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# Legal Bulletin



## Energy

In this issue:

1. Application date of the exemption approvals issued by the Ministry of Economy during 2015

### Application date of the exemption approvals issued by the Ministry of Economy, Commerce and Relationships with the Business Environment during 2015

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In accordance with the provisions of Government Decision No. 495/2014 *establishing a support scheme regarding the exemption of certain categories of end consumers from the application of Law No. 220/2008 establishing the system for promoting the generation of power from renewable energy sources*, as further amended and supplemented (“GD 495/2014”), energy-intensive industrial consumers may benefit from a support scheme consisting of an exemption from the obligation to pay a percentage of the number of green certificates related to the mandatory green certificates acquisition quota. The application of the abovementioned measure is conditional upon the obtainment by the persons meeting particular legal conditions of an exemption approval issued by the Ministry of Economy, Commerce and Relationships with the Business Environment (the “Ministry of Economy”).

In 2015, the Ministry of Economy issued 37 exemption approvals.

After the coming into force of GD 495/2014, disagreements have arisen in the energy market with regard to the application date of the exemption approvals issued throughout the year. In a literal interpretation of Article 3(1) of GD 495/2014, according to which the exemption “*shall apply (...) starting with the year in which the exemption approval was obtained*”, it was deemed that such exemption approvals would apply as of 1 January of the year in which they were issued. According to the informal discussions carried with the representatives of the Ministry of Economy, the latter shares such interpretation.

On the other hand, the National Regulatory Authority for Energy (“ANRE”), in the *Information on the mandatory estimated quota for green certificates acquisition by the undertakings*

*bound to acquire green certificates, for the year 2015 - 2<sup>nd</sup> revision<sup>1</sup>*, posted on its website in the second semester of 2015, was of the opinion that the date as of which the exemption approvals would apply should be the issuance date thereof, and not 1 January.

On 15 January 2016, ANRE posted on its website the *Release on the mandatory estimated quota for green certificates acquisition by the undertakings bound to acquire green certificates, for the year 2015<sup>2</sup>*, clarifying its position on the date as of which the exemption approvals would apply. Thus, in support of maintaining the estimated green certificates acquisition quota for 2015 at the level estimated in December 2014 (i.e., 0.274 green certificates/MWh), ANRE states that ***“until the Romanian Government issues an official interpretation of the provisions of Article 3(1) of GD No. 495/2014 as concerns the date as of which the exemption approvals issued during 2015 shall apply, (namely, as of 1 January 2015 or as of the issuance date of the exemption approvals), ANRE deems that the exemption approvals cannot be applied retroactively (prior to the issuance date of the approval), but only after the issuance date thereof”.***

It is essential that such official interpretation be issued by the Romanian Government as soon as possible, since, according to the provisions of Law No. 220/2008 establishing the system for promoting the generation of power from renewable energy sources, ANRE is under the obligation to approve, by 1 March 2016, the mandatory green certificates acquisition quota for 2015.

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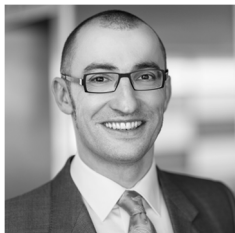
<sup>1</sup> <http://www.anre.ro/ro/energie-electrica/legislatie/surse-regenerabile/piata-de-certIFICATE-verzi-2015>.

<sup>2</sup> <http://www.anre.ro/ro/presa/comunicate/comunicat-15-01-2016-privind-cota-obligatorie-estimata-de-achizitie-de-certIFICATE-verzi-de-catre-operatorii-economici-cu-obligatie-de-achizitie-de-certIFICATE-verzi-pentru-anul-2015>.

## Editors

Țuca Zbârcea & Asociații's **Energy Practice Group** provides the full range of legal services to major electric power producers, renewable and alternative energy companies. Our lawyers advise on the regulatory components of M&A and other transactional work arising from the energy sector, including restructuring/de-regulation arising out of the wholesale and retail electricity/power market, as well as development of energy projects (such as electric, nuclear and hydro-electric plants, etc).

The team also covers financing, development and regulatory issues surrounding wind generation, solar, biomass energy generation and co-operates closely with the firm's Real Estate, Finance, Environment, and Corporate practice groups in relation to multi-billion large-scale investment projects.



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