



FORMAL OPINION

On the individual notification of the support measure consisting in granting green certificates for the electrical wind power plant Fântânele -West based on the *Scheme on the promotion of the production of electricity from renewable energy sources*

Set up by the Law no. 220/2008, republished, with the subsequent amendments and completions

By analyzing the following:

the *Scheme on the promotion of the production of electricity from renewable energy sources*, set up by the Law no. 220/2008, republished, with the subsequent amendments and completions¹,

The provisions of the *Community guidelines on State aid for environmental protection*², point 160 letter b) sub point iii), regarding the measures object of a detailed assessment

and

the Standard Notification Form for the support measure through green certificates granted to the electrical windmill power plant Fântânele -Vest based on the *Scheme on the promotion of the production of electricity from renewable energy sources* set up by the Law no. 220/2008, republished, with the subsequent amendments and completions, submitted by the Ministry of Economy, Department for Energy, by the address no. 330792/MP/17.07.213 and registered at the Competition Council with no. RG 9389/17.07.2013, 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 or the Law), 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;

¹ Published in the Official Journal of Romania, Ist Part, no.474 of July the 9th, 2013.

² The Community provisions on the State aid for environmental protection (2008/C82/01), published in the Official Journal of the European Union no. C82 of April the 1st, 2008.

2. The beneficiaries of the support scheme are the producers of electricity from renewable sources which produce electricity from the following energy 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, bio-liquids, ferment gas from wastes and ferment gas from the mud from the installations purifying the waste water.
3. The promotion system is applied to the producers of electricity produced from renewable sources, if the set-in function, respectively the re-technology of the power plant groups is made until the end of the year 2016 (the time limit until when the producers may enter the system). The support for individual companies, calculated from the date when the scheme enters into force, will be granted for 15 years;
4. The green certificates are granted to the producers monthly, by the system transport operator (Transelectrica SA), for the electricity produced from renewable energy sources eligible within the scheme;
5. The electricity suppliers have to acquire, quarterly, from the renewable energy producers, a number of green certificates equivalent to the multiplication between the value of the quota set-up for that year for acquiring green certificates and the quantity of electricity annually supplied to the end consumers;
6. The end consumers bear, through the increased price of the electricity, the supplementary production costs of the producers of electricity from renewable sources;
7. The transaction value of the green certificates is set-up by competitive mechanisms specific to the green certificates' market and may vary between a minimum transactional value of 27 Euro/certificate and a maximum transactional value of 55 euro/certificate, calculated at the average value of the exchange rate set-up by the National Bank of Romania for December of the previous year. These values are annually indexed, starting with 2011, in accordance with the annual average inflation rate for the previous year, calculated at the level of the Euro area in the EU, published by the EUROSTAT;
8. The maximum estimated number of beneficiaries is of 500, and the total estimated value of the budget of the scheme is of 80.713 billion RON (approx. 19.5 billion Euro).
9. The scheme promoting the production of electricity from renewable sources, set-up by the Law 220/2008, republished, with the subsequent amendments and completions, was authorized by the European Commission by the Decision no. C (2011)4938 final of 13.07.2011 (EC Decision)³.
10. By the issued decision, the European Commission did not finally established if the support measures set-up by the Law no.220 represent a State aid measure or not, considering that, regardless the framing of the case, it fulfills the criteria to be considered compatible with the provisions of the Treaty.⁴

³ Amendments to the support scheme after this date have not yet been notified to the European Commission by the Romanian authorities.

⁴ The criteria set out in the subchapter. 3.1.6.2., Points (110), Option 2, lit. b) of the Community guidelines on State aid for environmental protection (Guidelines): If the market mechanisms in question constitute State aid,

11. In accordance with the provisions from point 44 and 73 from the EC Decision, the Romanian state shall individually notify any support measure granted based on the Law no.220/2008 for the power plants producing electricity from renewable sources having an installed power higher than 125 MW.

12. In accordance with the provisions of sub-chapter 5.1. point 160, letter b, sub-point iii) of the *Community guidelines on State aid for environmental protection*, regarding the State aid measures subject to a detailed assessment, if functioning aid is granted for the production of energy from renewable sources, it is necessary to notify individually for the installations producing electricity within sites with a capacity over 125 MW, even if the aid is granted based on a scheme authorized by the Commission.

13. In accordance with art. 26 recital (1) in the Law no. 220/2008, an economic operator which develops a project for a power plant producing electricity from renewable sources, having an installed power higher than 125 MW, which meets the conditions for the application of the promoting system set-up by the present law, elaborates and submits, in accordance with the law, the documentation necessary for the detailed assessment of the support measure towards the European Commission, with the fulfillment of the provisions of point 160 letter b) sub-point iii)⁵ of the *Community guidelines on State aid for environmental protection* [...].

14. According to recital. (2) of the same article, the "applicants operators benefit from the promotion system provided by law only after its approval by the European Commission and only for the technologies for the production of electricity from renewable sources specified in the authorization decision, i.e. after completion of the detailed assessment provided in recital (1);

15. According to art. II recital (3) GEO. 88/2011⁶ and Regulation for accreditation of producers of electricity from renewable energy sources for the application of the green certificate promotion system⁷, electricity producers which commercially operate plants producing electricity from renewable sources having an installed power greater than 125 MW, at the date of the entry into force of the emergency ordinance, will be accredited by ANRE and benefit from the number of green certificates provisioned for by the Law. 220/2008, corresponding to the renewable source used, for a period of 24 months from the date of accreditation;

they may be authorized by the Commission if Member States can show that support is essential to ensure the viability sources renewable energy that do not in the aggregate result in overcompensation and does not dissuade renewable energy producers from becoming more competitive.

⁵ Measures subject to a detailed assessment under the Guidelines, section 160: To enable the Commission to carry out a more detailed assessment of substantial amounts of aid granted under authorized schemes and to decide whether such aid is compatible with the common market, Member States shall notify in advance any individual case of investment or operating aid granted under an authorized scheme or individually if the aid fulfills the following conditions:

[...] B) for individual measures covered by these Guidelines, all the following cases:

[...] iii) operating aid for the production of renewable electricity and / or combined production of renewable heat: where aid is granted to renewable electricity installations in sites where renewable electricity generation capacity exceeds 125 MW.

⁶ Amending and completing the Law no. 220/2008 on establishing the promotion system of energy production from renewable energy sources

⁷ Approved by ANRE Order no. 42/2011

16. The implementation of the provisions of recital (3) of art. II of the GEO. 88/2011 is achieved by ANRE by issuing an accreditation decision according to art. 6 recital (6) letter a) of the Law no. 220/2008⁸;

17. According to art. II recital (6) of the GEO. 88/2011, for the producers operating commercial power plants producing electricity from renewable sources having an installed power greater than 125 MW, receiving temporary of green certificates as stipulated in recital (3) thereof, any positive difference between the number of green certificates received and the number of green certificates due, according to the individual decision of the European Commission, will be recovered within maximum 24 months from the date of issue, based on a decision issued by ANRE;

18. The notification sent for receiving a Formal Opinion has as objective a support measure consisting of granting green certificates, under the scheme established by Law no. 220/2008, for Fântânele West wind power plant, located in the unincorporated area of Fântânele, Constanta County, which requires a detailed individual assessment of the European Commission, in accordance with point 160, letter. b, sub-point. iii) of the Community guidelines on State aid for environmental protection;

19. EEC Fântânele West is operated by the company Tomis Team SRL, belonging to the CEZ Group, being composed of a number of 105 new wind turbines (General Electric) each of them developing an installed power of 2.5 MW, with a total installed capacity of 262.5 MW.

20. EEC Fântânele West is assigned with the production licensee no. 953 of 26.08.2010;

21. By the ANRE Decision no. 2896 of 18.11.2011, EEC Fântânele West was temporarily accredited to implement the green certificate promotion system, until October 30, 2013.

22. EEC Fântânele West began to receive 1 GC / MWh based on GD. 1892/2004⁹, since June 2010, when the plant began producing electricity, and since November 2011, receiving 2 GC / MWh, according to GEO. 88/2011 for the amendment and completion of the Law no. 220/2008¹⁰.

23. SC Tomis Team SRL has fulfilled its obligation provisioned for at art. II recital (4) of the GEO. 88/2011, namely to elaborate and submit to the competent authorities the documentation necessary for the detailed assessment of the support measure by the European Commission, within maximum 3 months from the date of the accreditation decision. Based on this documentation was elaborated the individual notification of the support measure for CEE Fântânele West, which will be submitted to the European Commission.

⁸ Article II recital (5) of the GEO. 88/2011

⁹ GD. No. 1892/2004 has ended its applicability date at the same time of the effective implementation of Law no. 220/2008, republished, subsequently amended and completed, namely from 01.11.2011

¹⁰ Following the favorable decision of the European Commission, the draft of Emergency Ordinance amending and completing the support scheme established by Law no. 220/2008, through which the support scheme has been made compatible with the State aid legislation, was approved by the Romanian Government and the Emergency Ordinance was published in the Official Journal of Romania, on 19.10.2011, no. 88/2011. The Ordinance came into force on 01.11.2011.

24. The individual pre-notification documentation of the support measure consisting in granting green certificates to Fântânele West wind power plant was submitted to the European Commission on May 15th, 2012.

25. SC Tomis Team SRL did not receive any investment aid for achieving Fântânele West wind power plant, therefore, the producer may benefit of the number of certificates undiminished by the cumulation rule regarding aids received from several sources.

26. As shown in the notification of the green certificates support scheme set-up by the Law no. 220/2008 and in accordance with the Decision of the European Commission¹¹ the value of the internal rate of return (IRR) resulting from the support scheme are estimated to be between 9.9% for reused wind turbines and 11.8% for the fermentation gas from wastes and fermentation gas of the sludge;

27. According to the green certificates support scheme, for new wind installations, the internal rate of return, outcome as a result of granting the support measure consisting in green certificates and accepted by the Commission, is 10.9%. The updated unit cost equalized¹² for new wind power plants is of 104.3 EUR / MWh and the revenues per unit of electricity is 98 EUR / MWh, of which 37 EUR / MWh from the electricity market and 61 € / MWh from the green certificate market.

28. According to the data from the individual notification of the green certificate support measure for EEC Fântânele West, the internal rate of return associated to Fântânele West EEC is 9.5% which is below the 10.9% accepted by the Commission under the support scheme and the updated unit cost is € 121.73 / MWh, a value higher than the market price of electricity in Romania (PZU) that varied in the last 3 years between 38-52 Euro / MWh.

29. The data presented demonstrate that without the support measure, the decision to invest in Fântânele West wind power plant would not have materialized, having no justification from an economic point of view, as the price at which they could sell renewable energy was higher than the average market price. In the absence of green certificates it would be impossible to retrieve the updated unit cost and IRR value would be [-0.4%];

30. The total estimated value of the aid granted to EEC Fântânele, under the scheme for the promotion of electricity produced from renewable energy sources, is of 732.3 mil Euro.

31. On 29/4/2013¹³, the EC informed the Romanian authorities that, based on the preliminary analysis of pre-notification of the support measure, of the additional information provided during the procedure and of the technical consultations on this subject, held between the EC experts and the Romanian authorities, the Commission's services have reached a positive preliminary assessment of the compatibility of the support measure, in accordance with art. 107 recital (3) letter c) of the TFEU and the provisions of the Community guidelines on State aid for

¹¹ Point 33 of the EC Decision.

¹² The equalized unit cost of electricity for each technology was determined as the ratio of total costs equalized (investment costs and annual operational costs) and the production of electricity during the analysis period, using the same equalization rate, in accordance methodology of OECD / IEA

¹³ The Infogram no. 3573/26.04.2013

environmental protection, subject to the provision of supplementary information on the investment's turn-over and / or the level of profit earning capacity considered by the aid beneficiary for similar projects. The Notification Form of the support measure for CEE Fântânele West is also completed with the answer to the information requested by the Commission.

32. The Notification of the support measure for EEC Fântânele West is elaborated in accordance with the standard forms enclosed in Annex I of the EC Regulation no. 794/2004 implementing Council Regulation no. 659/1999 laying down detailed rules for the application of art. 93 of the EC Treaty, with the subsequent amendments and completions.

COMPETITION COUNCIL

Based on the Law no. 21/1996 on competition, republished, and 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 measure consisting in the granting of green certificates to Fântânele West wind power plant, to be individually notified to the European Commission, based on the Scheme on the promotion of the production of electricity from renewable energy sources, set up by the Law no. 220/2008, republished, with the subsequent amendments and completions.