant for energy disputes?

There are no particular rules for interim and emergency relief in relation to energy disputes. The general rules in civil and administrative law proceedings apply.

Provided the dispute derives from private law relations, it is brought before the civil courts. The claimant might apply for interim measures at any stage of the proceedings or even before the proceedings were initiated. In this case, if the court grants the interim measures, a term for submission of the claim is set not later than one month from the interim measures. The applicant must provide in the interim measure proceedings that its claim is prima facie well grounded and without the interim measures, it would be extremely difficult for the claimant to enforce its rights in the future. The claimant shall also prove that the requested measure is appropriate. The court is entitled to set a monetary guarantee, usually up to 10 per cent of the amount of the claim, to secure the damages that the defendant might suffer if the interim measure is not grounded. The types of interim measures in civil proceedings include interdict on a real estate, distraint on movable objects and receivables of the debtor, etc.

Provided that the dispute derives from public law relations, it is brought before the administrative courts. As a general rule, an appeal against an administrative act suspends its execution during the pending court proceedings. However, the Bulgarian legislator envisaged in the Energy Act that appeals against the decisions of the Bulgarian energy regulator do not suspend their execution. Interim relief can be requested by the addressee of the act before the administrative court to suspend the decisions for revocation of the licence, for imposing sanctions or for revoking the certificate of the independent transmission operator. The applicant must prove that the prior execution of the administrative act can cause significant damage or barely repairable damage to the addressee's property, rights and obligations. The prerequisites for granting suspensions are very rigid and courts are reluctant to grant them.

### What is the enforcement process for foreign judgments and foreign arbitral awards in energy disputes in your jurisdiction?

The general rules apply to recognition and enforcement of foreign judgments and foreign arbitral awards rendered in energy disputes. For judgments rendered in civil and commercial proceedings in EU member states, Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters applies.

Foreign judgments rendered in states outside the EU are subject to recognition and enforcement pursuant to articles 118 to 122 of the Private International Law Code (PILC). The actions (claims) for recognition and enforcement of foreign judgment have to be brought before Sofia City Court. The cited provisions of the PILC provide that the statement of claim shall be accompanied by copy of the judgment, certified by the court that has imposed it. These documents should be certified by the Ministry of Foreign Affairs. The debtor may make objections of lapse of the obligation on the grounds of circumstances appearing after the foreign award has entered in force (eg, such as payment of the awarded sums).

Foreign arbitral awards are subject to recognition and enforcement under the New York Convention, implemented in the Bulgarian International Commercial Arbitration Act. The actions (claims) for recognition and enforcement of foreign arbitral awards have to be brought before Sofia City Court and articles 118 to 122 of the PILC shall apply, mutatis mutandis, to the hearing of such actions. Written proof that the award has been delivered to the debtor is also required according to article 51, paragraph 1 of the International Commercial Arbitration Act. The recognition and enforcement may be refused only on the grounds of article 5 of the New York Convention. The court cannot retry the case on the merits. The court reviews the action on three instances.

### Alternative dispute resolution

Are there any arbitration institutions that specifically administer energy disputes in your jurisdiction?

No, there is no arbitration institution to review energy disputes. The most reputable arbitration institutions in Bulgaria are the Arbitration Court at the Bulgarian Chamber of Commerce and Industry (BCCI) and the Arbitration Court at the Bulgarian Industry Association, both of which review energy disputes when the parties have referred a dispute with an arbitration clause.

**Is there any general preference for litigation over arbitration or vice versa in the energy sector in your jurisdiction?**

In recent years, many arbitral institutions were established to promptly review disputes regarding non-payment of due sums under supply services contracts (in the telecommunications, energy and banking sector). Owing to failure by the numerous arbitration institutions to conduct fair arbitral procedures, the legislator specifically excluded consumer contract disputes from arbitration with amendments in 2017 to the Bulgarian Civil Procedure Code.

Owing to decreased trust in arbitration procedure, the usual referral of commercial energy disputes to arbitration tribunals has declined. Usually, companies in the energy sector used to incorporate the model arbitration clause of the Arbitration Court at the BCCI in all of their non-consumer contracts, but we are currently witnessing a withdrawal from arbitration and referrals to court.

**Are statements made in settlement discussions (including mediation) confidential, discoverable or without prejudice?**

The mediation proceedings led by qualified mediator are covered by confidentiality by law. Each of the participants is obliged to keep all facts and circumstances discussed during the mediation confidential. The mediator cannot be questioned as a witness.

The parties might conclude a confidentiality agreement regarding their settlement discussions. But as disclosure is not provided for in Bulgarian legislation, statements that are discoverable or without prejudice are not relevant. In both court and arbitration proceedings, each party presents the court with its own evidence.

### **Privacy and privilege**

**Are there any data protection, trade secret or other privacy issues for the purposes of e-disclosure/e-discovery in a proceeding?**

Disclosure, including e-disclosure or e-discovery is not provided for in Bulgarian legislation. However, general rules regarding data protection, trade secrets or other secrets protected by law (eg, bank secrets) are envisaged and do apply before administrative bodies and in court proceedings. The data protection rules are implemented and synchronised with Regulation (EU) 2016/679 (the General Data Protection Regulation).

**What are the rules in your jurisdiction regarding attorney-client privilege and work product privileges?**

Pursuant to the Bulgarian Attorney Act (article 45), attorneys-at-law are obliged to keep secret the information provided to them by their clients without restriction in time. Attorneys-at-law are exempted, in their capacity as witnesses, to reveal circumstances that have been disclosed to them in their capacity as attorneys by clients or by another attorney about a client. Pursuant to the Civil Procedure Code, attorneys have the right to decline to be questioned as witnesses.

on the case in which they represent a client.

### **Jurisdiction**

Must some energy disputes, as a matter of jurisdiction, first be heard before an administrative agency?

Complaints against a transmission or distribution system operator in relation to the operator's obligations shall be referred to the Bulgarian Energy and Water Regulatory Commission, which, acting as a dispute settlement authority, is obliged to issue a decision within two months of receipt of the complaint. The decision of the energy regulator is subject to an appeal before the Sofia Administrative Court and then the first instance court decision is subject to cassation before the Supreme Administrative Court. The authority of the energy regulator to resolve disputes is implemented in article 22 of the Bulgarian Energy Act in compliance with article 37, paragraph 11 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity.

### **REGULATORY**

#### **Relevant agencies**

Identify the principal agencies that regulate the energy sector and briefly describe their general jurisdiction.

The Bulgarian Energy and Water Regulatory Commission (EWRC) is the designated state energy authority within the meaning of article 35, paragraph 1 of Directive 2009/72/EC. The main duties and powers of the regulatory commission are as follows:

- licensing of energy activities;
- approval of standard terms and conditions of the transmission and distribution operators on the electricity and gas market;
- price regulation on the regulated segment of the electricity and gas market (prices for households and small enterprises) and feed-in-tariffs for renewable energy sources and cogeneration production;
- issue of combined heat and power (cogeneration) certificates;
- monitoring investment plans of the transmission system operators;
- monitoring the level of transparency, including of wholesale prices; and
- resolving complaints against a transmission or distribution system operator.

The Bulgarian commissions for protection of the competition and for the protection of the consumers also have authority regarding the energy sector as well as in any other business sector. Pursuant to the respective legislation, as implemented from EU relevant legislative acts, the respective commission is authorised to monitor, investigate and sanction non-compliance and breach of the legislation.

#### **Access to infrastructure**

Do new entrants to the market have rights to access infrastructure? If so, may the regulator intervene to facilitate access?

The Energy Act envisages transparent and non-discriminatory access to the electricity and gas network. The right of access was additionally secured and enabled by market rules issued by the energy regulator. Complaints regarding objections or hurdles to access the networks are reviewed by the EWRC within its power under article 22 of the Energy Act.

Exemption from the requirements regarding third-party access and ownership unbundling was granted to the Interconnector Greece-Bulgaria (ICGB) by the European Commission by a decision on 25 July 2018 through a joint proposal from the Bulgarian and Greek energy regulators. The Commission concluded that the ICGB constitutes major new gas infrastructure within the meaning of article 36(1) of that Directive, hence it qualifies for an exemption.

### **Judicial review**

What is the mechanism for judicial review of decisions relating to the sector taken by administrative agencies and other public bodies? Are non-judicial procedures to challenge the decisions of the energy regulator available?

Decisions of the energy regulator are appealed within 14 days of their issue before the Sofia Administrative Court and then the first instance court decision is subject to cassation before the Supreme Administrative Court. The general procedure rules under the Administrative Procedural Code apply. The legislation does not provide for a non-judicial procedure for challenging the decision of the energy regulator (eg, before another administrative body). It is deemed that the energy regulator is an independent authority and its decisions can be reviewed only by court, but not by any other administration authority.

### **Fracking**

What is the legal and regulatory position on hydraulic fracturing in your jurisdiction?

As of 2012, in Bulgaria there is a moratorium in force on hydraulic fracturing adopted by the National Parliament.

### **Other regulatory issues**

Describe any statutory or regulatory protection for indigenous groups.

There is no particular protection for indigenous people under Bulgarian law.

Describe any legal or regulatory barriers to entry for foreign companies looking to participate in energy development in your jurisdiction.

As Bulgaria is member state of EU, the freedom of movement of goods, capital, services and labour applies on the European single market, including in the energy segment. There are no particular legal or regulatory barriers to entry for foreign companies to participate in energy development in Bulgaria.

What criminal, health and safety, and environmental liability do companies in the energy sector most commonly face, and what are the associated penalties?

The general liability rules apply as regulated by the specific material laws envisaging administrative or punitive liability

in the case of non-compliance. Energy companies that are licensed by the energy regulator (transmission and distribution operators, electricity producers over 5MW, etc) are obliged to comply with the terms and conditions of the issued licence, including health and safety rules. The environmental authorities monitor and have the authority to impose sanctions on energy companies (eg, the Executive Agency for Environmental Protection monitors and sanctions with regard to compliance with air pollution permits and greenhouse emissions, the Water Directorates monitor and sanctions in regard to compliance with water permit regulation).

### OTHER

#### Sovereign boundary disputes

Describe any actual or anticipated sovereign boundary disputes involving your jurisdiction that could affect the energy sector.

There are no current or anticipated sovereign boundary disputes that could affect the energy sector.

#### Energy treaties

Is your jurisdiction party to the Energy Charter Treaty or any other energy treaty?

The Energy Charter Treaty entered into force in Bulgaria on 16 April 1998.

Bulgaria was a party to the first Energy Charter Treaty case before the International Centre for Settlement of Investment Disputes. A survey named Plama Consortium Limited v Republic of Bulgaria Best Award of 2008. The Republic of Bulgaria won the case – all claims by the investor against the state were rejected and the state was awarded reimbursement of the arbitration costs.

#### Investment protection

Describe any available measures for protecting investors in the energy industry in your jurisdiction.

Both national and foreign investors are entitled to right of court access while the acts of the state are reviewed. The most significant guarantees for national investors are the rights and freedoms envisaged in the Constitution and developed in national law (eg, in 2014, the Constitutional Court repealed a legislative act introducing an additional 20 per cent tax over the income of renewable energy sources producers).

Foreign investors are protected by acts and measures of the state by the investment protection treaties to which Bulgaria is a party: the Energy Charter, the European Convention for International Commercial Arbitration, the New York Convention, the Washington Convention and bilateral investment treaties.

#### Cybersecurity

Describe any legal standards or best practices regarding cybersecurity relevant to the energy industry in your jurisdiction, including those related to the applicable standard of care.

The general rules for cybersecurity as envisaged in the Cybersecurity Act apply. The energy companies, the transmission and distribution operators as service providers are obliged by law to introduce and apply organisational, technological and technical network and information security measures in accordance with the specifics of their

activity and proportionate to any risk of breach.

### UPDATE AND TRENDS

#### Update and trends

List any major developments (case law, statute or regulation) that are anticipated to affect the energy sector in your jurisdiction in the next 12 months, including any developments related to the taxation of energy projects. What is the anticipated impact of climate change regulations, treaties and public opinion on energy disputes?

The Commission for Protection of Competition (the Commission), in its decision of 18 July 2019, found that the state-owned National Electricity Company (NEC) has violated the competition rules by imposing unfair trading conditions on the producers of renewable energy sources (RES). The Commission imposed a penalty payment to NEC for committed violations under article 21, item 1 of the Competition Protection Act, constituting an abuse of a dominant position on the balancing market.

The balancing market has been introduced as of 1 June 2014 with the Rules for electricity trading and is administered by the transmission operator ESO EAD. The allocation of costs for imbalances in the special balancing group of RES electricity producers and from high-efficiency cogeneration production of heat and electricity is carried out by NEC EAD as the public supplier and a coordinator of the balancing group.

In its decision, the Commission found that the public provider NEC has assigned additional financial burdens on RES producers that do not represent the distribution of imbalances in the special balancing group of NEC EAD and do not objectively reflect costs incurred for the electricity system and are, consequently, unduly paid.

The Commission decision is subject to appeal before the Sofia Administrative District Court, but if it enters into force (and is confirmed by the court), all producers affected by the unfair practice will be entitled to monetary compensation in civil court proceedings.