



Working Group I:

Development of the ESCO market

UPDATE OF ORDINANCE 16-347 of 2009 (The ESCO ORDINANCE)

Introduction of good European practices.

Summary

The proposed amendments to the Ordinance aim to bring it in line with the latest revisions of the Energy Efficiency Directive, the Energy Efficiency Act, the Renewable Energy Sources Act, as well as good practices established by the Energy Efficiency and Renewable Energy Sources Fund (EERSF), the European Investment Bank and the Global ESCO Association.

The second direction of the proposals concerns the return of the dropped provisions in the old ordinance, thanks to which the owners of state- and municipal buildings can apply for funding in the payment of contracts with guaranteed results before the Ministry of Finance and the central budget after approval by the Sustainable Energy Development Agency.



Content:

I. Textual proposals and opinions presented in tabular form	3
II. Textual proposals and opinions presented in the provisions of the ordinance	3
III. List of supporters of the proposals	21



I. Textual proposals and opinions presented in tabular form

/Content in tabular format/

II. Textual proposals and opinions presented in the provisions of the ordinance

ORDINANCE No. ON THE TERMS AND CONDITIONS FOR DETERMINING THE AMOUNT AND PAYMENT OF FUNDS UNDER GUARANTEED PERFORMANCE CONTRACTS LEADING TO ENERGY SAVINGS IN BUILDINGS – STATE AND/OR MUNICIPAL PROPERTY

Chapter One GENERAL

Art. 1. (1) This Ordinance shall regulate:

1. the terms and procedure for determining the amount of the funds planned under the budgets of the spending units for the implementation of services under guaranteed contracts (ESCO contracts) in buildings – state and/or municipal property;

2. the terms and procedure for payment of the remunerations under the guaranteed result contracts for the buildings under item 1.

(2) The determination of the amount of the funds planned under the budgets of the spending units for the implementation of contracts with guaranteed results in buildings – state and/or municipal property shall be carried out on the basis of an energy efficiency audit and an issued certificate for energy performance, certifying the current state of the energy consumption in the building.

(3) The payment of funds under guaranteed performance contracts in buildings – state and/or municipal property shall be made upon reaching a level of energy efficiency improvement, guaranteed energy savings or other agreed criterion related to energy performance, which ensure the achievement of the legally required class of energy consumption for the building subject of the contract.

Art. (1) By the order of this Ordinance shall be determined and paid the funds for the implementation of activities and measures for increasing energy efficiency, reducing the costs of operation and maintenance, as well as other activities generating financial benefits provided for in contracts with guaranteed results.

(2) Contracts with guaranteed results:

1. are concluded for the implementation of measures for improving energy efficiency in buildings – state and/or municipal property, and the investments for the implementation of these measures



shall be paid according to the agreed guaranteed level of improvement of energy efficiency or another agreed criterion related to energy performance.

2. are performed by energy efficiency service providers – traders within the meaning of the Commerce Act or within the meaning of the legislation of another Member State of the European Union or of another State party to the Agreement on the European Economic Area or of the Swiss Confederation, with the subject of an activity including the performance of services under contracts with guaranteed results;

3. guarantee a result for received energy and financial savings in a numerical indicator that is assessable, measurable and verifiable by the methodology/standards for determining the energy consumption in buildings, art. 31, para. 4 of the EEA.

(Opinion:

See opinion to art. 17, item 1., new sub-item.

See opinion to art. 18, para. (2).

Proposal for a new text:

3. guarantee a result for received energy and financial savings and/or benefits in a numerical indicator that is assessable, measurable and verifiable according to the measurement and verification methodology/standards "IPMVP" or "ISO 50015".)

(Opinion:

Good European practice implies that guaranteed contracts are assessed as an option for the implementation of energy-saving measures for state- and municipal-owned buildings.

The aim is to attract private financial resources, to save public, to develop market-sustainable models, not grants.

Proposal for a new text:

(new item) are assessed as a possibility for the purpose of implementing energy saving measures.)

Art. 3. (1) The persons under art. 2, para. 2, item 2, referred to as "ESCO service providers":

1. ensure the provision of ESCO services provided for in the performance contracts, in whole or in part with own funds, in whole or in part with the resources of the contracting authority, including



those provided by national or European support schemes and mechanisms, and/or undertake to ensure their financing by a third party;

(Opinion:

Further expand the range of sources of funding.

Proposal for a new text:

1. ensure the provision of ESCO services provided for in the performance contracts in whole or in part with own resources, in whole or in part with the resources of the contracting authority, including and not limited to those provided by national or international support schemes and mechanisms, and/or undertake to ensure their financing by a third party;)

2. bear the financial, technical and commercial risk for the implementation of the activities and measures provided for in the contract to improve energy efficiency and to achieve the result guaranteed by the contract;

3. take into account the annual result guaranteed under the contract through a bilaterally signed statement of findings.

(2) The statement of findings under para. 1, item 3 shall be drawn up once a year, as of the date of commissioning of the site, on the basis of a methodology for reporting the guaranteed result, which is an integral part of the contract with an assured result and is in compliance with the requirements of the ordinance under art. 18(2) of the EEA.

(Opinion:

See opinion to art. 18, para. (2).

Proposal for a new text:

(2) The statement of findings under para. 1, item 3 shall be drawn up once a year, from the date of commissioning of the site, on the basis of a methodology for reporting the guaranteed result, which is an integral part of the contract with an assured result and is in accordance with the standard for measurement and verification "IPMVP" or "ISO 50015".)

(3) The persons under para. 1 shall provide annually data on completed projects with guaranteed results, which include the envisaged and achieved energy and financial savings of the Agency for Sustainable Energy Development.



(Opinion:

We propose to continue the Agency's good practice of making the data it collects publicly available.

Proposal for a new text:

(3) The persons under para. 1 shall provide annually data on completed projects with guaranteed results, which include the envisaged and achieved energy and financial savings of the Agency for Sustainable Energy Development and shall become publicly available on the website of the Agency.)

Art. 4. (1) The restoration of the one made by the persons under art. 3, para. 1 investment for the implementation of activities and measures to increase energy efficiency, as well as the payment of the remuneration due under the contract, shall be carried out for the duration of the contract, taking into account the realized energy savings, certified by a statement of findings under art. 3, para. 2.

(2) The payment of the remuneration due under the contract may be made quarterly, and at the end of the year an equalization contribution shall be made under the contract. In the event that quarterly payments exceed the amount of energy savings costed, the excess shall be distributed in an agreed ratio between the parties.

(3) The guaranteed energy saving shall be defined as the difference between the normalized energy consumption, calculated before the implementation of the energy efficiency improvement measures provided for in the contract, and the guaranteed energy consumption in the building after their implementation.

(4) Where the performance contract is performed for several buildings, the total guaranteed energy saving shall be calculated as the sum of the individual guaranteed energy savings of each of them.

Chapter Two PROCEDURE FOR DETERMINING THE AMOUNT OF THE FUNDS PLANNED UNDER THE BUDGETS OF THE AUTHORIZING OFFICERS FOR THE IMPLEMENTATION OF ESCO SERVICES UNDER GUARANTEED CONTRACTS IN BUILDINGS - STATE AND/OR MUNICIPAL PROPERTY

Section I Determination of the amount of funds planned under the budgets and provision of funding for the implementation of ESCO services under guaranteed contracts in state-owned buildings

Art. 5. Budget spending units may plan funds for the implementation of a contract/contracts with guaranteed results within the budgets approved by the State Budget of the Republic of Bulgaria Act for the respective year.

Art. 6. (1) The planning of the funds under art. 5 is carried out under the conditions of art. 1, para. 2, the amount of planned funds corresponding to the normalized energy consumption.

(Opinion:



We propose similar to the provision of funds for normalized energy consumption to provide funds for normal operation and maintenance in order to secure payments and in this direction in order to store the renovated building.

Proposal for a new text:

Art. 6. (1) The planning of the funds under art. 5 is carried out under the conditions of art. 1, para. 2, as the amount of the planned funds corresponds to the normalized energy consumption, as well as taking into account the normal costs of operation and maintenance and other relevant to ensuring the suitability of the buildings.)

(2) The planned payments to the contractors of ESCO services for the recovery of the investment shall not exceed the agreed guaranteed result for energy and financial savings - subject of the contract with guaranteed results.

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(Opinion:

There is a hypothesis that the contributions for the recovery of the investment exceed the achieved energy savings in case the contracting authority has access to financial resources with which to co-finance and wishes to repay the investment of the ESCO company in a shorter period in order to pay less interest and takes advantage of 100% of the financial benefits that have arisen at an earlier stage. At the same time, the bonification/penalization mechanism of the ESCO company in case of overshooting/non-achievement of the guaranteed result should be periodically reported and active (hence the construction "... upon accounting...").

See also opinion to Art. 17, 1, proposal for a new sub.

Proposal for a new text:

(2) The planned payments to the contractors of ESCO services for the recovery of the investment must take into account the agreed guaranteed result for energy and financial savings and benefits - subject of the contract with a guaranteed result.)

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(3) The amount of the estimated funds shall include an appreciation corresponding to the amount of the interest rate of the Bulgarian National Bank for long-term investment loans as of the date of conclusion of the contract.

(Opinion:

See opinion to art. 17, p.11.



In addition, the statement contradicts art. 12, para. (1), item 3, where we have proposed a revision in relation to the imposed limit for the duration of the contract with guaranteed results within the simple payback period of the energy-saving measures.

Proposal for text:

(3) The amount of the estimated funds shall also include an appreciation corresponding to the amount of the interest rate of the Bulgarian National Bank for long-term investment loans as of the date of conclusion of the contract and/or other indicators referenced in the guaranteed performance contract)

(4) The determination of the amount of funds under the contract with guaranteed result shall be made on the basis of the monetary equivalent of the guaranteed energy saving, valued at the current price of the energy as of the date of signing the ascertainment protocol under art. 3, para. 2.

(Opinion:

The restriction to use only the current price at the date of signing the contract opens the possibility of distortions with effect for the entire duration of the contract. The good practice is to adopt an average price for the whole year to avoid seasonal fluctuations or one for the last 2-3 years, potentially with different burdens if there are substantial fluctuations in the energy supply conditions. Of course, the possibility of adopting a current price at a date of signing is also permissible under certain conditions.

Proposal for a new text:

(4) The determination of the amount of funds under the contract with guaranteed performance shall be made on the basis agreed between the parties the monetary equivalent of the guaranteed energy saving, e.g. valued at the actual price of energy as of the date of signing the ascertainment protocol under art. 3, para. 2.)

Art. 7. The examination and approval of the means for the performance of guaranteed contracts shall be carried out under the terms and conditions of Chapter Three.

Art. 8. In the case of a contract/contracts with an assured result, the budget spending units shall provide annually for the provision of funds for servicing the contract/contracts with a guaranteed result until the repayment of the obligations to the ESCO service providers approved by the State Budget of the Republic of Bulgaria for the respective year.

Section II Determining the amount of funds planned under the budgets and providing funding for the implementation of ESCO services under guaranteed contracts in municipal property buildings



Art. 9. Each municipality may plan funds for payment of obligations under contracts with guaranteed results in buildings - municipal property, in the draft budget for the respective year after a decision of the municipal council.

(Opinion:

We believe that the repeal of the provisions of the old ordinance, enabling municipalities to submit requests to the Ministry of Finance for the allocation of financial resources for the payment of contracts with a guaranteed result from the central budget, is a fundamental change in the meaning and meaning of the ESCO regulation. A smart mechanism is being abolished through which the central budget has supported the process of decarbonisation of the public building stock in years when I have tens of times less financial resources.

As a consequence of the abolition of the support mechanism, the ESCO model becomes inapplicable because public buildings are chronically underfunded – energy poor and in a state of accelerated depreciation, i.e., there is no normal energy consumption, operation and maintenance. In this way, the generation of energy and financial savings through guaranteed performance contracts becomes impracticable.

Return of the relevant provisions of the old ordinance and restoration of the mechanism for requesting support from the Ministry of Finance, which emulates normal exploitation of the building stock, allows the use of contracts with guaranteed results and stops the process of destruction of the public building stock by attracting private financial resources.

We have also proposed some amendments to the restored provisions of the Ordinance with a view to expanding the scope of the mechanism and adopting good European practices.

Proposal for a new text:

(return of old paragraph (2) with revision) The determination and payment of funds from the central budget under contracts with guaranteed results for municipal property buildings is carried out only for buildings with a total built-up area of over 250 sq. (m) subject to the conditions of Chapter Three.

(return of old paragraph (3)) Funds from the central budget shall be provided to finance the implementation of ESCO services under guaranteed contracts after obtaining a certificate of at least category B for the municipal property buildings under para. 2, for which energy efficiency improvement measures have been implemented and the energy consumption levels specified in the contract(s) have been reached.

(return of an old paragraph (4) with adjacent points) Municipalities that have concluded a contract/contracts with guaranteed results in buildings under art. 9, para. 2, submit to the Ministry of Finance:

1. a request for financing under the contract(s) with a guaranteed result together with a copy of the summary for an inspection of the building, a notarized copy of the contract(s) with an assured result for this building, the decision of the municipal council, a copy of the issued



certificate for the building in which the energy efficiency improvement measures have been implemented, as well as a repayment plan for the payments under the contract(s);

2. information on the planned means of performance of the contract and the corresponding measures to improve energy efficiency and other financial benefits;

3. information about implemented so far, financed under national or other programs from the state budget or from other financial sources, including external programs, credit institutions, etc., activities and measures to improve energy efficiency in the building/buildings subject to the contract with guaranteed results, as well as the amount of their financing.

(return of old Art. 11 with adjacent paragraphs) (1) The consideration and approval of the funds for the execution of contracts with guaranteed results in municipal property buildings shall be carried out under the terms and conditions of Chapter Three by the Energy Efficiency Agency, which shall send a reasoned proposal to the Ministry of Finance to finance the payment thereunder and certify that no other certificate has been issued for the respective building as a result of implemented activities under other programs or from other financial sources.

(2) After approval of the funds under para. 1 they shall be provided from the central budget of the municipalities by the order of art. 34, para. 2 of the State Budget Act.

(return of old Art. 12) The provision of funds from the central budget for servicing contracts with guaranteed results in the buildings under art. 9, para. 2 shall be carried out until the repayment of the obligations under these contracts.)

Art. (1) Planned payments to ESCO contractors for the recovery of the investment shall take into account the scope of the guaranteed result, including the energy savings and other relevant financial benefits subject to the performance contract.

(2) The amount of the estimated funds shall include an appreciation corresponding to the amount of the interest rate of the Bulgarian National Bank for long-term investment loans as of the date of conclusion of the contract.

(Opinion:

See opinion to art. 6, para. (3).

Proposal for a new text:

(2) The amount of the estimated funds shall include an appreciation corresponding to the amount of the interest rate of the Bulgarian National Bank for long-term investment loans as of the date of conclusion of the contract and/or other indicators referenced in the guaranteed performance contract.)



(3) The determination of the amount of funds under the contract with a guaranteed result shall be made on the basis of the agreed guaranteed result for energy and financial savings.

(Opinion:

We offer a staging analogous to art. 91 para. 1 of the State Budget Act, with a view to ensuring the consistency and stability of the regulatory framework.

Proposal for a new text:

(new article) The annual amount of payments for each municipality under long-term contracts with guaranteed performance (ESCO contracts) shall not be included in the total annual amount of payments under the municipal debt for the respective municipality when determining the ratio and applying the limit under art. 32, para. 1 of the Public Finance Act.)

Section III Determining the amount of funds planned under the budgets and providing funding for the implementation of ESCO services under guaranteed contracts in buildings with mixed ownership regime - state and municipal

Art. (1) The planning and provision of financing for the implementation of guaranteed performance contracts in buildings with mixed ownership regime shall be carried out:

1. under the conditions and by the order of Section 1 - in the cases where the state is the owner of the larger share of the co-owned building;
2. under the conditions and by the order of Section Two - in the cases when the municipality is the owner of the larger share of the co-owned building.

(2) Where the state and the municipality hold equal shares of the respective building, the financing shall be planned and provided under the conditions and by the order of Section one for the part of the building representing state property, and under the conditions and by the order of Section Two for the part of the building representing municipal property.

Chapter Three FINANCING CONDITIONS AND REQUIREMENTS FOR GUARANTEED PERFORMANCE CONTRACTS IN BUILDINGS - STATE AND/OR MUNICIPAL PROPERTY

Section I Conditions for financing guaranteed performance contracts in buildings - state and/or municipal property

Art. (1) The contracts with guaranteed result in buildings - state and/or municipal property, for which funds are planned in the budgets of the spending units, shall be financed in compliance with the following conditions:



1. the activities and measures envisaged for implementation to increase energy efficiency to ensure the achievement of energy savings and the issuance of an energy efficiency certificate corresponding at least to the requirements for issuing a class B certificate;
2. the measures envisaged for implementation to increase energy efficiency to be implemented with materials complying with the requirements of the Technical Requirements for Products Act;
3. the payback period of the energy savings investment provided for in the guaranteed contract shall not be longer than the simple redemption period of the package of measures provided for in the contract.

(Opinion:

The proposed point makes it impossible to attract private financial resources, e.g. ESCOs to use specialized credit lines, as envisaged by the Fund of Funds in the next programming period, through the banking sector. The simple payback period does not imply consideration of the cost of attracted private financing and renders ESCO projects unviable.

We believe that the dropped point dealing with the terms of guaranteed contracts is more relevant, after reflecting the need to adopt terms longer than ten years. This opens the possibility for ESCO projects to cover the full energy savings potential of buildings, the so-called Energy Savings Potential. "deep" renovation.

Proposal for a new text:

"3. the payback period of the investment for energy savings provided for in the guaranteed contract shall not exceed 20 years, and in certain cases, e.g. buildings-monuments of culture, from 25 years")

- (2) The recovery and/or ancillary activities included in the subject of the contract with guaranteed results, which guarantee the operational suitability of the measures for improving energy efficiency, shall not be subject to financing under para. 1.

(Opinion:

In the implementation of energy-saving measures, the amount of accompanying and supporting activities is essential and inevitable. Failure to pay for this type of activities makes the implementation of the overall energy-efficient project meaningless, i.e., it is a barrier to the realization and achievement of energy savings and a prerequisite for poor quality energy efficiency and accidents. In addition, "deep" renovation projects are hindered, in which the prescriptions in the technical passports, subject to mandatory implementation, are also implemented.



We propose the long-standing practice of the Energy Efficiency Fund (regulated by the Energy Efficiency Act) to finance accompanying and supporting activities if they do not exceed 50% of the value of the investment.

Proposal for a new text:

(2) The recovery and/or ancillary activities included in the subject of the contract with guaranteed results, which guarantee the operational suitability of the measures for improving energy efficiency, shall not be subject to financing under para. 1 if they exceed 50% of the value of the investment.)

Section II Requirements for performance contracts

Art. 13. Guaranteed performance contracts subject to financing under this Ordinance include the following stages - preliminary research stage, actual stage and contract servicing stage.

Art. (1) The preliminary research stage shall include an analysis of the results of an energy efficiency audit.

(Opinion:

In any case, if there is an energy audit available, it should be submitted for analysis. As a result of the analysis, if it is established that no one can take responsibility, that the prescribed in the energy audit is realistic and fit for realization, and / or if there is no energy audit at all, then a hypothesis should be provided for the preparation of a new energy audit by the ESCO company, respectively. to present measures fit for realization and realistic, for which responsibility and guarantee can be assumed.

Proposal for a new text:

Art. (1) The preliminary research stage shall include an analysis of the results of an energy efficiency audit and/or the preparation of a new one by the contractor with a guaranteed result.)

(2) Where the ESCO service provider does not accept the results of a previous audit, he may make a new investigation, which shall not be financed from the budget of the respective authorizing officer.

(Opinion:

The lack of opportunity to pay realistic and implementable energy audits hinder the implementation of energy-efficient projects for which guarantees can be taken to achieve energy savings.



We propose the value of the energy audit to be paid within the term of the contract with guaranteed results. In this way, the beneficiary will be relieved to the maximum extent because of the free financial resources from the savings achieved during the contract.

Proposal for a new text:

(2) When the ESCO service provider does not accept the results of a previous audit, he may make a new investigation to be paid within the term of the contract with guaranteed results.)

Art. (1) The actual stage of performance of the guaranteed contract shall include:

1. elaboration or assignment by the ESCO service provider of the elaboration of an investment project, on the basis of which a building permit is issued, where such is necessary, in compliance with the requirements of the Spatial Planning Act (SPA) and the current secondary legislation on the design of systems, installations and facilities;
2. implementation of the investment project in compliance with the requirements of the SPA and the current secondary legislation.

(2) The actual stage shall be based on the results of the preliminary stage accepted by the contracting authority.

Art. 16. The service stage of the contract with an assured result includes:

1. ongoing and periodic monitoring, systematization and reporting of results for the energy savings guaranteed by the contract;
2. reimbursement of the investment made by the ESCO contractor and payment of the remuneration due to it, taking into account the assessed, measured and verifiable energy savings;
3. determining the terms and conditions for operation of the respective building in order to achieve the energy savings guaranteed in the guaranteed by the guaranteed contract.

Art. 17. Guaranteed performance contracts subject to financing under the terms and conditions of this Ordinance shall contain at least the parameters under art. 73, para. 3 of the Energy Efficiency Act, as well as:

1. numerical values for:

- (a) the integrated energy performance of the building before and after the implementation of the measures;
- (b) current energy consumption before implementing energy efficiency improvement measures;
- (c) normalised energy consumption;
- (d) energy consumption after the introduction of energy efficiency improvement measures;
- (e) the guaranteed energy and financial savings for the building;



(Opinion:

In line with the new provisions of the Energy Efficiency Directive, performance contracts should be combined with innovative technologies and functionalities that bring additional benefits to owners e.g. demand-response management systems, energy storage systems, etc.

Proposal for a new text:

(new sub.) additional financial benefits, if any;

- (f) the environmental equivalent (carbon dioxide emissions) of the energy saved;
2. a plan for the introduction of the energy efficiency improvement measures prescribed in the energy efficiency audit report for the building;
 3. methodology for monitoring, systematization and reporting of the results as a result of the implementation of the contract with guaranteed results;
 4. method of payment of the investment and/or remuneration of the persons under art. 3, para. 1;
 5. prices of the energy carriers, valid at the time of conclusion of the contract, without and with charged value added tax (VAT), as well as heat of combustion of used primary energy carriers and/or characteristics of converted energy carriers;
 6. technical specifications and detailed bills of quantities for the proposed energy efficiency improvement measures, as well as a timetable for their implementation;
 7. total value of the contract without and including charged VAT and breakdown of the investment required for the implementation of energy efficiency improvement measures and of the necessary investment for the implementation of the restorative, construction and repair activities to ensure the operational suitability of energy efficiency improvement measures;
 8. conditions, terms and periodicity of reimbursement of the investment and payment of the remuneration due to the contractor under the contract with guaranteed result under a repayment schedule;
 9. penalty clauses for non-fulfillment of obligations of each of the parties;
 10. simple term of redemption of the investment under the contract, repayment period of the investment under the contract and term of validity of the contract;
 11. mechanism for determining and updating the amount of the annual service in case of change in energy prices.

(Opinion:



An update mechanism should be envisaged not only in the event of a change in energy prices, but also in the case of changes in other long-term benchmarks, e.g. inflation, EURIBOR and/or other performance indicators referenced in the contract.

Proposal for a new text:

11. mechanism for determining and updating the amount of the annual service in case of change in energy prices and/or other indicators referenced in the contract with guaranteed results.)

Chapter Four PROCEDURE FOR REIMBURSEMENT OF INVESTMENTS AND PAYMENT OF REMUNERATION UNDER GUARANTEED PERFORMANCE CONTRACTS

Art. (1) The guaranteed result of energy savings shall be determined by a methodology for measuring and/or assessing consumption before and after the implementation of the energy efficiency improvement measures implemented under the performance contract, adjusting for the impact of external conditions and additional factors affecting the energy consumption of the building concerned.

(2) For the purposes of accounting for the guaranteed energy savings and verifying the correctness of the reported results, the contractors of ESCO services, who perform contracts with guaranteed results, subject to financing under this Ordinance, shall develop the methodology under para. 1 in accordance with the requirements of the ordinance under Art. 18, para. 2 of the EEA.

(Opinion:

We propose that periodic performance reporting, which usually takes place on a monthly, quarterly or annual basis, should follow established international practice in guaranteed performance contracts, using developed protocols and standards such as IPMVP or ISO 50015.

If the requirement of the ordinance under Art. 18, para. 2 of the EEA for the needs of periodic reporting, then several times a year for the period of validity of the contract with guaranteed results, usually 10 years, energy audits must be carried out. The need to pay several energy audits per year would make guaranteed contracts meaningless from a financial point. For this reason, we propose this hypothesis to remain only in cases where it is legally necessary to prove energy savings, for example, issuing certificates for energy savings, reporting on the achievement of set individual goals, etc. Traditionally, this has been a one-time act, not a periodic one, and could be performed by any interested person.

Proposal for a new text:

(2) For the purposes of periodic reporting of the guaranteed result, ESCO service providers who perform guaranteed performance contracts subject to funding under this Ordinance



shall develop the methodology under para. 1 in accordance with the measurement and verification standard "IPMVP" or "ISO 50015".

(new paragraph) If it is necessary to issue a certificate of energy savings and/or regulatory proof of the achieved energy savings, the requirements of the ordinance under Art. 18, para. 2 of the EEA.)

Art. 19. The investments and remuneration for ESCO services under guaranteed performance contracts carried out by the contractors of ESCO services under this Ordinance shall be reimbursed, respectively paid, taking into account the energy savings realized.

(Opinion:

See opinion to art. 25, para. (3).

Proposal for a new text:

(new article) The value added tax due as a result of the realization of the envisaged investments under a guaranteed performance contract shall be eligible for rescheduling within the term of validity of the contract.)

Art. 20. The energy savings assessed, measured and proven by ESCO contractors shall be valued annually in accordance with the procedure laid down in the performance reporting methodology.

Art. (1) The ESCO service provider shall submit annually to the owner of the building - contracting authority under the contract a report on monitoring, systematization and reporting of the guaranteed result.

(2) The report under para. 1 shall be drawn up before the protocol under art. 3, para. 2 and applied to it.

Art. 22. The total amount of the financial expenses reflected in the statement of findings under art. 3, para. 2, and the invoices for the payments made during the respective year shall be the basis for planning the necessary funds for servicing the contract, with a guaranteed result for the next financial year.

Art. (1) Where the reported energy savings reflected in the ascertainment protocol are greater than the guaranteed, the monetary equivalence of the difference, calculated through the energy prices used in determining the amount of the contract, shall not be subject to return to the state budget and shall be spent purposefully for payment under the contract as an advance contribution for the following year.

(Opinion:



The need to comply with art. 4, para. 2

Proposal for a new text:

Art. (1) Where the reported energy savings reflected in the statement of findings are greater than the guaranteed, the monetary equivalence of the difference, calculated through the energy prices used in determining the amount of the contract, shall not be returned to the state budget and shall be distributed in an agreed ratio between the parties.)

(2) Where the reported energy saving is less than the guaranteed one, the financial risk shall be borne by the ESCO service contractor.

Art. (1) The control over the implementation of the concluded contracts with guaranteed result shall be carried out by the respective authorizing officer.

(2) The spending units shall provide information to the Executive Director of the Sustainable Energy Development Agency about the contracts with guaranteed results implemented during the previous year under the ordinance under art. 70 of the EEA.

Chapter Five TERMS AND CONDITIONS FOR PAYMENT OF THE OBLIGATIONS FOR ENERGY EFFICIENCY SERVICES UNDER GUARANTEED PERFORMANCE CONTRACTS THROUGH THE BILLS FOR THE SUPPLIED ENERGY OR NATURAL GAS

Art. (1) The owners of buildings - state and/or municipal property, who conclude a contract with guaranteed result may negotiate deferred payment of energy efficient services through the bills for the delivered energy or natural gas with:

1. an energy undertaking supplying energy or natural gas to a final customer, which provides the same customer with an energy-efficient service;
2. the contractor of an assured contract and the energy company supplying energy or natural gas to a final customer through a tripartite contract for settlement of the payment of the obligations;
3. financing institutions offering financing of energy-efficient services and an energy company supplying energy or natural gas to collect and pay the value of the provided energy-efficient services through a tripartite contract for settlement of the payment of the obligations.

(2) The energy efficient services under the contract under para. 1 may not include the installation of heating installations of natural gas in the replacement of installations of liquid fuels of petroleum origin.

(Opinion:

We propose to drop Al. (2). The reasons are as follows:

- *There are unnecessary restrictions on the choice of energy resources.*



- *There is a contradiction of the principles of the free market and a discriminatory restriction on energy from natural gas is introduced, which does not arise either from regulatory requirements or from the effect that natural gas achieves in the realization of energy savings.*
- *The replacement of liquid fuels with natural gas, in addition to an economic effect, has a highly environmentally friendly one.*

(3) The value added tax due as a result of the realization of the envisaged investments under a guaranteed performance contract shall be admissible for rescheduling within the term of validity of the contract.

(Opinion:

We offer the staging of Al. (3) to be transformed into a new article in Chapter Four with a view to the hypothesis to cover guaranteed contracts for state and/or municipal property buildings as a whole, and not only in terms of bills for supplied energy or natural gas.)

(4) The energy company shall collect the amounts for the deferred payment and transfer them to the person offering energy efficiency services or the financing institution on a monthly basis, in accordance with the terms of the contract.

(5) Annually, on the basis of the valuation of the assessed, measured and proven by the contractors of the contracts with guaranteed results energy savings, if necessary, an adjustment of the amount due shall be made.

(6) The amounts for the deferred payment shall be shown as a separate line in the energy invoices. Invoices must provide a clear breakdown of energy consumption, and related repayment amounts, in accordance with the terms of the deferred payment contract.

(7) The energy company may negotiate with the provider of an energy-efficient service and with the end customer - owner of a building - state and/or municipal property - to take into account the achieved energy savings from the result of the energy-efficient service for the fulfillment of its individual objectives under art. 14a of the Energy Efficiency Act in its capacity as an obligated person.

(8) The energy company shall provide information to the Executive Director of the Sustainable Energy Development Agency about the contracts concluded under the Ordinance under art. 70 of the EEA.

Additional provision

§ 1. For the purposes of this Ordinance:

1. "Guaranteed energy savings" means the total amount of energy saved, determined by measuring and/or calculating before and after the application of one or more energy efficiency



improvement measures, taking into account the external climatic conditions and internal factors of the building, which comprehensively affect its energy consumption;

2. "Contract with guaranteed results" is a financial instrument for energy savings, in which investments for the implementation of activities and measures to increase energy efficiency are paid from the agreed energy and financial savings.

(Opinion:

See opinion to art. 10, para. (3) and to ...

Proposal for a new text:

2. "Contract with guaranteed results" is a financial instrument for energy savings, which is not accounted for as debt and the investments for the implementation of the activities and measures to increase energy efficiency are paid taking into account the agreed energy and financial savings.)

(Opinion:

We propose to define the standards and protocols for assessment referred to in the ordinance.

Proposal for a new text:

"IPMVP" and "ISO 50015" are leading standards for measurement and verification of the guaranteed performance in performance contracts under the auspices of the Organization for Performance Assessment and the International Organization for Standardization, respectively.)

Final provisions

§ 2. This Ordinance repeals Ordinance No RD-16-347 of 2 April 2009 on the terms and conditions for determining and disbursing the planned funds under guaranteed contracts leading to energy savings in buildings - state and/or municipal property (State Gazette No. 28 of 14 April 2009).

§ 3. The ordinance shall be issued on the grounds of Art. 73, para. 8 of the Energy Efficiency Act.

§ 4. The Ordinance shall enter into force from the day of its promulgation in the State Gazette.



III. List of supporters of the proposals

Energy Efficiency Alliance

Agency for Energy and Sustainable Development

Sofia Municipality

Gabrovo Municipality

Bulgarian Construction Chamber

National Trust Ecofund

Bulgarian-Austrian Consulting Company AD

Overgas Networks SA

Energoeffect Consult Ltd.

We remain available!

21.11.2023, Sofia

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Briefly about BeSmart

The Bulgarian Forum for Financing Energy Efficiency Projects:

The transition to a low-carbon economy requires higher energy efficiency and better energy management, the introduction of new specialised services and the development of financial mechanisms. This exceptional challenge is particularly relevant in the building sector, where the currently used 100% grant mechanism for the renovation of multi-family residential buildings needs to be reformed into a more sustainable financing scheme that is socially acceptable, ensures the participation of vulnerable consumers and at the same time sets higher criteria for energy efficiency and environmental benefits.

What are we aiming for?

To help develop and implement policies and financial mechanisms to support investment in energy efficiency and to support the implementation of European sustainable energy development initiatives at national and local level.

How will we achieve it?

- Involving all stakeholders in an open dialogue
- Dissemination of good practices, initiatives and tools
- By building an online communication platform for sharing knowledge and experience
- With nine national roundtables with extensive media coverage
- With specific recommendations for the development of financial instruments to support energy efficiency

Target groups:

- Banks, other financing institutions and ESCOs
- Representatives of the central government, mainly from the ministries of finance, economy, energy, regional development and public works and the executive agencies belonging to them.
- Local and regional authorities
- National associations - construction, SMEs and industry associations, consumer associations and various service providers
- Think tanks and academia
- The general public and citizens
- Media.



Main benefits:

- Involving all stakeholders in an open dialogue
- Dissemination of good practices, initiatives and tools
- By building an online communication platform for sharing knowledge and experience
- With nine national roundtables with extensive media coverage
- With specific recommendations for the development of financial instruments to support energy efficiency



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