



## FORMAL OPINION

### **On the Draft of the Memorandum on opening the national scheme to promote energy production from renewable sources through green certificates to producers from other Member States**

By analyzing:

The Draft Memorandum on opening the national scheme to promote energy production from renewable sources through green certificates to producers from other Member States (hereby named the Draft of the Memorandum);

submitted by the Ministry of Energy, Small and Medium Enterprises and Business Environment by the address no. 25018/13.01.2015, and registered at the Competition Council with no. RG/227/13.01.2015, in order to receive a formal opinion,

and ascertaining that:

1. The Draft Memorandum aims to comply with art. 29 of the *Guidelines on State aid for environmental protection and energy for the period 2014-2020* (2014 / C 200/01), which entered into force on 1 July 2014 and the provisions of art. 30 and 110 of the *Treaty on the Functioning of the European Union* (TFUE)<sup>1</sup>.
2. The European Commission has repeatedly called Romania, as a Member State, to ensure compliance with art. 30 and 110 of the TFUE, by opening the national scheme to promote energy production from renewable sources through green certificates to producers from other Member States<sup>2</sup>.
3. At the same time, the European Commission asked Romania to submit a government commitment for measures to ensure that the green certificates promotion system does not apply for energy generation at negative prices.
4. The Draft Memorandum proposed the opening of the green certificates promotion scheme, under the following conditions:

<sup>1</sup> According to recital 29 of the *Guidelines on State aid for environmental protection and energy 2014-2020*, "(...) in the field of energy, any levy that has the aim of financing a State aid measure needs to comply in particular with Articles 30 and 110 of the Treaty "

Pursuant with art. 30 of the TFUE, "Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States"

Pursuant with art. 110 of the TFUE, "No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products."

<sup>2</sup> By letters from 16 May 2014 and 31 July 2014, during the visit from 8 October 2014 of the Romanian delegation to Brussels, by letter from 29 October 2014 and during bilateral discussions that took place in Brussels from 17 to 19 December 2014

- energy producers from renewable energy sources from other Member States shall have the right to be accredited by the National Regulatory Authority for Energy, on request, as beneficiaries of the aid scheme under, the same conditions as those provided by the national legislation for domestic producers and under the provisions of reciprocity agreements signed previously with the Member States concerned. Consequently, they will be eligible for accreditation and will present the accreditation documentation similar to Romanian producers;
- when it will determinate the level of support in the accreditation process, it will take into account the rules on aid cumulation in order to avoid over-compensation. Producers from other Member States will be required to provide information on this line;
- producers from other Member States accredited to benefit from the Romanian support system will receive green certificates issued by the transmission system operator Transelectrica SA, for the energy produced from renewable sources, exported and consumed in Romania, based on the evidence of its origin;
- producers from other Member States receiving green certificates in Romania will be allowed to trade these certificates on the Romanian centralized market, under the same conditions as those provided by the national legislation for domestic producers of energy from renewable sources;
- green certificate promotion system applies for an annual quantity of energy from renewable sources imported, established on the total import volume of energy of Romania, in year 2013.

5. The Draft Memorandum proposed the submission to the European Commission (DG Competition) of a government commitment for measures to ensure that the green certificate promotion system does not apply to energy produced from renewable sources sold at negative prices.

6. However, the draft memorandum mandates the Ministry of Energy, Small and Medium Enterprises and Business Environment to initiate and promote proposals of legislation which will ensure that the commitments referred to in paragraphs 4 and 5 above, will be achieved.

7. The proposals of the Romanian authorities referred to in paragraph 4 above were submitted to the Commission in order to obtain a preliminary opinion.

8. The informal opinion of the Commission was that the proposals submitted by the Romanian authorities regarding the opening of the green certificate support scheme are consistent with those previously discussed in bilateral meetings in Brussels on the same subject, and with the latest decision adopted by the Commission for similar cases in other Member States. The Commission also requested that, the official letter which will be sent by the Romanian authorities, should clarify whether the agreements to be concluded, on the basis of reciprocity by Romania with other Member States, shall be in accordance with *Directive 2009/28 /EC* on the promotion of renewable energy<sup>3</sup>

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<sup>3</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

## **COMPETITION COUNCIL**

Based on the art. 20 paragraph 34) point c) and art. 26 paragraph (1) point I) from *Competition Law no. 21/1996, republished*

### **ISSUES FORMAL OPINION**

On the Draft Memorandum on opening the national scheme to promote energy production from renewable sources through green certificates to producers from other Member States, noting that it does not contain provisions contrary to competition law, including state aid and ensure compliance with art. 30 and 110 of the *Treaty on the Functioning of the European Union* and the community rules on state aid field, as requested by the European Commission.

The proposals initiated by the draft of the Memorandum on opening national scheme to promote energy production from renewable sources by producers from other Member States, as well as the government's commitment regarding the failure of the support under the scheme for the energy sold at negative prices, will be transposed into national legislation on the promotion of renewable energy sources and submitted to the European Commission in addition to notification of amendments to the green certificate support scheme, established by *Law no. 220/2008, with the subsequent amendments and completions*.