

11 June 2013

# Legal Bulletin



## Energy

In this issue:

1. **Severe reductions of the support scheme for the generation of power from renewable energy sources**

### Severe reductions of the support scheme for the generation of power from renewable energy sources

---

Government Emergency Ordinance No. 57 of 4 June 2013 for the amendment and supplement of Law No. 220/2008 establishing the support scheme for the generation of power from renewable energy sources (“**Law No. 220/2008**”) has been published in the Official Gazette, Part I, No. 335 dated 07 June 2013 („**GEO No. 57/2013**”) and will enter into force on 1 July 2013.

The main amendments to the support scheme introduced by GEO No. 57/2013, as well as the expected impact on the renewable power market, are summarised herein below.

#### 1. **Postponing the allocation of a number of green certificates**

For the period 1 July 2013 - 31 March 2017, it is postponed the allocation of:

- 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.

According to GEO No. 57/2013, the postponement of the green certificates allocation shall be applied in relation to each MW of electricity generated from renewable energy sources and evacuated in the grid, no distinction being made from the perspective of the date when the electricity generation commenced. Therefore, we believe that the postponement measure shall apply both to the producers who commenced to produce electricity prior to the entry into force of GEO No. 57/2013, as well as to the future producers, who shall commence producing electricity after such date.

The postponed green certificates will be recovered gradually starting with 1 April 2017 (in case of photovoltaic and hydro energy) and starting with 1 January 2018 (in case of wind energy), but not later than 31 December 2020.

However, GEO No. 57/2013 does not set out the mechanism under which the green certificates will be recovered, leaving such matter in the regulatory competence of the National Authority for Regulation in the Energy Field (“ANRE”). Moreover, no guarantees are provided to the power producers as regards the sale of the recovered green certificates, as well as the sale price.

## **2. Cumulating the postponing measure with the adjustment of the support scheme**

A power producer who will be accredited for the support scheme after the entry into force of GEO No. 57/2013 will be affected both by the green certificates allocation postponement, as well as by the adjustment of the support scheme for overcompensation, if such an adjustment will have been already approved at the time of accreditation (for overcompensation matters please refer to the next item 3 below).

## **3. Overcompensation analysis**

Unlike the current overcompensation analysis procedure (which is done annually and which does not impose strict deadlines to the involved authorities), GEO No. 57/2013 provides ANRE obligation to monitor on a bi-annual basis the producers benefiting from the support scheme and to draft and publish a monitoring report within 90 days as of the end of the monitored period. Should the report conclude that the support scheme leads to overcompensation for one or more technology(ies), within 30 days as of publishing the report, ANRE must submit to the Government its proposals for decreasing the number of green certificates for the respective technology(ies). Such measures are adopted by means of Government decision within 60 days as of the submission by ANRE of its proposal, and apply to power plants/groups accredited for the support scheme after the entering into force of the relevant Government decision.

The first monitoring report based on which the Government may amend the number of green certificates is that referring to the year 2012, being thus eliminated the provisions of the Law No. 220/2008 stating that no overcompensation measures can be adopted earlier than 1 December 2014 for photovoltaic producers and earlier than 1 December 2015 for power producers using other types of renewable energy sources.

As a consequence, we can expect a twice-yearly intervention from the Government for reducing the green certificates number. In addition, considering the tight overcompensation calendar imposed by GEO No. 57/2013, the reduction will be implemented on a very short notice.

#### 4. Additional limitations which may be imposed by ANRE

Article II of GEO No. 57/2013 contains an unclear provision which reads as follows:

---

*„(3) The Romanian Energy Regulatory Authority 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, by using the green certificate promotion system, on the basis of firm agreements concluded with each accredited producer.”*

---

According to such provision, ANRE will impose additional limitations to the support scheme by means of annual quotas. However, it is not clear the object of such quotas (namely if they will limit the quantities of renewable power which will be taken into the national power system or the quantities benefiting from the support scheme), what criteria will be used for the establishment of such quotas and how they will be applied.

Nevertheless, if it is envisaged the limitation by ANRE of the quantities of renewable power which will be taken into the national power system, such a provision infringes the principle of guaranteed access to the grid established by Law No. 220/2008 for the renewable power benefiting from the support scheme.

#### 5. Accreditation limits

GEO No. 57/2008 introduces a limitation to the renewable power plants which may be accredited for the support scheme, up to the annual aggregate value of installed capacities which will be established for each calendar year by means of Government decision, based on the updated data from the National Action Plan in the Renewable Energy Field (“PNAER”) (PNAER is available for download on the following website: [www.minind.ro/pnaer/pnaer\\_29%20iunie\\_2010\\_final\\_alx.pdf](http://www.minind.ro/pnaer/pnaer_29%20iunie_2010_final_alx.pdf)). After such limit is reached, the accreditation shall be ceased until the limits set out in the Government decision can be met.

Imposing such an accreditation limit creates significant practical problems for the renewable power developers as, upon initiating the construction works, they will not have any guarantees that they will fall within the accreditation limits upon commissioning. We estimate that such uncertainty will have a high impact on the future bankability of the projects.

## **6. Limitations to the green certificates trading**

As regards the green certificates trading, GEO No. 57/2013 introduces the same principles as those imposed last year for the power trading. Hence, the green certificates must be traded in a transparent, centralised and non-discriminatory manner, on the centralised markets managed by OPCOM.

Consequently, as of 1 July 2013, the green certificates may no longer be traded through sale purchase agreements concluded by means of direct negotiations. In addition, such amendment triggers the additional concern that the power producers can no longer ensure the long term sale of the green certificates, as no such trading platform exist on the centralised market operated by OPCOM. We estimate that such limitation will significantly impact on the bankability of the projects.

A new limitation refers to the entities which can participate on the green certificates market. According to GEO No. 57/2013, the green certificates may be traded solely by renewable power producers and by the power producers/suppliers who have the obligation to acquire a certain quota of green certificates, thus being excluded the holders of power supply license which do not fall under the acquisition obligation.

We note that GEO No. 57/2013 left unchanged Article 10 (1) of Law No. 220/2008 which provides that the green certificates are traded by renewable power producers and by power suppliers, on both segments of the green certificates market, *i.e.* on the centralised market and on the bilateral agreements market. Despite the contradiction, we believe that it could be sustained that the will of the legislator to change such trading rules result undoubtedly from GEO No. 57/2013, so that the provisions of Article 10 (1) can no longer be invoked.

## **7. Exclusion from the support scheme of the power generated in excess of that notified through physical notifications**

GEO No. 57/2013 excludes from the application of the support scheme the quantities of renewable power delivered by dispatchable generation units, which exceed the quantities notified through the hourly physical notifications submitted by the power producers to the transmission and system operator. Such a limitation significantly affects the power producers using uncontrollable renewable sources, such as wind or sun.

## **8. Exclusion from the support scheme of the photovoltaic plants developed on land qualified as agricultural upon the enforcement of GEO No. 57/2013**

An additional exclusion from the support scheme refers to the photovoltaic plants built on lands which, upon the entering into force of GEO No. 57/2013 (*i.e.* 1 July 2013), are qualified as agricultural lands. Hence, although the Romanian law allows (with specific exemptions) for the removal of the lands from the agricultural circuit (by following a specific procedure) so as to be used for construction purposes, the photovoltaic power

plant built following the application of such a procedure will not benefit from the support scheme. No such restrictions apply to other types of renewable technologies.

#### **9. Exemptions from the support scheme applicable to power consumers**

Certain final consumers will be exempted from the obligation to pay the green certificates value for part of their energy consumption. The requirements for qualifying for the exemption, as well as the exempted quantities shall be approved through Government decision after the notification and approval thereof by the European Commission.

Considering the previous drafts of the GEO No. 57/2013, it seems that the intention is still to exempt the big consumers with a consumption exceeding a certain threshold, after obtaining the clearance from the European Commission in respect thereof.

#### **10. Financial guarantees for the issuance of grid connection permits**

Upon the issuance of the grid connection permits, the grid operator has the right to request the applicant financial guarantees. The value and the manner in which such guarantees may be used will be established by ANRE.

We note that rules connected to the financial guarantees are included in the draft of Regulation for the connection of users to public interest grid, which was submitted by ANRE for public consultation in March this year. According to such draft, the value of the financial guarantee is calculated as a percentage from the connection tariff and will be inserted in the grid connection permit. Also, the financial guarantee must be established within 3 months as of the issuance of the grid connection permit under the sanction that the grid connection permit ceases to be valid.

Such measure will contribute to the decrease of the number of grid connection permits to be issued in the future, by eliminating the projects for which the financing is uncertain.

*[sorin.vladescu@tuca.ro](mailto:sorin.vladescu@tuca.ro)*

*[mihaela.alexandrescu@tuca.ro](mailto:mihaela.alexandrescu@tuca.ro)*

## 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, Corporate practice groups in relation to multi-billion large-scale investment projects.



Sorin Vlădescu  
Partner  
+4 021 204 88 95  
sorin.vlădescu@tuca.ro



Mihaela Alexandrescu  
Managing Associate  
+4 021 204 88 90  
mihaela.alexandrescu@tuca.ro

### TUCA ZBARCEA ASOCIATII

Șos. Nicolae Titulescu nr. 4-8  
America House, Aripa de Vest, et. 8  
Sector 1, 011141, București, România  
T + 4 021 204 88 90  
F + 4 021 204 88 99  
E office@tuca.ro  
www.tuca.ro

Follow us on:   

This material is for reference only. It does not seek to provide legal advice, which may be requested according to each specific legal issue and may not be relied upon for any purposes whatsoever. For details and clarifications on any of the topics dealt in this Legal Bulletin, please do not hesitate to contact the attorneys indicated hereinabove.