



# 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 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 Draft of Emergency Ordinance 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,*

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 and the Draft of Emergency Ordinance on the amendment and completion of the Law no. 220/2008, republished, with the subsequent amendments and completions,

submitted by the Romanian Energy Regulatory Authority (ANRE) by the address no. 22824/23.05.2011 and 23453/26.05.2011, registered at the Competition Council with no. RG 7575/24.05.2011 and 7713/26.05.2011, in order to receive a formal opinion,

and

*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, as well as the Government Decision no. 1479/2009 for setting up the system to promote the production of electricity from renewable energy resources, issued in its application*

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 target on the proportion of the electricity produced from renewable sources within the total gross consumption of electricity, namely 38% until 2020;

2. The Law 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. Until now, the support scheme set up by the Law no. 220/2008 did not apply as, according to the communitarian legislation, the support measures set up by this law constitute or are susceptible to be State aid, therefore being necessary to receive a prior authorization from the European Commission;
4. The Government Decision no. 1479/2009 for setting up the system to promote the production of electricity from renewable energy resources stipulates at art. 6 recital (3) that the promotion system set up by the Law no. 220/2008 shall be applied after its authorization by the European Commission;
5. The Support scheme established by the Law no. 220/2008 is under assessment to the European Commission since 20 November 2009, date when the Romanian authorities have requested an informal opinion of the European forum. The Commission has registered the case as a pre-notification with the no. PN 288/2009. After going through certain preliminary steps of information exchange, the scheme was informally notified to the European Commission on 28.07.2010;
6. The European Commission has submitted to the Romanian authorities a number of requests of information on the support measures set up by the Law no. 220/2008, expressing its doubts on their compatibility and especially on the absence of the over-compensation;
7. The Draft of Emergency Ordinance submitted by the ANRE, hereby named the *draft of Emergency Ordinance*, amends and completes the *Law no. 220/2008*, in order to meet the provisions of the *Community guidelines on State aid for environmental protection* (2008/C82/01), the communitarian case-law and the recommendations submitted by the European Commission to the Romanian authorities within the preliminary technical consultations;
8. From the State aid's point of view, the main amendments brought by the Draft of Emergency ordinance aim to meet the communitaire legislation in the State aid field, the main amendments aiming to avoid the producers' overall over-compensation and the cumulation of the aids from several sources;
9. The system promoting the electricity produced from renewable sources established 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 the electricity used for other own consumption spots wired up to the power plants' bars (except from the own technological consumption) and produced from the following renewable sources:
  - Hydro-energy used in power plants with an installed power of at most 10 MW;
  - Wind energy;
  - Solar energy;
  - Geo-thermal energy;

- Bio-mass, regardless the aggregation form (solid bio-mass, biogas, bio-liquid);
- Ferment gas from wastes;
- Ferment gas from the mud from the installations purifying the waste water;

10. The system is to be applied only for the power plants or groups starting to function or being re-technologized before the end of 2016;

11. In accordance with the proposal for amending and completing the Law no. 220/2008, the producers of electricity from renewable sources receive a number of green certificates for a certain quantity of energy produced and delivered within the electricity network, in accordance with the below table:

*Table no. 1 - Number of green certificates according to the technologies and to the duration of the support*

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. <b>HYDRAULIC</b> 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. <b>WIND</b> energy	<i>new</i>	2CV until 2017	15
		1CV din 2018	
3. <b>GEO-THERMAL</b> energy	<i>new</i>	2 CV	15
4. <b>BIO-MASS</b> regardless the aggregation form, made from:			
4.1. sylvan wastes, agrarian vegetal wastes, sawdust, animal motion etc.	<i>new</i>	2 CV	15
4.2. energetically cultures	<i>new</i>	3 CV	15
4.1. and 4.2.	<i>new</i> – highly efficient co-generation (supplementary to points 4.1. and 4.2.)	1 CV	15
5.1. <b>Ferment gas from wastes</b>	<i>new</i>	1 CV	15
5.2. <b>Ferment gas from muds</b> from the installations for purifying wastes waters	<i>new</i>	1 CV	15
6. <b>SOLAR</b> energy	<i>new</i>	6 CV	15

12. Compared to the provisions of the Law no. 220/2008, by the Draft of Emergency Ordinance the number of green certificates was reduced from 3 certificates to 2 certificates for the electricity obtained from geo-thermal energy, bio-mass (other than that coming from energetically cultures), bio-liquids, bio-gas and for the gas from processing the wastes and fermenting gas from muds the number of certificates was reduced from 3 to 1. The number of green certificates for hydraulic, solar, wind energy and bio-mass obtained from energetically cultures remained the same;
13. The time period for which the support scheme is applied are un-changed for the above- mentioned technologies, as presented in the above table;
14. For the producers of energy from renewable sources who have benefited from green certificates prior to the date when the Law no. 220/2008 came into force, the time periods for the application of the promoting system are to be decreased in accordance with the periods for which they have already benefited from certificates;
15. The producers of electricity in highly efficient co-generation obtained from bio-mass benefit from a bonus of 1 green certificate for each MWh produced;
16. For the electricity produced form renewable sources in co-generation, the producers have to choose between the support scheme promoting the highly efficient co-generation based on the demand of useful thermo-energy, in accordance with the Government Decision no. 1215/2009, or the promoting scheme provisioned for by the Law no. 220/2008;
17. The promotion system through green certificates is applied also for the second-hand wind power-plants, if these were set into function in Romania before the date when the promotion system provisioned for by the Law no. 220/2008 came into force. The time period for which this type of power-plants benefit form support is of 7 years;
18. The green certificates are granted to the producers on monthly basis by the transport and system operator (Transelectrica SA), for the electricity produced from the eligible renewable sources;
19. The suppliers of electricity have to acquire each year a number of green certificates equal to the multiplication between the value of the compulsory quota of green certificates to be acquired in a specific year and the quantity of electricity annually delivered to the end users;
20. The green certificates issued to the producers can be sold on the green certificates' centralized market and/or on the market of green certificates' bilateral contracts, to the suppliers and end users;
21. By this support scheme, the end users bear through the increased price of electricity, the supplementary production costs of the producers of electricity from renewable energy resources;
22. A green certificate is valid for 3 years from its issuing date and is considered „consumed” when the supplier uses it to prove that it met its own mandatory quota;
23. The transactional value of the green certificates is established through competitive mechanisms specific to the centralized market and to the bilateral contracts' market,

with the fulfillment of the price ceilings established by the law. In accordance with the Law no. 220/2008 and of the Draft of Emergency Order, the transactional value of the green certificates on the green certificates' market can vary between:

- a) A minimum transactional value of 27 Euro/certificate;
- b) A maximum transactional value of 55 Euro/certificate,

Calculated at an average value of the rate of exchange established by the National Bank of Romania for December of the previous year. These values are annually indexed starting with the year 2011, in accordance with the average annual index of the inflation calculated for the previous year, at the level of EU euro zone, as officially published by EUROSTAT;

24. If the grantors do not achieve the mandatory quota, they have to pay the value of the non-acquired green certificates at the rate of 110 Euro for each non-acquired green certificate, calculated in RON at the average exchange rate established by the National Bank of Romania for December of the previous year. The value will be indexed in 2011 in accordance with the annual average inflation index at the level of EU euro zone, as officially published by EUROSTAT;
25. The amount resulted from enforcing the penalties is collected by the transport and system operator and will become income to the Environmental Fund, in order to finance the production of energy from renewable energy sources by the natural persons which invest in energetically capacities with an installed power of up to 100 KW;
26. The time limit of the notified scheme is of 10 years, while the support as green certificates at the level of the individual companies is of maximum 15 years;
27. The producers of electricity from renewable resources cover their production costs on one hand, from trading the electricity produced on the electricity de-gross market, in the same conditions as any other electricity producer in Romania, and on the other hand, by trading the green certificates received each month for the electricity produced on the green certificates' market;
28. In accordance with the calculation presented in the notification by ANRE regarding the mathematical pattern elaborated for the calculation of the internal rentability rate (IRR), the level of this rate and the updated uniform cost and equalized in accordance with each technology, is presented in the below table:

*Table no. 2 Internal rentability rate and the updated uniform cost*

	New wind installations	Re-used wind installations	New hydro power-plants, $P_i \leq 10$ MW	Re-technologized hydro power-plants, $P_i \leq 10$ MW	Old hydro power-plants, $P_i \leq 10$ MW	Bio-mass co-gen	Bio-mass residue - only electricity	Bio-mass energetically culture – only electricity	Fermenting gas from city wastes & waste waters – only electricity	Solar

									city	
RIR (%)	10.9	9.9	10.2	10.3	2.1	10.5	10.6	11.3	11.8	11.6
Updated equalized uniform cost (EUR/MWh)	104.3	100.2	184.0	114.5	53.4	156.1	136.5	181.3	84.01	306.1

29. The comparison between the updated uniform costs with the electricity from the market (approx. 40 Euro/MWh on the next day's market, in accordance with the data from the notification) proves that the production of electricity from renewable sources does not ensure the economic viability of the producers, without the existence of the support scheme;

30. In order to meet the European Commission's requests on over-compensation and the cumulation of aids, by the Draft of Emergency Ordinance the main amendments brought to the Law no. 220/2008, republished, are the following:

- At art. 6 recital (7) letter b) in the draft it is stipulated that if the power-plants are supplementary benefiting from one or more State aids, in order to avoid the possible over-compensation, ANRE shall reduce the number of green certificates, diminishing the reference value of the investment on MW with the value of the aid received on MW and keeping the value of the IRR to the level taken into account in the calculations submitted to the European Commission. Therefore, it is aimed prevent exceeding the level of the IRR presented in the previous level in spite of the cumulation of the aids;
- At art. 29 recital (2) in the draft it is stipulated that if from the data resulted from the feasibility studies for the new investment projects and from the results of monitoring the costs/incomes of the producers it is determined that the parameters specific for each technology significantly differ from those taken into account in the calculation made for the authorization of the promotion scheme, situation that may lead to an overall over-compensation for one or more technologies benefiting from support, ANRE suggests measures to reduce the number of green certificates stipulated at art. 6 recital (2) in the draft of Emergency Ordinance;
- The above-mentioned measures shall be approved through a Government Decision and shall be applied for the producers of electricity from renewable resources who start producing electricity after the date when the decision comes into force;
- The over-compensation is defined as the situation in which, by taking into account the average specific technical and economic indicators made each year for each technology, from the cost-benefit analysis made for the overall of the production capacities using the same technology, results an IRR 10% higher than the value considered for that specific technology when authorizing the promotion system;
- For certain technologies the number of green certificates was reduced – in accordance with recital (12) in the present Formal Opinion – as the data existing at ANRE show that in this case the number of green certificates from the Law no. 220/2008 leads to an over-compensation and for the bio-mass the number of green certificates was differentiated by taking into account the variety of the raw

materials for bio-mass and of the technologies leading to different production costs for electricity;

31. In accordance with the notification, the maximum estimated number of beneficiaries of the scheme is of 500, and the estimated amount of the financing granted during the first 10 years of the scheme's life time is of approx. 41,521 million RON, allotted as follows:

*Table no. 3 The allotment of the funds during the first 10 years*

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Budget [mil. RON]	1305	2773	3992	4987	2764	3095	6992	5104	5203	5306	41521

32. 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 art. 8 recital (1) in 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 *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. Introducing after recital (2) of art. 26 in the draft of Emergency ordinance a new recital with the following content:

„(3) An economic operator developing a project of power-plant producing electricity from renewable energy resources with an installed power higher than 125 MW, which meets the conditions for applying the promotion system established by the present law, will elaborate and submit in accordance with the law the documentation necessary to a detailed assessment of the support measure by the European Commission, with the fulfillment of the provisions of point 160, letter b) iii) from the Community guidelines on State aid for environmental protection (2008/C82/01) ”;

2. Recital (3) of art. 26 in the draft of Emergency ordinance shall become recital (4) and shall be modified as follows: „ANRE qualifies the electrical power-plants belonging to the solicitor economic operators in order to benefit from the promotion system through green certificates provisioned by the present law, after its authorization by the European Commission, namely after the end of the detailed assessment from recital (3)”;
3. Introducing after recital (4) of art. 26 in the draft of Emergency ordinance, a new recital with the following content:

„(5) for the operators mentioned at recital (3), ANRE may modify the number of green certificates provisioned for at art. 6 recital (3), in accordance with the provisions of the authorization decision issued by the European Commission.”;
4. Completing art. 29 recital (3) in the draft of Emergency ordinance with the expression „starting with 1 January of the next year”.