



ROMÂNIA

CONSILIUL CONCURENȚEI



Piața Presei Libere nr.1, Sector 1, București, Cod poștal: 013701 • Tel.: (021) 318 1198, (021) 318 1199 • Fax: (021) 318 4908
E-mail: office@consiliulconcurentei.ro • Web: www.competition.ro ; www.consiliulconcurentei.ro

FORMAL OPINION

On the notification of the State aid scheme exempting certain categories of end consumers from the application of Law no. 220/2008 for setting up the system to promote energy production from renewable energy sources

By analyzing the following:

The Government Decision to set up a State aid scheme exempting certain categories of end users from the application of the Law no. 220/2008 for the set-up of the system to promote energy production from renewable energy sources;

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 Law no. 23/2014 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,

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 State aid scheme exempting certain categories of end consumers from the application of Law no. 220/2008 for setting up the system to promote energy production from renewable energy sources, republished, with the subsequent amendments and completions

submitted by the Ministry of Economy by the address no. 182208/30.06.2014, and registered at the Competition Council with no. RG/7330/30.06.2014, 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 completions¹ (hereby named the Law 220/2008 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. 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;

3. The scheme promoting the production of electricity from renewable energy sources, set-up by the Law no.220/2008, was authorized by the European Commission through its 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.

4. 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 re-technologizing of the groups/power plants are made until the end of 2016;

5. The producers of electricity from renewable sources receive, in accordance with the Law no. 220/2008, republished, in conjunction with the GD no. 994/2013 approving the measures to reduce the number of green certificates in the cases provided for in art. 6 recital (2) letter a, c and f of the Law no. 220/2008, a number of green certificates for a certain amount of energy produced and delivered to the electricity network;

6. The green certificates received by the producers of energy from renewable sources are traded on the green certificates market, their validity being of 12 months;

7. The electricity suppliers have to purchase annually a number of green certificates equal to the multiplication of the mandatory acquisition quota of green certificates set for that specific year and the quantity of electricity annually supplied to end consumers;

8. The final consumers bear, through the increased price of electricity, the additional production costs had by the electricity producers from renewable sources of energy;

9. The Law. 220/2008 provides in art. 8 recital (8)² the possibility that "a percentage" of the amount of electricity delivered to end consumers be exempted from the application of the provisions of the Law no. 220/2008. The qualifying conditions for the exemption mechanism, and the amount exempted, subject to the application of the annual programs for the increase of energy efficiency, are approved by Government Decision, after their notification to the European Commission and after they obtain an authorization decision on its part;

10. Based on these provisions, the Government issued a decision to establish a State aid scheme exempting certain categories of end users from the application of the Law no. 220/2008, as a result of the increase in energy costs due to the system for the support of renewable energy through green certificates, with a significant impact on industrial goods prices and, therefore, on the competitiveness of energy-intensive industry, which may lead to an increased risk of relocation of certain electro -intensive companies;

¹ The legal framework on the system to promote energy production from renewable energy sources has undergone successive changes: GEO no. 88/2011, the Law no. 134/2012 approving Government Emergency Ordinance no. 88/2011, GEO no. 79/2013, GEO no. 57/2013, the Law on the approval of the GEO no. 57/2013.

² This provision was introduced by GEO no. 57/2013, approved with amendments and completions by the Law no. 23/2014.

11. The exemption Scheme was elaborated based on Section 3.7.2 of the Guidelines on aid for environmental protection and energy for 2014-2020 (Guidelines), adopted by the European Commission on 04.09.2014, with effect starting from 1 July 2014;

12. According to recital 182 of the Guidelines, in order to avoid that the undertakings particularly affected by the costs incurred by the funding of the support granted to energy obtained from renewable sources have a significant competitive disadvantage, Member States may choose to partially compensate these additional costs, given that, in the absence of such compensation, funding the support for renewable energy may be unsustainable;

13. In accordance with recital 185 of the Guidelines, the aid must be limited to areas subject to a competitive risk due to costs incurred by the financing of energy from renewable sources (the sectors listed in Annex no. 3 to the Guidelines), depending on their electrical intensity and on the exposure to international trade;

14. Based on these considerations, the Ministry of Economy, as the grantor³ of the State aid, has selected the beneficiaries of State aid based on the NACE codes set out in Annex 3 of the Guidelines, in accordance with their energy consumption⁴;

15. According to the notification submitted by the Ministry of Economy, the impact of exempting the electro-intensive industry is reflected in the bill to the end consumers not exempted;

16. In order to avoid a major increase in the bill paid by the end consumers not exempted from payment of green energy, the Romanian authorities have estimated that the exemption may be granted for a consumption of approx. 9TW / year;

17. The industries selected in accordance with the Annex. 3 of the Guidelines will pay differentiated percentages of the number of green certificates corresponding to the mandatory quota, according to their electro-intensity⁵, namely 15% in the case of electro-intensities greater than 20%, 40% in the case of electro-intensities ranging from 10 to 20% and 60% in the case of electro-intensity between 5-10%;

18. In view of the exemption, the Ministry of Economy, as grantor of the aid, has set-up eligibility criteria additional to those set out in the Guidelines. Therefore, may benefit of exemption under the State aid scheme, undertakings that cumulatively meet, at the date of the request, the following eligibility criteria:

- a) are registered in accordance with the Companies Law no. 31/1990, republished, with subsequent amendments and completions;
- b) their main activity or one of the secondary activities fall within the NACE codes provided in Annex. 3 of the Guidelines;
- c) do not register remaining debts to the budgets component of the general consolidated budget;

³ The authority responsible for managing the State scheme is the Ministry of Economy;

⁴ Annual consumption partially exempted from the payment of subsidies to renewable energy was calculated based on NACE codes set out in Annex 3 of the *Guidelines*, combined with the data provided by the National Institute of Statistics, by summing the annual estimated consumption of the maximum number of potential beneficiaries of the scheme;

⁵ The electro-intensity is calculated according to Annex. 4 to the Guidelines, also provisioned for at art. 2 recital (5) of the Government Decision.

d) ensure the carry out, by independent accredited experts, of the energy auditing activity, both prior to the application of energy efficiency measures, as well as after achieving them⁶;

e) during the entire duration of the scheme, maintain the activity in Romania and the possible layoffs do not exceed 25% of the number of employees at the time of qualification for the support scheme;

f) sign partnerships with educational institutions, in order to achieve specialization in the activity field (vocational schools, training at work, scholarships, etc.) and finance the endowment of laboratories from secondary and higher education, professional training programs for students and teachers, in order to attract qualified personnel;

19. The validity of the scheme the state is 10 years;

20. According to art. 6 recital (2) of the Government Decision, the maximum total amount of the State aid scheme may not exceed 85% of the maximum value⁷ specified in the Commission Decision authorizing the green certificates support scheme set-up by the Law no. 220/2008;

21. The estimated number of beneficiaries of the State aid granted under the scheme is 300, and the estimated total budget allocated for the State aid scheme is 750 million Euro;

22. According to the data provided in the notification, by applying the measure of exemption from payment of green energy, the cost impact of green certificates in the electricity bill of consumers not exempted increases from approx. 35 lei / MWh at present, at approx. 43 Euro / MWh in 2015. This impact is reflected in the increase of the final bill of the non-exempted consumers by about 1.7% in 2015 and about 1.3% in 2024;

23. 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 State aid scheme exempting certain categories of end users from the application of the Law no. 220/2008 setting-up a system to promote the production of energy from renewable energy sources, republished, with subsequent amendments and completions, noting that the

⁶ Initial audit reflects the stage of implementation of energy efficiency measures and / or plan for making more efficient the consumption of electricity resulted from that audit and assumed by the beneficiary. Subsequently, the energy audit is performed with a periodicity of four years, except that the final energy audit done within the last year of validity of the scheme.

⁷ The total estimated budget of the green certificates' support scheme is 19.5 billion Euro, and the budget for the first 10 years of implementation is 41,521 million Lei (about 9 billion Euro).

conditions of compliance, fairness and fulfillment of obligations under Community law on elaborating State aid schemes,

With the following recommendation:

1. In accordance with the Community procedures in the State aid field, any intention to grant a State aid must be notified to the Commission in sufficient time for it to express a point of view on the measure concerned and the Member State shall not implement the measure until the Commission finds its compatibility with the State aid rules;
2. According to art. 8 recital (8) of the Law no. 220/2008, the measures of exemption are approved by Government Decision, after their notification to the European Commission and an authorization decision on its part;
3. The Government Decision establishing that *State aid scheme exempting certain categories of end users from the application of the Law no. 220/2008* has already been adopted and will enter into force on August 1, 2014.

It is necessary for the implementation of the measures provisioned for by the State aid scheme exempting certain categories of end users from the application of the Law no. 220/2008 to be made subject to the decision to be issued by the Commission, as a result of the submission, by the Romanian authorities, of the notification documents.