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Intro

TUCA ZBARCO ASOCIAȚII

- What's Past is Prologue:
The Outcome of the Legal
and Regulatory Changes in
the Energy Sector

What's Past is Prologue: The Outcome of the Legal and Regulatory Changes in the Energy Sector



Romania needs a functional and effective economy, a steady influx of investment and sound public and private sector projects. Obviously, all steps and measures taken in this direction should demonstrate responsible commitment and be fully compliant with the law.

Indeed the current lack of long-term energy policies set out under a coherent national energy strategy and the regulatory uncertainty have already taken a heavy toll on energy investments. Romania's energy sector is currently perceived as being rather instable and unattractive to investors, even though our country has greater potential for growth than its neighbours. Nobody wants to invest in a volatile legislative environment, as any serious business would require multiannual budgets and reliable business plans.

Ever since last summer, when the new law on electricity and natural gas (Law No. 123/2012) changed the electricity trading principles by banning the execution of energy sale-purchase agreements through direct negotiation, investors' trust and interest in the renewable energy sector have declined. This downward

trend has grown worse following government officials' statements and measures changing the support scheme for renewable generation. Recently, the Government issued Emergency Ordinance No. 57, which drastically reduces the support scheme. I do not think that this reduction of the scheme is the way to boost competitiveness in the Romanian industry. This scheme is a critical component to ensure delivery of the national targets for renewable energy that Romania undertook before the European Commission. Moreover, the benefits of securing a stable renewable framework are associated with a fall in the electricity trading price, as it has already been the case up until now due to the surge in renewable energy in the past few years.

Keys to the Development of a Strong Energy Market: Political Will and Consensus, and a National Energy Strategy

There is more than one solution for developing a strong energy sector over the coming years. It is clear under any solution or scenario that political will and consensus,>

as well as a coherent energy strategy are required to implement such solutions.

To begin with, investments in industrial production would help increase the domestic energy consumption levels. On the other hand, in order to bolster energy exports, the Government should develop the interconnection capacities of the national power systems between Romania and its neighbours. To this end, the Romania-Turkey undersea cable would be extremely beneficial for the Romanian energy system, as it would facilitate energy exports to the Asian market. I also believe that it is important to develop the interconnection capacities of the energy and natural gas networks between Romania and the Republic of Moldova. This would help alleviate the Republic of Moldova's dependency on its current energy sources.

Moreover, as compared to other EU states, Romania has one of the lowest prices for electricity trading. However, it uses more energy resources to generate GDP than any other EU states. In other words, Romania produces at higher costs. The solution is to foster investments in the energy efficiency of all sectors: production, transmission and distribution, consumption. Also, a higher absorption of EU funds is of the essence for such investments.

Setting-Up an Energy Investment Fund

From my perspective, setting-up an energy investment fund is key to the revival of the Romanian energy sector. Shareholders in such an investment fund would be the energy companies in which the Romanian state owns a majority or a significant interest. As opposed to the Government's initiative to reorganise energy producers into one company (a measure taken in 2010 when the establishment of the national companies Electra and Hidroenergetica was proposed), creating an energy investment fund may attract significant private investments. At the same time, this solves many of the legal, economical and social issues that were faced at the time of the establishment of a single energy player on the market. Thus, while maintaining the independence of state-owned companies, the profitability of performing companies will no longer be

adversely affected by the underperforming players within the same sector. Also, the electricity trading price will no longer be adversely affected by the "basket price" resulting from the aggregation of cheap energy generation technologies (e.g., hydro power) with underperforming and costly technologies (e.g., thermal power). In addition, the setting-up of an energy investment fund will not distort competition on the energy market.

I trust that the national energy strategy which is now being drafted will implement a set of coherent measures, in line with EU energy policy, to help revive Romania's energy sector. Without doubt, it is a sector that contributes to national competitiveness and ensures economic recovery.

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Case by Case

- European Commission Clearance for Large Renewable Projects

European Commission Clearance for Large Renewable Projects

Benefitting from the Romanian renewable energy support scheme for large renewable projects

Investments in renewable energy are burdensome and involve a long period of recovery. In particular, this happens because it is not possible to charge an appropriate price for the electricity produced given the lower prices charged by conventional electricity power plants that do not face similar financial challenges. This is why the operation of renewable power plants is encouraged throughout the European Union (the EU) by means of feed-in tariffs or tradable instruments. These incentives aim at allowing investors to obtain a competitive price per MWh by reference to that applied by conventional power plants and, at the same time, at making the investment worth the effort economically. The underlying supporting principle is straightforward: the generation of electricity from renewable sources is essential for global environmental purposes, as well as for the diversification of Europe's energy supply, and should be encouraged.

However, is it easy to obtain support, especially for large-scale projects?

Romanian System Aimed at Encouraging the Generation of Electricity from Renewable Sources

In Romania, Law No. 220/2008 establishing the promotion system for the generation of energy from renewable energy sources (Law 220/2008) implements a system aimed at encouraging the operation of renewable electricity power plants by means of the allocation of tradable green certificates (GCs), with the number of GCs depending on the technology used.

Given that the general system offers operational support to renewable energy power plants, it was notified to the European Commission ("EC") based on relevant State aid rules and was cleared under Decision No. C(2011) 4938 dated 13 July 2011 (the "Decision"). Is the Decision enough for any renewable energy plant project operating in Romania to benefit from the GC support measure?

Unfortunately, the answer is no. Nevertheless, such benefit is certainly possible.>



Individual Clearance by the EC in the Case of Renewable Energy Power Plants with an Installed Capacity in Excess of 125 MW

Under Article 26 of Law 220/2008, an investor that develops a renewable energy power plant with an installed capacity in excess of 125 MW (and complies with the legal requirements to benefit from GCs) must prepare and submit to the relevant authorities the documentation necessary for an in-depth review of the benefit by the EC. Accordingly, the GC benefit is granted subject to the paramount requirement of obtaining prior clearance from the European body.

Exceptions are allowed for a limited category of projects i.e. already operating renewable energy power plants or projects that had a grid connection agreement in place upon the date of entry into force of Government Emergency Ordinance No. 88/2011 only for a transitory period of a maximum of 24 months from the date of the accreditation issued by the Authority for Regulation in the Energy Field (ANRE) and subject to the EC's final clearance decision.

The Road to Individual Clearance in the Case of Renewable Energy Power Plants with an Installed Capacity in Excess of 125 MW

Amid the recent turmoil generated by the amendments brought to the support scheme by Law 220/2008, there is still room for some

good news for large power plant projects in excess of 125 MW in terms of efficiency in preparing the required documentation for EC notification and technical collaboration with the relevant authorities, ANRE and the Romanian Competition Council (RCC).

One of the first large renewable energy power plant projects in Romania with an installed capacity in excess of 125 MW was the first to undertake an individual notification exercise and paved the way for similar individual assessment under Law 220/2008 before the EC.

The company – Romania's most important investor in renewable energy – retained our team of competition lawyers in connection with this project. To date, our client successfully completed the pre-notification step before the EC and is currently awaiting a positive and swift decision from the European authority once the formal notification is undertaken

“There is still room for some good news for large power plant projects in excess of 125 MW

through the secure system SANI (State Aid Notification Interactive).

Given the complexity of the project, Țuca Zbârcea & Asociații's team involved included members from both the firm's Competition Law and Energy practice groups, namely Raluca Vasilache, Partner, and Andreea Oprișan, Senior Associate (Competition Law), and Sorin

Vlădescu, Partner, Irina Moinescu, Partner, and Nisa Jecu, Associate (Energy).

In a nutshell, the individual notification process consists of the following steps:

- **Step 1: Collecting and processing relevant information.** The notification to the EC is drafted using a template request form set out under EC Regulation No. 794/2004. It requires a series of complex legal and economic information on the investor, its group, the renewable power plant project and corresponding investment details, the IRR (Internal Rate of Return), estimated market conditions, including market shares on both the electricity and GC markets, commercial relations with third parties and environmental benefits triggered by the project. The exercise was not an easy one; however, the first stage of the notification process was swiftly completed as a result of the collective efforts of our team of lawyers and the client's internal technical expert team. The result consisted of a comprehensive documentation including the relevant notification requirements.
- **Step 2: Technical discussions and consultations with ANRE and the RCC over the complete documentation to be delivered to the EC.** The complete set of information under the EC notification format was, in this second step, submitted to the relevant local authorities (in particular, ANRE and the RCC, but also >

the Ministry of Economy) for review and comment. This step consisted of technical discussions with the authorities and updating the information based on constructive requirements from ANRE and the RCC made on the grounds of significant experience in the electricity and state aid fields, respectively. Although the authorities had already been through a notification and clearance process before the EC for the general scheme implemented by Law 220/2008, it still took a considerable effort to adapt the documentation for an individual in-depth assessment of a single large project, understand the legal and economic rationale behind the project and finally conclude that the data was accurate and ready to be sent to the EC.

- **Step 3: Filing of the individual notification to the EC under the pre-notification procedure. Subsequent clarification discussions with the EC.** In state aid procedures, it is the state entity granting the support (in this case, ANRE and the Ministry of Economy) that has the direct obligation to notify the EC of the support. Such notification is performed through and with the full support of the RCC. In line with established EC practice, detailed under the Code of Best Practice for the conduct of State aid control procedures (2009/C 136/04), the individual notification was delivered to the EC by the Romanian authorities

under an initial consultation procedure (i.e. pre-notification contacts). The team's efforts to liaise with the authorities and swiftly respond to their recommendations and requirements, as well as ANRE's and the RCC's willingness to share from their knowledge and experience, led to extensive and complete documentation which required little clarification for the EC team in charge of assessing the project. Accordingly, the EC officially invited the Romanian authorities to give formal notification of the project with the aim of obtaining the corresponding clearance decision.

- **Step 4: Filing the formal individual notification and issuance of EC decision.** At this stage, formal notification of the project will be made to the EC through the secured system SANI. Pursuant to such formal notification, although the EC is entitled to request additional information and clarification on the project, it is expected that the authority will swiftly issue its clearance decision subsequent to the successful pre-notification stage. This is consistent with the EC's practice under the Code of Best Practice for the conduct of State aid control procedures.

With the project, our client, along with Țuca Zbârcea & Asociații's legal team set a high standard for the next individual notification procedures under Law 220/2008 to benefit

from GCs, and developed an approach pattern that may very well considerably simplify similar efforts for other undertakings in addressing the individual notification requirement.

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Focus

- Red Light for Green Power Producers

Red Light for Green Power Producers

Less than a year since the power market was short-circuited by the banning of power purchase agreements concluded through direct negotiations, a new legislative intervention shook the industry to its very core, this time the renewable power sector.

The Romanian Government has dramatically cut back the support scheme for the generation of power from renewable energy sources by passing the Emergency Ordinance No. 57 (GEO) - published in the Official Gazette of Romania on 7 June, 2013. The GEO amends Law No. 220/2008 on establishing the promotion system for the generation of power from renewable energy sources (Law 220/2008).

Surprisingly enough, the reduction of the support scheme comes shortly after the European Council meeting held in Brussels, when the council reaffirmed the objectives of facilitating investments and diversifying the energy sources and set as priorities the implementation of national and EU measures to boost the financing of renewables and the continuation of renewable energy deployment.

Even more surprisingly, the GEO stipulates that it comes into effect on 1 July, 2013, and that the European Commission be only "notified" (as in informed) of the

amendments adopted thereby, although the initial intentions (as reflected in the GEO draft submitted for public consultation) were that the enforcement would occur only after analysis and approval by the European Commission.

Main Changes to the Support Scheme and their Expected Impact

A comparison of the final version of the GEO with the draft submitted for public consultation will reveal that none of the comments submitted by the market players affected by the envisaged measures was actually implemented in the GEO, despite the active involvement of such players in the public consultation process (either directly or through their professional association). Moreover, the GEO contains additional material limitations of and exemptions from the support scheme as compared to those inserted in the initial draft which significantly prejudice renewable power producers and about which no public consultation was conducted.>



The main amendments to the support scheme brought by the GEO and its expected impact on the renewable power market are summarised below.

Postponing the allocation of a number of green certificates

The allocation of the following is postponed for the period 1 July 2013-31 March 2017:

- 1 green certificate for each MWh of power generated in wind power plants and in new hydro power plants with installed capacities not exceeding 10 MW; and
- 2 green certificates for each MWh of photovoltaic energy.

The GEO provisions on the postponement do not make any distinction from the perspective of the accreditation date of the power plants to which they apply. It may be concluded, therefore, that the postponement measure will be applicable both to producers that were accredited prior to the entry into force of the GEO, as well as to future producers, who will be accredited afterwards.

The postponed green certificates will be recovered gradually from 1 April, 2017 (for photovoltaic and hydro energy) and from 1 January, 2018 (for wind energy), but not later than 31 December, 2020. However, the reallocation brings great uncertainty and involves high risks for power producers as the GEO does not set out the mechanism by which the green certificates will be recovered (leaving

the matter under the regulatory jurisdiction of the National Authority for Regulation in the Energy Field, ANRE); nor does it provide any guarantees as regards the sale of the recovered green certificates.

Reducing the support scheme in the event of overcompensation

Unlike the current overcompensation analysis procedure (which is done annually and which does not impose strict deadlines on the involved authorities), the GEO obliges ANRE to scrutinise twice a year the producers benefiting from the support scheme and to draft and publish a monitoring report within 90 days of the end of the period of analysis. Should the report conclude that the support scheme leads to overcompensation for one or more technologies, within 30 days of publishing the report, ANRE must submit to the Government its proposals for decreasing the number of green certificates for the respective technology.

“ It may be concluded that the postponement measure will be applicable both to producers that were accredited prior to the entry into force of the GEO and to future producers who will be accredited afterwards

Such measures are to be adopted by means of a Government decision within 60 days of ANRE’s submission of its proposal, and will

apply to power plants/groups accredited for the support scheme after the entry into force of the relevant decision.

The first monitoring report based on which the Government may amend the number of green certificates covers 2012, thereby revoking the provisions of Law 220/2008 (as introduced by Law No. 134/2012 amending and supplementing Law 220/2008) which stated that no overcompensation measures would be applied before 1 December, 2014, for photovoltaic producers and before 1 December, 2015, for power producers using other types of renewable energy sources.

The tight calendar imposed by the GEO for monitoring and adjusting the support scheme on the grounds of overcompensation converts the renewable power sector into a highly unpredictable investment environment as the support scheme may be adjusted twice a year and at very short notice.

This makes it difficult for investors to draw up business plans and therefore harms the bankability of renewable power projects.

Cumulating the postponement and adjustment measures

Given that the postponement of the green certificate allocation applies to all power producers, irrespective of their accreditation date, a producer that is accredited for the support scheme after the adjustment of the scheme due to overcompensation will be affected by both measures.>

Additional limitations that will be imposed by ANRE

Article II of the GEO contains an ambiguous provision which reads as follows:

“(3) The National Authority for Regulation in the Energy Field is under the obligation to regulate, by means of annual quotas, the quantity of electricity generated from renewable sources to be delivered into the national power system, with the benefit of the green certificate promotion system, on the basis of firm agreements concluded with each accredited producer

This provision is not clear on the annual quotas that will be established by ANRE (namely if it will limit the quantities of renewable power taken into the national power system or the quantities of renewable power benefiting from the support scheme), what criteria will be used for the establishment of such quotas or how they will be applied.

If ANRE is to limit the quantities of renewable power taken into the national power system, this would infringe the principle of guaranteed access to the grid (as established by Law 220/2008) for renewable power benefiting from the support scheme. Under an alternative interpretation in which ANRE would establish annual quotas of renewable energy which benefit from the support

scheme, such quotas are already set out in Law 220/2008 for every year through to 2020.

According to public statements by ANRE officials, it appears that the intention behind the legal provision is to allow (and even oblige) ANRE to amend the annual quotas (as provided by Law 220/2008) for renewable energy benefiting from the support scheme. In the absence of any criteria in the GEO based on which such quotas would be amended, this provision increases the unpredictability of the renewable energy sector, both for prospective investors as well as for those with projects that are under development or already operational.

In addition to the above, confusion is also created by the requirement that the annual quotas apply to the energy quantities delivered based on firm agreements concluded with each accredited producer. Although the wording of the GEO seems to imply that these agreements would be concluded by ANRE, we deem this interpretation highly unlikely as ANRE does not have the legal capacity to enter into these kinds of agreements..

Accreditation limits

The GEO gives the Government the right to impose annual limits on the aggregate installed capacities of the power plants that can be accredited for the support scheme. These limits will be established for each calendar year by means of a Government decision, based on the updated data from the National Action Plan in the Renewable Energy

Field (PNAER) (PNAER is available for download at the following website: www.minind.ro/pnaer/pnaer_29%20iunie_2010_final_alx.pdf). After this limit is reached, the accreditation will cease until a higher accreditation limit is established by means of a new Government decision.

The grounds for imposing an accreditation limit are incomprehensible, as Law 220/2008 already sets out annual quotas for renewable energy benefitting from the support scheme; hence the impact of the support scheme is already under control.

In addition, imposing an annual accreditation limit creates significant practical problems for the renewable power developers which, upon initiating construction works, will have no guarantees that they will fall within the accreditation limits upon commissioning. Such uncertainty triggers a high investment risk for renewable energy projects, prevents developers from drawing up reliable business plans and therefore significantly impairs the bankability of such projects.

Limitations on green certificate trading

As regards the trading of green certificates, the GEO introduces two limitations, namely to the manner of trading and to the entities that can participate in the green certificates market.

With respect to the **manner of trading**, the GEO establishes the same principles as those imposed last year for power trading: green certificates must be traded in a transparent,>

centralised and non-discriminatory manner, on the centralised markets managed by OPCOM – the Romanian power market operator.

Consequently, as of 1 July, 2013, green certificates may no longer be traded based on sale-purchase agreements concluded through direct negotiations. This restriction affects both power producers owning operational projects, as well as the developers of renewable projects.

For instance, there is concern that those producers owning operational projects will no longer be able to ensure the long-term sale of green certificates, as no such trading platform currently exists on the centralised market operated by OPCOM. However, it seems that OPCOM now intends to create a new trading platform for the execution, in a centralised manner, of long-term sale-purchase agreements for green certificates, although its implementation date is not yet known.

Additionally, this restriction raises serious bankability concerns as regards the development of renewable power projects, given that the long-term sale-purchase agreements of green certificates were essential for guaranteeing the reimbursement of financing.

Before Electricity and Natural Gas Law No. 123/2012 entered into force, credit institutions conditioned the granting of financing for the development of renewable projects upon the execution of long-term power sale-purchase agreements and long-term green certificate

sale-purchase agreements, as a guarantee for the reimbursement of the financing.

After the execution of power sale-purchase agreements was limited to OPCOM markets (on which only license holders can participate and not developers with only ready-to-build projects), the credit institutions continued to finance renewable power projects, accepting as guarantees long-term green certificate sale-purchase agreements.

As such agreements may no longer be concluded from 1 July, 2013, it is highly unlikely that credit institutions will grant non-recourse project finance for developing renewable projects, given that developers can no longer provide any guarantees as regards the cash flow the projects will generate.

“As of July 1, 2013, green certificates may no longer be traded based on sale-purchase agreements concluded through direct negotiations

Although OPCOM may implement a centralised platform for the execution of long-term sale-purchase agreements, it will not solve the bankability issue. As with the centralised electricity market, participation on the platform will probably be limited to power producers owning operational projects (and not to developers with only ready-to-build projects).

As to the second limitation related to the **green certificate market participants**, the certificates may be traded solely by renewable power producers and by power producers/suppliers which are obliged by law to acquire a certain quota of green certificates.

Hence, the holders of power supply licenses that do not fall under the acquisition obligation are excluded from green certificate trading.

This limitation is one of the few beneficial principles introduced by the GEO.

The green certificate market was established as a framework on which producers would be able to cash in the value of the support granted under the green certificates promotion system, and not as a market where entities not involved in the support scheme would profit. Eliminating the intermediaries in the certificate trading may reduce the trading price.

It is worth noting that the GEO left unchanged Article 10 (1) of Law 220/2008, which stipulates that the green certificates be traded by renewable power producers and by power suppliers, on both segments of the green certificate market, i.e. on the centralised market and the bilateral agreements market.

Despite the contradiction, it could be argued that legislator’s willingness to change these trading rules results undoubtedly from the GEO, so the provisions of Article 10 (1) can no longer be invoked.>

Exclusion from the support scheme of power generated in excess of that reported through physical notifications

The GEO excludes from the application of the support scheme the quantities of renewable power delivered by dispatchable generation units that exceed the quantities reported through the hourly physical notifications submitted by the power producers to the transmission and system operator. Obviously, such a limitation significantly affects the power producers using uncontrollable renewable sources, such as wind or sun. Additionally, as result of this restriction, renewable power producers will be penalised twice for deviating from the hourly physical notifications: by being charged for the balancing costs and excluded from the scheme.

Exclusion from the support scheme of photovoltaic plants built on land classified as agricultural upon the enforcement date of the GEO

An additional exclusion from the support scheme applies to photovoltaic plants built on land that, when the GEO came into force (i.e. 1 July, 2013), was classified as agricultural land. Basically, photovoltaic power plants to be built on land that is reassigned from agricultural use after 1 July, 2013 will not be eligible for the support scheme. This applies even though Romanian law allows (with certain specific exemptions) the reallocation of land intended for agricultural use (by

following a specific procedure) so it may be used for construction purposes. Given that agricultural land offer the highest development potential for photovoltaic projects, this exclusion significantly affects the photovoltaic energy sector, which is currently the most attractive to investors. However, the Government has recently adopted a new government emergency ordinance (i.e. GEO No. 79 of 26 June 2013) by which it postpones from 1 July, 2013 to 31 December, 2013 the date when the classification of the land as agricultural land triggers the exclusion of the photovoltaic plants from the support scheme, while also amending and supplementing several enactments related to the land improvement activity. Such a measure is beneficial considering that the short notice exclusion from the support scheme introduced by GEO No. 57/2013 significantly affected the developers of photovoltaic plants having projects in progress.

Exemptions from the support scheme applicable to power consumers

Certain final consumers will be exempted from the obligation to pay the value of green certificates for some of their energy consumption. The criteria for qualifying for the exemption and exempted quantities will be approved through a Government decision after its notification and approval by the European Commission. Considering the previous drafts of the GEO, it seems that the Government's

intention is still to exempt the big energy consumers whose consumption exceeds a certain threshold, after obtaining the relevant clearance from the European Commission.

Financial guarantees for the issuance of grid connection permits

The GEO gives grid operators the right to request the establishment of financial guarantees upon the issuance of grid connection permits. The value and the manner in which such guarantees may be used will be established by ANRE. Rules concerning the financial guarantees are included in the draft of the Regulation for the connection of users to the public interest grid, which was submitted by ANRE for public consultation in March this year. According to the draft, the value of the financial guarantee is calculated as a percentage of the connection tariff and will be specified in the grid connection permit. Also, the financial guarantee must be established within three months of the issuance of the grid connection permit or the permit will cease to be valid. Considering the significant number of issued grid connection permits as compared to the number of projects that are actually being developed, this measure will have a positive effect on grid capacity. It will help reduce the number of grid connection permits issued in the future, by eliminating the projects that lack financing sources, and will therefore ensure available grid capacity for projects that have real development potential.>

Conclusions

The measures imposed by the GEO have no precedent in Romanian legislation post-1989, significantly affecting both investors with operational projects, as well as those with projects in advanced stages of development. These measures seriously affect investors' business plans, by dramatically changing the circumstances based on which the investment decision was taken. Moreover, considering the short notice of the measures (the entering into force within less than a month of adoption) and that investment levels' budgets are approved on an annual basis, the investors' capacity to adjust to the new market conditions is also drastically impaired.

The impact caused is even more severe taking into consideration that the reduction of the support scheme comes at a very early stage of its application. Although the legislation governing the green certificate support scheme was adopted in 2008, it came into force only in November 2011, after the scheme was authorised by the European Commission and after ANRE adopted secondary legislation for its implementation. Given that many of the investors held off starting their projects until the support scheme had come into effect (due to uncertainties related to its enforcement), it may be concluded that renewable energy investors benefited from the support scheme only for a very short period of time, especially given the significant value of the investments involved and their average depreciation

duration. Moreover, some of the measures adopted through the GEO may be deemed to be in breach of important commitments to the protection of foreign investments, which were undertaken by Romania through bilateral agreements and through the Energy Charter Treaty. In fact, we have already noticed increased interest from investors in assessing the legal actions available against the Romanian state on account of these measures.

In addition to impacting existing investors, the measures adopted by the Government will, obviously, lead to a decrease in future investments in the renewable power sector, which appears to be, in fact, the main purpose of the GEO. The worst affected technology will be photovoltaic energy, as it is subject to the greatest limitations (the highest number of postponed green certificates, highest reduction in the event of overcompensation and exclusion from the support scheme if developed on agricultural land). The decrease in investments will not derive solely from the fact that the renewable power sector will become less attractive to foreign investors (due to the high risks involved in the support scheme and its lack of predictability and stability), but also from the difficulties in securing finance for projects in this sector.

And although the aim of the GEO is limited to discouraging investments in the renewable power market, the volatility of the legislation governing the sector may be seen as an indication of the instability and

unpredictability of the overall Romanian investment environment. Hence, the red light effect of the GEO may extend to foreign investors interested in other sectors of the Romanian economy.

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News and Views

- An Investor's Perspective on Key Topics within the Energy Sector

An Investor's Perspective on Key Topics within the Energy Sector

Government Decision No. 138/2013 on the Measures Adopted for Ensuring the Safety of the Energy Supply

Government Decision No. 138/2013 may produce distortions on the market and will result in the increase of the energy price

In the current context on the energy market that records a significant increase in the number of power plants producing energy from renewable resources up to approximately 2.2 GW, the price on the wholesale market is decreasing, which limits the access to the market for the power plants on conventional resources, especially the ones using coal. Thus, conventional resources power plants are faced with increased costs due to discontinuous functioning and additional costs required for restart after downtimes. Beside the lowered quantities delivered by this type of power plants, this causes a chain impact on the mining sector through the diminished quantities of used coal and may have a long term impact on Romania's energetic security.

Government Decision No. 138/2013 was not submitted to public debate

The Law No. 123/2012 on energy and natural

gas leaves room for Government Decisions to grant, in certain conditions, guaranteed access to the power grid for the energy produced in certain power plants using internal fuels, in order to ensure safety of the supply with energy. However, this process needs to be made transparent and submitted to public debate.

Continuous functioning (uninterrupted production) and guaranteed access to grid

The Government Decision No. 138/2013 provides for continuous functioning (uninterrupted production) and guaranteed access to the grid for certain quantities of power produced by CE Hunedoara (thermoplant Mintia – Deva) and CE Oltenia (Turceni, Rovinari, Isalnita and Craiova II).

However, continuous functioning and uninterrupted production of the electricity for which access is guaranteed, has no defined mechanism in the sense that contracts for this energy should be in place on the competitive market, where demand meets offer and where these producers are not competitive in terms of prices. It is worth mentioning that the only regulated contracts provisioned by the Authority for Regulation in the Energy Field >



(ANRE) are those from the regulated “basket” for household customers, and the takeover of a higher quantity of energy produced in these power plants will result in an increased final price for these customers.

Priority dispatching of electricity produced by these power plants

To ensure the balance between consumption and production, Transelectrica (the national power grid company) purchases balancing energy, depending on “merit criteria” (listed based on the principle of costs minimization). Through the new provisions, Transelectrica will have to disregard the mentioned criteria. Hence the significant distortions on the voluntary energy market and on the balancing market, resulting in increase of costs.

The obligation for certain energy producers – i.e. CE Oltenia and CE Hunedoara - to supply technological system services

The Government Decision No. 138/2013 sets up the obligation for these producers to provide technological system services for a power of 1 GW.

Integration of Wind Power Plants on Balancing Market

Wind energy is probably the most exposed from all forms of renewable energy to fluctuations on the balancing market. For this reason, its successful integration on the market must be very carefully approached.

The Romanian Government made a firm commitment to promote wind energy and its integration in the market structure. The organisation of the market is one of the key elements in achieving the target wind energy quota, within the total energy produced in Romania. ANRE is the responsible entity assigned to secure the market integration of all participants in an impartial and optimal manner. The design of the energy market should be as efficient as possible and should use all the existing commercial mechanisms so as to minimize the general need for “balancing” (volumes and costs).

“Wind energy is probably the most exposed from all forms of renewable energy to fluctuations on the balancing market. For this reason, its successful integration on the market must be carefully approached

Key elements in integrating wind energy in the market structures:

- **Offering increased flexibility in trading electricity that would allow for adjustment depending on the wind prognosis.**

The error in wind prognosis decreases significantly for a shorter reference time. It is important to offer the commercial means that would allow trading as close as possible to real time (production), in order to decrease the balancing energy volumes.

This should be achieved by introducing an intraday market, close to the real production time.

- **Offering the right signals for the system balancing costs.** The balancing market offers to participants on the market the last chance to trade energy and, as such, this should reflect the real cost of the balancing market. The calculation of the imbalance price truly reflects the economic cost of the system if a marginal imbalance price is calculated, or if the market has either a single price or a dual price (with one of the prices linked to the market price) that corresponds with the purchase of system services, depending on the general status of the system.
- **Safe and flexible use of the transmission grid.** The transmission grid represents one of the key elements and its use should recognize the flexibility of production units. Signals for investments should be in accordance with costs of congestions. Wind energy should have priority in maintaining connection and, in extreme cases of disconnection or power curtailment, should have the rights both for recognition of support scheme (green certificates), and for losses due to undelivered energy. A comparison of imbalances on the wind energy markets shows that in Romania the risk of imbalance and its costs are the highest.>

Order No. 33/2012 regarding the Rules on the Balancing Market Applicable to Renewable Production

This order regarding the rules on the balancing market assimilates wind power plants (WPP) with dispatchable units (DU) and, as a consequence, all wind energy producers with power plants over 10 MW have to participate in the balancing market as DU and to submit to the rules for dispatchable units as described in the Grid Technical Code and Dispatching Regulations.

It also establishes the priority of dispatching WPP on the balancing market at the same level with solar energy (DU-SEP), cogeneration, hydro with high hydraulicity and nuclear energy.

These dispatchable units are the last ones reduced on the balancing market in the merit criteria (under the physically notified power).

Merit criteria

After curtailing classical plants (non-priority offering P_{\min} 10 RON/MWh), National Dispatch (DEN) reduces power of WPP and DU-SEP, exceeding notified power.

Discussion topic: WPP need to minimize the possibility of these curtailments by increasing the precision of the hourly prognosis and, implicitly, of physical notifications. For the energy curtailed in this phase by restrictions from the dispatch, the losses are in both green certificates and in unproduced energy.

The method through which DEN curtails thermo power plants prior to WPP needs to be transparent and verifiable on the market.

After curtailing classical power plants, followed by the curtailment to notified power of wind and solar plants, the next curtailed groups in the merit criteria are renewable notifying P_{\min} 5 RON/MWh (hydro < 10 MW, biomass, biogas, etc) and, after that, it may lead to curtail below notification of WPP together with the other technologies that can come up with a minimal priority price of 0.1 RON/MWh (cogeneration, nuclear and hydro with high hydraulicity).

Requirements regarding transparency

The operator of the balancing market publishes on its webpage

information related to the reason for curtailing the power on the balancing market based on dispatch disposition, in the case of WPP or DU-SEP. This information will include besides the curtailment reason, also the curtailed power, the producer's name and the location of the respective DU.

The requirement regarding information on curtailment of renewable energy producers is insufficient and does not allow for an adequate hourly analysis of the National Energy System (SEN), or the method of curtailing other DU. Transelectrica cannot display more detailed information unless so stipulated by ANRE.

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They are not and should not be regarded as legal advice.



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