

CMS | Romania announces public consultation for ESCO contract models



The Ministry of Energy has put the ESCO framework contracts for industry and local authorities into public consultation until 12 of February 2024.

The draft contracts represent an integrant part of the already adopted Government Decision No. 1329/2023 regulating the necessary measures for the operation of companies providing energy design and energy performance services (**GD 1329/2023**). With these model contracts and the approval of GD 1329/2023, the Romanian Government is fulfilling one of its National Recovery and Resilience Plan (**NRRP**) obligations, which provides for the removal of barriers to energy performance contracts.

According to GD 1329/2023, companies providing energy design and energy performance services (i.e. **ESCO companies**) have an obligation to register in the national database of ESCO companies. By failing to fulfil such an obligation, companies can be fined between RON 10,000 and RON 50,000. The Ministry of Energy is expected to approve the standard forms and the procedure for registration in the national database of ESCO companies by the end of March.

ESCO contracts are concluded between one beneficiary and one ESCO company, whose energy performance services are paid for from the beneficiary's energy savings within a contractually agreed timeframe.

An ESCO company usually implements energy efficiency solutions resulting from an energy audit from its own financial sources. ESCO companies have several models by which to operate. The most common is the “**guaranteed savings**” model, where the ESCO company only assumes the technical risk, implements the energy efficiency project, and the beneficiary is responsible for obtaining the loan that finances the investment. There is also a “**shared savings**” model where the ESCO company assumes both the technical and the financial risk (i.e. the company either takes out a loan or uses equity from previous projects).

Under the ESCO contract draft model for industry proposed by the Ministry of Energy, the ESCO company is responsible for:

- □ Securing financing from its own or other legally established sources for all phases of design, execution/implementation, commissioning, operation, maintenance, monitoring and verification of energy efficiency measures;
- □ Design of energy efficiency measures, including technical expertise, energy audit, preparation of the documentation for the approval of intervention works, preparation of the technical project and preparation of

the execution details;

- □ Purchase and installation of new and/or the modernisation of existing materials, equipment and/or machinery;
- □ Implementation of energy efficiency measures for the execution of the designed works;
- □ Provision of energy efficiency services for the duration of the contract, operation, maintenance, measurement and verification, and reporting; and
- □ Maintenance services for equipment, installations and systems under the contract.

In addition, the ESCO company must provide a performance bond corresponding to each stage of investment according to the investment schedule. The performance bond must represent at least 10% of the value of the investment made in the respective stage in relation to the following:

- □ the services provided under the design services stage;
- □ the measures implemented under the implementation/construction phase;
- □ the services provided under the operation/service phase.

The ESCO contract can be concluded for a minimum of eight years, which can be prolonged with the written agreement of both parties.

The model contract also provides for penalties. A penalty of up to 20% of future operating costs is applied for energy savings below the guaranteed savings. If the beneficiary, however, has paid in full according to the actual energy savings, which is lower than the energy savings estimated in the initial audit, the beneficiary is entitled to compensation of up to 15% of the total value of the contract.

In addition, if the actual cost savings achieved during the settlement period exceed the guaranteed cost savings, the ESCO company is entitled to receive a bonus of two-thirds of the additional savings calculated according to the reference prices.

The mechanism presented in the ESCO contract models, which may undergo further change as a result of the public consultation, will be relevant in the upcoming call for projects under the Modernisation Fund.

In addition, ESCO contracts may become an important package to be assessed with a special view on subsidies granted for new renewables projects with at least 70% output allocated for self-consumption where the beneficiary would be in a position to use an ESCO agreement and provide requisite evidence of financial capabilities to develop the project through the ESCO company.

For more information on the public consultation in Romania and ESCO framework contracts, contact your CMS client partner or these CMS experts: Varinia Radu and Ramona Dulamea.

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