



# ROMÂNIA

## CONSILIUL CONCURENȚEI



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### FORMAL OPINION

#### ***On the Support scheme on the free title transitory allocation of the greenhouse gas emission certificates in the benefit of the producers of electricity***

By analyzing the following:

the *Draft of Law on the set-up of the scheme on the commercialization of the certificates granted for the emissions of gases with greenhouse effect*, which transposes into the Romanian legislation of the *Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community*, revised by the *Directive 2009/29/EC for the amendment of the Directive 2003/87/EC* in order to improve and extend the trading of greenhouse gas emission certificates

and

The standard notification Form (Notification) on the *Support scheme on the free title transitory allocation of the greenhouse gas emission certificates in the benefit of the producers of electricity* (the Scheme)

submitted by the Ministry of Economy, Trade and Business Environment (MECMA) by the address no. 4884/16.10.2012 and 23453/26.05.2011, registered at the Competition Council with no. RG 14160/16.10.2012, in order to receive a formal opinion,

and ascertaining that:

1. The Directive 2003/87/EC<sup>1</sup> set-up a trading system for the greenhouse gas emission certificates within the European Commission in order to fight off the climatic changes and to promote the renewable energy sources and the production of energy with low carbon dioxide emissions. In accordance with art. 10 of this Directive, for a 3 year period starting with January the 1<sup>st</sup> 2005, the Member States allot to the undertakings at least 95% of the allowances for free and for a 5 year period, starting with January the 1<sup>st</sup> 2008, the Member States allot at least 90% of the allowances for free. On national level, the GD no.60/2008 has approved the National allotment Plan for emissions (PNAER) for the year 2007 and for the period 2008-2012;
2. The Directive 2009/29/EC (the ETS Directive) for the amendment of the Directive 2003/87/EC assigns that, starting with 2013, the integral bidding of the quotes should become mandatory for the energy system, taking into account the possibility of this sector to transfer the increased costs related to the CO<sub>2</sub>;

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<sup>1</sup> establishing a scheme for greenhouse gas emission allowance trading within the Community

3. The Directive 2009/29/EC (the ETS Directive) for the amendment of the Directive 2003/87/EC assigns, by art. 10 c, the possibility of a transitory waiver from the integral bidding of certificates for the electricity producers<sup>2</sup>, if any of the following conditions is fulfilled:
  - (a) The national electricity network was not directly or indirectly connected, in 2007, to the network operated by UCED<sup>3</sup>, or
  - (b) The national electricity network was directly or indirectly connected, in 2007, to the network operated by UCED, through a single line having a capacity lower than 400 MW, or
  - (c) In 2006 more than 30% of the electricity was produced from fossil fuel and the GNP per inhabitant did not exceed 50% of the average GNP per inhabitant within the EU.
4. Romania meets the third eligibility condition mentioned at art. 10 c of the ETS Directive as, in 2006, the percentage of the production of electricity from coal power plants was of 40% and the average GNP per inhabitant was 45% out of the average GNP in EU;
5. The waiver mentioned at art. 10 c of the ETS Directive is linked to the need to modernize the energetically system and the Member States that decide to use this option must undertake, in parallel, actions to guarantee the investments in the energetically system, as well as the improvement of the infrastructure, clean technologies etc., with a value apposite to the value of the related quotes of the emissions allotted with free title;
6. In accordance with art. 10 c recital (1) of the ETS Directive, in order to benefit from the waiver, the Member States must submit to the Commission a national investment plan which directly or indirectly contributes to the reduction of greenhouse gas emissions in a feasible manner. The national investment plan must be based on a set of principles such as:
  - To identify the investments that contribute to the future discharge of the situations mentioned at letter (a) – (c) of the above mentioned point 3;
  - Not to consolidate the dominant positions and not to distort the competition and trade on the electricity internal market;
  - To be complementary to the investments that the Member States must undertake in order to meet other objectives or legal requirements resulting from the EU legislation;
  - The investments must be viable from an economic point of view even without the allotment of free certificates.
7. Romania has submitted to the European Commission<sup>4</sup> - DG Climate, on the 30 of September 2011, the *Application for a transitory waiver from the integral acquisition within biddings at EU level, of greenhouse gas emissions certificates associated with the production of electricity, based on art. 10 c of the Directive 2003/87/EC, revised by the Directive 2009/29/EC*;
8. By the *Commissions' Decision C (2012)4564 final*, issued by DG Climate on 06.07.2012, Romania's request on the transitory free allotment for the installations producing electricity during 2013-2019.

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<sup>2</sup> For the installations running until December the 31 2008 or for those for which the electricity production process was initiated until that date.

<sup>3</sup> The Union for the Coordination of Electricity Delivery.

<sup>4</sup> The coordinator of the Application is the Ministry of Economy, Trade and Business Environment (MECMA).

9. The above mentioned Decision provisions, at recital 17 that “*the allotment of free quotes for the installations for electricity production and financing the corresponding investments involves a State aid, according to art. 107 (1) of the TFEU, that Romania is to notify to the Commission, for approval, in accordance with the notification obligation stipulated at art. 108 (3) of the TFEU. Romania cannot enforce the proposed State aid measures until the Commissions adopt a final decision on the compatibility of this State aid with the internal market*”.

10. The notification submitted by MECMA in order to be forwarded to the European Commission – DG Competition, meets the condition expressly stipulated in the Commission’s Decision C (2012)4564 final issued by DG Climate, on the notification obligation provisioned for at art. 108 (3) of the TFEU.

11. The notification is elaborated in accordance with the following:

- *The EC Guidelines on certain State aid measures in the context of the scheme for greenhouse gas emission allowance trading after 2012 (2012/C 158/04),*
- *The Community guidelines on State aid for environmental protection*<sup>5</sup>,
- *The Commission’s Communication – guiding document on the discretionary application of art. 10 c of the Directive 2003/87/EC (2011/C99/03) and*
- *The Commission’s Decision on the guidelines on the methodology to transitory allot free emission certificates for the electricity production installations based on art. 10 c recital (3) of the ETS Directive.*

12. In accordance with the Commission’s Communication 2011/C99/03, the eligible investments must be related to the electricity sector and must be made starting with June the 25<sup>th</sup> 2009.

13. The Notification submitted by MECMA affirms the cumulative fulfillment of the conditions mentioned at recital 40 of the *EC Guidelines on certain State aid measures in the context of the scheme for greenhouse gas emission allowance trading after 2012*, namely:

- a) The transitory certificate having free title is granted based on art. 10c of the ETS Directive and in accordance with the Commission’s Decision on the guidelines on the methodology to transitory allot free emission certificates for the electricity production installations based on art. 10 c recital (3) of the ETS Directive and with the *Commission’s Communication on the discretionary application of art. 10 c of the ETS Directive*;
- b) The national plan aims a common interest objective, namely the increase of the environmental protection level;
- c) The national plan includes investments for the adaptation and modernization of the infrastructure, clean technologies and diversifying the energetic mix and the energy supplying sources made after June the 25, 2009, based on the ETS Directive;
- d) The market value (at the level of groups of undertakings) of the free certificates during the whole allotment period does not exceed the total costs for the investments made by the beneficiary of the free certificates (at the level of the groups of undertakings). If the total costs of the investments are lower than the market value of the certificates or the beneficiary of the free certificates does not undertake any

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<sup>5</sup> Chapter 5 of the Community Guidelines on state aid for environmental protection, referring to a detailed notification of the State aid and point 3.3 of the community Guidelines on the compatibility of the State aid based on art. 87 (3) letter b) of the Treaty.

- investment eligible within the national plan, the beneficiaries of the free certificates must transfer the difference through a mechanism that will fund other investments eligible within the national plan;
- e) The aid does not affect in a negative manner the commercial conditions in a measure to contravene to the common interest, especially if the State aid has a limited number of beneficiaries or if there exists any probability that such an aid consolidates the beneficiary's position on the market (at the level of group of undertakings).
14. The counter value of the certificates allotted for free shall be used to make investments to re-technologize and modernize the infrastructure, to make investments in eco-technologies and in diversifying the energetically mix and the supply sources, investments that are enclosed in the National Investment Plan.
15. The National Investment Plan follows a common interest objective at EU level, namely the increase of the environmental protection degree by reducing the CO2 emissions. The National Investment Plan will lead to an annual reduction of the CO2 emissions of approx. 15.6 billion tons.
16. The National Investment Plan encloses 37 installations for the production of electricity which were functioning until 31.12.2008, as well as 2 installations for the production of electricity for which the investment process started until the same date. Out of them, only 29 investments will be made by operators receiving free certificates.
17. The National Investment Plan shall be approved by Government Decision, after its approval by the DG Competition. The Government Decision shall enclose the following:
- The list of the operators benefiting from a free title allotment and the number of received quotes;
  - The National Investment Plan, specifying the beneficiaries and the implementing period;
  - The list of capacities to be closed, specifying the companies, the capacity and the period.
18. In accordance with the notification, the maximum estimated number of beneficiaries of the support scheme is of 29, situated in NUTS II regions, in accordance with the following table:

No	Operator	Company	Region (NUTS II)	County (NUTS III)
1	SEB - CET Bucuresti South	ELCEN	București - Ilfov	București
2	SEB - CET Grozăvești	ELCEN	București - Ilfov	București
3	Titan Ecopower	Titan Ecopower	București - Ilfov	București
4	CE Turceni	CE Turceni	Sud-Vest	Gorj
5	CE Rovinari	CE Rovinari	Sud-Vest	Gorj
6	SE Galați	SE Galați	Sud-Vest	Galați
7	PP Făgăraș	PP Făgăraș	Centru	Brașov
8	ELCEN (Fântânele)	ELCEN	Centru	Sibiu
9	CET Govora	CJ Vâlcea	Sud-Vest	Rm Vâlcea
10	CTE Deva	SC Deva	Vest	Hunedoara
11	ADREM	ADREM	Nord-Est	Suceava
12	International Recycling	CL Timișoara	Vest	Timis

13	Energy Cogen - Făgăraș	Energy Cogen	Centru	Brașov
14	Energy Cogen - Săvinești	Energy Cogen	Nord-Est	Neamț
15	CCCC Brazi	PETROM	Sud	Prahova
16	Brăila Power	Brăila Power	Sud-Est	Braila
17	Ecogen	Ecogen	Sud-Est	Buzau
18	Amonil	Amonil	Sud	Ialomița
19	SC CET SA Brăila	CL Brăila	Sud-Est	Brăila
20	SE Ișalnița	CE Craiova	Sud-Vest,	Dolj
21	SE Craiova II	CE Craiova	Sud-Vest,	Dolj
22	SC Paroșeni	SC Paroșeni	Vest	Hunedoara
23	Vilcet	Vilcet	Sud-Vest,	Rm Vâlcea
24	CE Turceni	CE Turceni	Sud-Vest,	Gorj
25	CE Rovinari	CE Rovinari	Sud-Vest,	Gorj
26	CE Rovinari	CE Rovinari	Sud-Vest,	Gorj
27	SE Mureș-CTE Iernut	Romgaz	Centru	Mures
28	SE Ișalnița	CE Craiova	Sud-Vest,	Dolj
29	CET Arad	CL Arad	Vest	Arad

19. The scheme is valid through 2013- 2019, the total planned budget being of 5,214,786.5 thousand RON (1,245,848.0 thousand Euro), recouped on years as follows:

thousand Euro

2013	2014	2015	2016	2017	2018	2019
258860,9	221880,8	255035,4	204028,3	153021,3	102014,2	51007,1

thousand RON

2013	2014	2015	2016	2017	2018	2019
1.092.393	931.899	1.063.498	850.798	638.099	425.399	212.700

20. The eligible costs are limited to the total costs of the investment mentioned within the National Investment Plan, corresponding to the market value of the free certificates (calculated in accordance with the Commission Communication from 29<sup>th</sup> of March, 2011<sup>6</sup>).
21. 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 amendments and completions.

<sup>6</sup> The Commission's Communication – guiding document on the discretionary application of art. 10 c of the Directive 2003/87/EC (OJ C 99, 31.03.2011).

## COMPETITION COUNCIL

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

## ISSUES FORMAL OPINION

On the *Support scheme on the free title transitory allocation of the greenhouse gas emission certificates in the benefit of the producers of electricity*, set-up by the *Draft of Law on the set-up of the scheme on the commercialization of the certificates granted for the emissions of gases with greenhouse effect*, ascertain that the conditions on the conformity, correctness are fulfilled and also the fulfillment of the obligations provisioned for by the *communautaire* legislation on the elaboration of State aid schemes.