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**ATTN:**

**MR. RADOSLAV RIBARSKI  
CHAIRMAN OF THE ENERGY COMMITTEE**

**REGARDING: DRAFT DECISION FOR ADDITIONAL MONTHLY PAYMENTS TO THE ELECTRICITY SYSTEM SECURITY FUND BY PRODUCERS OF ELECTRICITY, SUBMITTED ON 22.03.2022 BY RAMADAN ALTAY, STANISLAV ANASTASOV AND FATME RAMADAN, SIGNATURE NUMBER 47-254-02-32**

**Dear Mr. Ribarski,**

**Distinguished members of the Energy Committee,**

BGWEA is a representative organization for the wind energy sector in the country, uniting the majority of the companies active in the sector, including investors in projects generating wind energy. The members of BGWEA form a significant share of the total installed wind power capacity in Bulgaria. The main fields, in which the association is actively engaged, include the development of the legislative and regulatory framework, aimed at creating a favorable business and investment environment.

BGWEA strongly disapproves the draft decision on additional monthly contributions to the Electricity System Security Fund (ESSF) by producers of electricity, submitted by Ramadan Atalay, Stanislav Atanasov and Fatme Ramadan, signature number 47-254-02-32, received on 22/03/2022.

Given the growing need for renewable energy to overcome the energy dependence at both European and national level, as well as the indisputable transformation of our energy system to carbon-independent technologies using entirely local resources, the draft decision is a step backwards and a retreat from the European climate policies.

This constitutes a sanction measure against RES producers over 500 KW, providing for the deprivation of this group of producers of part of their income. It will destabilize the existing projects, while creating uncertainty among potential investors in the sector, who are focused on markets ensuring a stable regulatory framework, security and predictability of prices. The deterioration of the investment climate, in turn, will be a significant obstacle to achieving the ambitious energy and climate goals set at a European level.

We would like to note that the proposal **contradicts both the national legislation and the guidelines of the European Commission (EC)** in the "REPowerEU: Joint European action for more affordable, secure and sustainable energy" document.

The additional monthly contributions to ESSF in essence constitute a new income tax imposed on a certain producer group. Such a tax cannot be introduced by a decision of the National Assembly, it has to be adopted by law in compliance with the relevant procedural rules (Article 60, paragraph 1 of the Constitution of the Republic of Bulgaria). In this regard, the proposed draft decision contradicts the basic constitutional principles in the country.

The vicious practice of imposing additional fees on wind and solar electricity producers acquired a regulatory form with the adoption of a new Article 35a of REA, which required the relevant producers to pay a 20% fee on their income from electricity sales. This legal text was pronounced unconstitutional by the Constitutional Court (CC) in Decision No. 13 of 31 July 2014 on constitutional case No.1 of 2014. The reasoning of the Constitutional Court in the decision clearly indicates:

- "Formal compliance with the constitutional requirements is insufficient when a law introduces additional financial obligations for citizens in violation of the nature of such obligations."
- The amendment of REA contradicts Art. 19, para. 2 and 3 of the Constitution: "The law shall create and guarantee uniform legal conditions for economic activity to all citizens and legal persons by preventing abuse of monopoly and unfair competition and by protecting consumers. The investments and economic activity of Bulgarian and foreign citizens and legal persons shall be protected by the law."
- It is inadmissible to introduce a separate, special legal regime for certain business entities, and to exclude others from such special regime. The legislator is obliged to establish an appropriate legal mechanism that can successfully prevent abuses involving monopoly and unfair competition, and protect the consumer.

As a result of the decision of the Constitutional Court, the producers filed lawsuits for the recovery of all amounts paid by them on the basis of the provision of Article 35a REA. The courts have upheld and

continue to uphold these claims, as a result of which the state suffers damages due to the statutory interest and costs paid for the proceedings.

The adoption of the proposed draft decision will contradict the Constitution of the Republic of Bulgaria due to the same reasons as those with which the Constitutional Court pronounced the provision of Article 35a REA unconstitutional in 2014. As a result, new lawsuits and new damages for the state in the form of statutory interest and costs for the proceedings will follow.

The proposal also completely conflicts the “RePower EU” Plan of the European Commission, which provides for accelerated development of wind and other RES projects in order to increase energy security. Annex 2 to the European document " REPowerEU: Joint European action for more affordable, secure and sustainable energy" describes the possibility of Member-States, as an exception and due to the current critical situation, to introduce tax measures including part of the profits of certain electricity producers. The document explicitly states that the measures shall be applied to all producers on equal footing. However, the proposal for additional contributions to the ESSF concerns only a certain group of producers. In this regard, the draft decision is discriminatory, since the damage caused to green energy producers at the expense of large-scale producers, which are also the biggest air pollutants, is obvious ("item 1.2 ..... and with the exception of producers using coal and/ or natural gas as their primary fuel"). This is an obvious contradiction to the fundamental principles of equality, fair treatment of all market participants and protection of existing investments.

The Annex to “RePower EU” explicitly states that such measures shall not have retroactive effect, shall be technology-neutral and allow producers to cover their costs. The duration of the tax shall also be clearly limited, providing for an end date no later than 30 June 2022, based on clearly defined criteria. Item 5 of the submitted draft decision clearly specifies that the proposal will remain valid until December 2022. Obviously, this is yet another discrepancy between the European guidelines and their implementation at a local level.

In addition, we would like to emphasize that the main revenue of the ESSF is generated from the sale of carbon allowances, and the share of other revenues is much smaller (the 5% contribution by all producers and the "Obligations to society" fee). Member-States benefit from revenue from the Emissions Trading Scheme, which is higher than expected. From 1 January 2021 to 28 February 2022, the revenue generated from the auctions for EU Emissions Trading Allowances amounted to around € 30 billion. In this regard, the revenues of the ESSF from the sale of harmful emissions are increasing, and according to our information the total revenues of the Fund exceed BGN 2 billion, of which BGN 1.6 billion are the result of the carbon allowances prices. In the context of the above, the financial stability of the ESSF is currently guaranteed, and

objectively, it does not need to be injected with additional financial resources. In view of the above, the proposal made becomes meaningless.

**Distinguished Members of Parliament,**

**In view of all the above, we urge you to take into account our arguments and to reject the submitted proposal.**

Respectfully yours,

Miglena Stoilova

Chairperson of the Supervisory Board of BGWEA