

LEGAL HIGHLIGHTS

REGULATION AND SUBSIDY SYSTEM FOR E-RES

In the larger context of EU promoting the production of electricity from renewable energy sources (E-RES), Romania had begun with transposing the relevant EU Directives (2001/77/EC) way before its accession to the EU, in the year 2003. The last piece of legislation concerning the promotion of E-RES (the Law 220/2008 about the promotion system of producing E-RES ("Law 220") which was adopted by the Romanian Parliament entered into force on November 6, last year

Promotion System for E-RES

According to Law 220, the promotion system of E-RES is based on the mandatory quota combined with the green certificates system or the feed-in-tariff system, the latter being mentioned for the very first time in Romanian legislation as a promotion system for E-RES. One of the two aforementioned systems should have been approved by Decision of the Romanian Government, at the proposal of the Romanian Energy Regulatory Authority ("ANRE"), within 90 days as of November 6, 2008 but was still not published in the Official Gazette. According to a draft proposal of ANRE which can be downloaded from the website of ANRE, the current system of the mandatory quota combined with the green certificates system is to be further on applied.

Green Certificates

Law 220 has maintained the definition of the green certificate ("**GC**") as being the document certifying that 1 MWh of electricity has been produced from RES and supplied into the grid. The definition of the GC needs to be amended given the new regulations brought in by Law 220, according to which a various number of GC (between 1 and 4) are to be allotted for 1 until 2 MWh of electricity produced from various renewable energy sources and supplied into the grid. To mentioned just a few, it is regulated that 1 GC is to be granted for each 2 MWh produced in (not new/not been re-furbished) hydro power plants with an installed capacity between 1 and 10 MW; 2 GC until the year 2015 and 1 GC beginning with the year 2016 for each 1 MWh supplied into the grid by the producers of electricity from wind energy; 4 GC for each 1 MWh supplied into the grid from solar energy, etc.

Nevertheless, until the aforementioned Government Decision regarding the promotion system to be adopted is published, it appears that the previous regulation is still applied, and that the E-RES producers currently get only one GC for each 1 MWh electricity produced from RES irrespective of the type of the renewable energy source used for producing the electricity.

GC are traded separately from the electricity produced from RES on two different markets: (i) either on the bilateral contracts market or (ii) on the centralized market of GC operated by the Green Certificates Market Operator OPCOM SA. The Romanian Legislator set new mini-

imum (for producers' protection – EUR 27.00/GC) and maximum (for consumer's and suppliers' protection – EUR 55.00/GC) values for the GC through Law 220. The price of GC is to be calculated on the basis of the average exchange rate of the National Bank of Romania for the month of December of the previous year and is to be adjusted yearly with the consume price index for Romania.

Mandatory Quota

Law 220 sets also the mandatory quota for the years 2008-2020 to be performed by electricity producers established as yearly percentage from the gross nation-wide electricity consumption, whereas the quota for 2021-2030 will be established by the competent Ministry and will be at least in the amount of the quota for the year 2020. The mandatory quota for the current year is of 6.28% and for the next year of 8.30%.

Missing Norms for the Appliance of Law 220

The norms that should facilitate the appliance of Law 220 have not been adopted yet. We are talking here of several Government Decisions that should have been adopted within various time frames from 60 to 90 days as of entering into force of Law 220 addressing (i) the selection of the promotion system for E-RES; (ii) the regulation regarding the grid connection (costs) of E-RES producers; (iii) fiscal measures for promoting the E-RES; (iv) the conditions and time frame for subsidies for E-RES.

Furthermore, ANRE should have amended the existing regulatory framework for promoting E-RES in order to correspond to the new regulations introduced by Law 220 within 90 days as of November 6, 2008. We can only hope that the missing norms will be adopted soon, so that the general legal framework introduced by the Law 220 can also be applied in the praxis.

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The information in this newsletter does not replace the need for advice in particular cases.

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