



FORMAL OPINION

On the notification of the amendments made to the *Support scheme on the system of compulsory levels of electricity combined with the transaction of green certificates*, set up by the Law no. 220/2008 for the establishment of the system for promoting the production of energy from renewable energy resources, republished, with the subsequent amendments and completions

By analyzing the following:

the Law on the approval of the Government Emergency Ordinance no. 57/2013 on the amendment and completion of the Law no. 220/2008 for the establishment of the system for promoting the production of energy from renewable energy resources, republished, with the subsequent amendments and completions, adopted by the Romanian Parliament on February the 11th, 2014,

The Government Emergency Ordinance no. 57/2013 on the amendment and completion of the Law no. 220/2008 for the establishment of the system for promoting the production of energy from renewable energy resources, published in the Official Journal of Romania, Part I, no. 335 of June the 7th, 2013,

The Government Emergency Ordinance no. 79/2013 on the amendment and completion of the Law on improving land reclamation no. 138/2004, for the completion of the Government Emergency Ordinance no. 82/2011 on certain measures for the organization of land reclamation improvement, as well as for the amendment of letter e) of recital (6) of art. 3 in the Law no. 220/2008 for the establishment of the system for promoting the production of energy from renewable energy resources, published in the Official Journal of Romania, Part I, no. 390 of June the 29th, 2013,

Law no. 134/2012 on the approval of the Government Emergency Ordinance no. 88/2011 on the amendment and completion of the Law no. 220/2008 for the establishment of the system for promoting the production of energy from renewable energy resources, published in the Official Journal of Romania, Part I, no. 505 of June the 23th, 2012,

The Government Emergency Ordinance no. 82/2011 on the amendment and completion of the Law no. 220/2008 for the establishment of the system for promoting the production of energy from renewable energy resources, published in the Official Journal of Romania, Part I, no. 736 of October the 19th, 2011,

Law no. 220/2008 (republished) for the establishment of the system for promoting the production of energy from renewable energy resources (republished based on art. II of the Law no. 139/2010 on the amendment and completion of the Law no. 220/2008

for the establishment of the system for promoting the production of energy from renewable energy resources), published in the Official Journal of Romania, Part I, no. 557 of August the 13th, 2010 and

The standard notification form on the *Support scheme on the system of compulsory levels of electricity combined with the transaction of green certificates* set up by the Law no. 220/2008, republished, with the subsequent amendments and completions

submitted by the Department for Energy by the address no. 100900RM/17.03.2014 and registered at the Competition Council with no. RG 2719/18.03.2014, in order to receive a formal opinion,

and ascertaining that:

1. The *Law no. 220/2008 for the establishment of the system for promoting the production of energy from renewable energy resources, republished, with the subsequent amendments and completions* (hereby named the Law 220/2008) initiated and adopted by the Parliament of Romania, sets up a support scheme for the production of electricity from renewable energy resources, in order to meet the level of the national targets assumed by Romania on the proportion of the electricity produced from renewable sources within the total gross consumption of electricity;

2. Romania's Energy Strategy for the period 2007 – 2020 approved by the Government decision no. 1069/2007 lays out the level of national targets on the proportion of electricity produced from renewable energy sources in the final consumption of electricity, having in view the years 2010, 2015 and 2020, which is 33%, namely 35% and 38%. The assumption of those targets by Romania is re-confirmed by art. 5 of the Law no. 220/2008, republished;

3. The Law no. 220/2008 creates the legal framework to establish a mechanism to promote the production of electricity from renewable energy sources, the beneficiaries being the producers of electricity from renewable sources which produce electricity from the following energy sources: hydraulic, wind, solar, geo-thermal, bio-mass, gas resulted from the ferment of waste, gas from the ferment of mud, bio-liquids and bio-gas;

4. The system to promote electricity produced from renewable energy sources, set up by the Law no. 220/2008 is applied for the electricity delivered through the electrical network and/or directly to the consumers, including for the quantity of electricity produced during the trial period of the groups/electrical power plants, as well as for that used for other own consumption places connected to the power plants (excluding the own technological consumption) and produced from the following renewable sources:

- hydro energy used in the power plants with an installed power of at most 10 MW;
- wind energy;
- solar energy;
- geo-thermal energy;
- bio-mass, regardless the form of aggregate (solid bio-mass, bio-liquid, bio-gas);
- gas resulted from the ferment of waste;
- gas from the ferment of mud from the wastewater treatment installation.

5. The promoting system is applied to those producers qualified by ANRE, starting with the date from which they start to produce electricity, if the start of function, respectively the refurbishments of groups/power plants are made until the end of 2016;

6. In accordance with the Law no. 220/2008 and with the Commission Decision no. C (2011) 4938, the producers of electricity from renewable sources receive a number of green certificates for a certain quantity of energy produced and delivered in the electricity network, in accordance with the table below:

RENEWABLE SOURCE	Power-plant /group type	Draft of GEO for amending the Law no. 200/2008	Length (years)
		CV/MWh	
1	2	3	4
1. HYDRAULIC energy – used in power-plants with installed power ≤10 MW	<i>new</i> –functional since 1 January 2004	3 CV	15
	<i>Re-technologized</i>	2CV	10
	<i>Non re-technologized</i> – starting to function before 1 January 2004	0.5CV	3
2. WIND energy	<i>new</i>	2CV until 2017 1 CV from 2018	15
	<i>Re-technologized</i>	2CV until 2018 1 CV from 2018	7
3. GEO-THERMAL energy	<i>new</i>	2 CV	15
4.1 BIO-MASS made from sylvan wastes, agrarian vegetal wastes, sawdust, animal motion etc.	<i>new</i>	2 CV	15
4.2. BIO-MASS from energetically cultures	<i>new</i>	3 CV	15
4.3. Bio-mass - high efficiency co-generation	<i>new</i>	1 CV – supplementary to the points 4.1. and 4.2	15
5.1. Ferment gas from wastes	<i>new</i>	1 CV	15
5.2. Ferment gas from muds from the installations for purifying wastes waters	<i>new</i>	1 CV	15
6. SOLAR energy	<i>new</i>	6 CV	15

7. The trading price of green certificates (GC) on the market for green certificates must fall between the minimum and maximum values established by the Law no. 220/2008, namely between 27 euro / GC minimum and 55 euro / GC maximum value, indexed annually;

8. The indexed price of the green certificates for the transactional year 2013 is of 28.876 euro/GC minimum and 58.823 euro / GC maximum value;

9. The scheme for promoting the production of energy from renewable sources, set up by the Law no. 220/2008 was authorized by the European Commission by the Decision no. C(2011) 4938 on the State aid SA 33134 2011/N – RO – System for promoting the production of energy from renewable energy resources, on 14.07.2011;

10. The Commission's Decision no. C(2011) 4938 was based on the Law no.220/2008, republished and the draft of Government Emergency Ordinance no. 88/2011;

11. The legal framework on the system for promoting the production of energy from renewable energy resources was successively amended through: GEO no. 88/2011¹, the Law no. 134/2012 for the approval of the GEO no.88/2011, GEO no.79/2013, GEO no. 57/2013, the Law for the approval of the GEO no.57/2013;

12. The amendments brought to the scheme for promotion of the energy from renewable energy sources (E-SRE), to be notified to the Commission mainly aims the reduction of the support through green certificates to the minimum necessary for the fulfilment of the obligations assumed by Romania and the correction of certain dysfunctions in the functioning of this scheme, so that it maintains, at the same time, the financial affordability of the consumers who support the scheme, as well as the viability of the investments made within it;

13. The reduction of the support has into view the following:

- To maintain the viability of the scheme by progressively echeloning the financial effort of the consumers of electricity in supporting the promotion scheme and a better functioning of the market mechanisms provisioned for by the support scheme through green certificates;
- To meet the scheme's environmental objectives without provoking collateral damages by occupying the agricultural land with photovoltaic plants and by increasing exhaust emissions to balance the electro-energetically system due to increased share of energy supplied intermittently;
- the national targets on the proportion of electricity produced from renewable sources in the final consumption of electricity were met and exceeded, Romania achieving in 2012 a share of 33.57% compared to the 35% provisioned for 2015. It is estimated that in 2014 the share of electricity from SRE in the final consumption of electricity will exceed 35%;
- in 2014 it is estimated that the objective of 24% of E-SRE in the final consumption of energy foreseen for 2020 will be reached;
- the park of generators of electricity from renewable sources, accredited to benefit of the promoting system through green certificates, of approx.. 4385

¹ Subsequent to the date when the Commission's Decision was issued, GEO no. 88/2011 was approved with amendments as compared to the initial draft used by the EC for their decision.

MW capacity installed on 31.12.2013, exceeds the installed capacity foreseen in PNAER for the end of the year 2013, namely 3315 MW.

14. The amendments of the scheme for the promotion of the production of E-SRE were notified on 02.08.2013 through a simplified notification procedure, under the number SA 37177 (2013/PN);

15. After a preliminary assessment of the amendment proposals, the Commission has underlined that the application of the simplified notification procedure was inapplicable in this case, due to the multiple amendments of the initial scheme, which require a depth analysis. In this context, the Commission has invited the Romanian authorities to officially notify the amendments brought to the support scheme, without going through the pre-notification stage in the standard procedure;

16. The proposals to amend the scheme for the promotion of the production of E-SRE, object of the notification to the European Commission, refer to the following aspects:

- deferment of granting green certificates during 1 July 2013 to 31 March 2017;
- introducing the possibility that network operators to require financial guarantees in order to connect to the network, from the producers of electricity from renewable sources;
- to allow the trade of green certificates only to the producers of electricity from renewable sources and to the operators who are required to purchase green certificates, in a transparent, centralized and non-discriminatory manner from the centralized markets administered by the commercial operator of the electricity market (OPCOM);
- removing the support granted to the producers of photovoltaic energy which install production facilities on lands appearing in the agricultural accounts at the end of 2013;
- removing the support granted for the electricity supplied to the network, in addition to the schedule quantities specified by the producers dispatchable to the transport and system operator (TSO);
- annual review of the mandatory quota of electricity produced from renewable sources benefiting of the green certificate promotion system, starting with 2014;
- the validity of green certificates issued by the transport and system operator shall decrease to 12 months;
- modifying the methodology of calculation of GC for cumulating with other State aid.

17. Postponement of the granting of green certificates during 1 July 2013 to 31 March 2017:

➤ To support approved by the Commission Decision. C (2011) 4938, to temporarily postpone the granting of green certificates for each MWh produced and delivered in the period 07.01.2013 - 03.31.2017 by the producers of electricity from renewable sources, such as:

- 1 GC of 3 GC granted to hydroelectric power plants;
- 1 GC of 2 GC granted to wind power;
- 2 GC of 6 GC granted to solar power.

➤ The certificates are deferred for trading. As a result, deferred GC are issued and can be identified in the beneficiaries' heritage;

- The deferral is only applied to the producers accredited by ANRE till 31.12.2013. As a result, it is eliminated the possibility of cummulation of the effects of postponing the GC and of the measure to reduce the number of GC as a result of overcompensation, given that the first reduction in the number of green certificates made to avoid overcompensation is applied within the support scheme for the beneficiaries accredited after January 1, 2014;
- For the power plants made with investment aid, for which the number of green certificates to be granted is diminished in order to avoid overcompensation due to cumulating the support measures, postponement does not apply if the number of green certificates initially granted is subunit or if the result obtained after postponement is subunit;
- The recovery of postponed GC will be made during April 1, 2017 - December 31st 2020, by installment;
- As a result of the measures proposed to postpone the trading of green certificates, the mandatory acquisition annual quota of green certificates decreases during 07.01.2013 – 03.31.2017 with the number of green certificates postponed and shall increase during 04.01.2017 - 31.12 .2020 with the same number of green certificates postponed. Thus, part of the support level initially foreseen for the period 2013 - 2016 is passed in the years 2017 – 2020. It is expected to postpone this way about 40% of green certificates issued for the period 01.07.2013 - 03.31.2017.

18. The introduction of the possibility that the network operators request financial guarantees in order to connect to the network to the producers of electricity from renewable sources

The measure introduced by GEO no.57/2013 was taken over by the Regulation of connecting the users, approved by the ANRE Order no. 59 / 02.08.2013, published in Official Journal no. 517 / 08.19.2013. By secondary regulation, the financial guarantees required by network operators are non-discriminatory, proportional to the work required to strengthen the network and fully repayable;

19. Trading green certificates is allowed only to E-RES producers and operators who are required to purchase green certificates, from the centralized markets administered by OPCOM

The measure results in avoiding the situations of sharing the revenues from the promotion scheme with intermediary entities, since the beneficiaries of the promotion scheme are exclusively the producing installations.

Bilateral contracts concluded before the entry into force of the GEO no. 57/2013 (07.01.2013) between the operators which, at the conclusion date of the contracts were registered as participants in the GC market, still produce economic and legal effects until the expiration date, with no possibility of extension.

20. Removing the support granted to the producers of photovoltaic energy who install production capacities on lands appearing in the agricultural accounts at the end of 2013

Promoting renewable energy resources must meet the Community requests on agriculture and environment, the compliance with agricultural land use, non-reduction

of the areas for agriculture, conservation of biodiversity, the use of degraded land for investment in renewable energy;

21. Removal of the support granted for the electricity supplied in the network, in addition to the scheduled amounts specified by the producers dispatchable to the transport and system operator (TSO).

The measure motivates the producers of electricity from renewable sources owing dispatchable power plants to achieve as precise hourly notifications as possible, eliminating the practices to notify in imbalance, to the lower limit of the estimated deliverable quantities;

22. Annual review of E-RES mandatory quotas benefiting of the green certificate promotion system, starting with 2014.

By this measure is aimed to correlate the mandatory annual quota of electricity produced from renewable energy sources, which benefits from the promotion system, with the objectives assumed by Romania in the Directive 2009/28 / EC. For the period 2014 - 2020, the mandatory annual quota is set up and approved by Government Decision, at the proposal of ANRE.

For 2014, ANRE has proposed the setting up of the quota of electricity produced from renewable sources benefiting of the GC promotion system, at the level of the share of electricity produced from renewable sources realized in 2013. This share is estimated between 11.1 and 11 5%.

23. The validity of the green certificates issued by the transport and system operator is reduced to 12 months.

The measure proposes the reduction of the validity of green certificates from 16 months to 12 months, along with the obligation to annually purchase green certificates, in order to avoid disturbances in the normal flow of market trading.

24. Amending the methodology of calculation of GC for cumulating with other State aid.

Art. 6 recital (7) letter c) of the Law no. 220/2008, republished, with the subsequent amendments and completions, provides that "*the provisioned reduction of the number of green certificates is applicable until it is reached the value of the investment aid received by the producer of electricity, using, when calculating, the average value of a green certificate, calculated as arithmetic average of the maximum and minimum value of trading green certificates*", **changing the methodology of cumulating green certificates with investment aid granted to the same beneficiary**, approved by the authorization Decision issued by the Commission no. C (2011) 4938 final.

This provision was introduced by the Law no. 134/2012 and was not rescinded by subsequent legal acts (GEO no. 57/2013 and the Law on the approval of GEO no. 57/2013).

The measure has not been applied since it modifies the cumulating rule approved by the Commission through its decision and, at the same time, enters in conflict with the provisions stipulated at letter b) of recital 7 of article 6, according to which, in case of cumulating with an investment aid, E-RES producers shall receive "*a number of green certificates established by ANRE, by reducing the number of green certificates*

provided in recital (2), decreasing the reference value of the investment per MW with the amount of the aid received per MW, and keeping the internal rate of return considered in the calculations provided to the European Commission during the authorization process for the promotion system, if the power plants receive, in addition, State aid";

25. The date of implementation of measures reducing the support provided by Law no. 220/2008 republished is:

- 01/07/2013 for the measure postponing certain green certificates;
- 01/01/2014 for the first measure of adjusting the scheme to avoid overcompensation;
- 08/19/2013 for the possibility to request guarantees when connecting;
- 07/01/2013 for trading green certificates on centralized markets except for the bilateral contracts concluded before the entry into force of GEO no. 57/2013 still producing economic and legal effect until the expiration date, without possibility of extension;
- 01/01/2014 measure to eliminate support for producers of energy from solar sources located on lands in agricultural use;
- 7/1/2013 to remove the support for electricity quantities notified in imbalance;
- 01/01/2014 for the revision, for 2014, of the annual mandatory quota of renewable energy production for which the support system applies.

26. Measures to reduce the support provided by Law no. 220/2008, subject to notification, shall apply for the whole duration of the support scheme, with the exception of the measure to postpone certain green certificates, which shall apply until 31.03.2017 and of the measure on the annual review of mandatory quotas for renewable energy production benefiting of the support system, which applies including for 2020;

27. According to the Report on the analysis of the overcompensation, issued by ANRE on 29. 03.2013, based on the monitoring of 2012, there is an overcompensation of 0.5 green certificates for wind energy, 3 green certificates for solar energy and 0.7 for hydro energy. For these technologies, the specific investment (thousand euros / MW) was lower than the reference value, with 90,000 euro / MW for wind energy, with 1.63 million euro / MW for solar energy and EUR 1.33 million / MW for hydro energy, while the average variable costs and fixed costs is above the reference level, except for solar energy;

28. Therefore, by the Government Decision no. 994/2013, entering into force from 01.01.2014, the number of GC is reduced, to the accreditation of new beneficiaries, compared to the level of support initially provisioned for, with the following:

- 0.7 green certificates for new hydro-electric power plants;
- 0.5 green certificates until 2017 and 0.25 green certificates since 2018 for wind power plants;
- 3 green certificates for photovoltaic power plants;

29. After applying the measures to reduce the level of support (postponement of GC for trading and the annual review of the quota of production of electricity from renewable sources supported through the promotion system), including the measures of adjustment as a result of overcompensation, the rate of return of the projects benefiting of support is given in the table below:

Installed capacity by type of technology	Old IRR (%)	New IRR (%)
Wind - new equipments (MW)	10.9	8.6
Wind - Equipment reused (MW)	9.9	10.2
Hydro – new equipment (MW)	10.2	7.4
Hydro – re-technologized equipment (MW)	10.3	7.6
Hydro – old equipment (MW)	2.1	2.1
Biomass Cogeneration (MW)	10.5	7.5
Biomass from waste fermentation-based technologies and sludge from wastewater (MW)	11.8	5.5
Biomass (MW)	10.6	7.2
Biomass resulting from energy crops (MW)	11.3	8.0
Solar (MW)	11.6	8.3

30. The initially estimated budget of the support scheme for the power plants entering into operation until 31.12.2016, was 80.713 million Lei. Following the implementation of the measures to reduce the level of support, including measures of adjustment as a result of overcompensation, the budget foreseen for the support scheme is 78.135 million Lei;

31. The notification is completed in accordance with the standard forms enclosed in Annex I to the Regulation (EC) no. 794/2004 implementing Council Regulation (EC) no. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty, with the subsequent modifications and completions.

COMPETITION COUNCIL

Based on the Law on competition no. 21/1996, republished, with the subsequent amendments and completions, and of art. 8 recital (1) of the Government Emergency Ordinance no. 117/2006 on the national procedures in the State aid field, approved with amendments and completions by the Law no. 137/2007.

ISSUES FORMAL OPINION

On the amendments brought to the **Support scheme on the system of compulsory levels of electricity combined with the transaction of green certificates** set up by the *Law no. 220/2008 for the establishment of the system for promoting the production of energy from renewable energy resources*, republished, with the subsequent amendments and completions, considering that the conditions on the conformity, correctness and fulfillment of the communitarian legislation when elaborating State aid schemes are met,

With the following recommendation:

1. The provisions of art. 6 recital 7 letter c) of Law no. 220/2008, republished, introduced by the Law no. 134/2012 and non-abrogated by subsequent legislative acts amending the Law no. 220/2008, according to which "the provisioned reduction of the number of green certificates is applicable up to the amount of the investment aid received by the producer of electricity, using, when calculating, the average value of a green certificate, calculated as the arithmetic average of the maximum and minimum trading value of green certificates ", modifies the methodology of cumulating the green certificates with the investment aids granted to the same beneficiary, approved by Commission Decision no. C (2011) 4938 final, and, at the same time, come into conflict with the provisions of letter b) of the same article;
2. The methodology of cumulating the investment aids with the support granted through green certificates applied so far is provided in letter b) recital 7 article 6 of the Law no. 220/2008 republished;
3. We propose that the Romanian authorities assume to continue to apply the cumulating method provided for in art. 6 recital 7 letter b) of the Law no. 220/2008, republished, with subsequent amendments and completions, in the notification of amendments brought to the Scheme to promote energy production from renewable energy sources, to be submitted to the European Commission.