

24 March 2014

Legal Bulletin



Energy

In this issue:

1. Approval by law of the Government Emergency Ordinance No. 57/2013 whereby severe reductions to the green certificates support scheme had been introduced

Approval by law of the *Government Emergency Ordinance No. 57/2013* whereby severe reductions to the green certificates support scheme had been introduced

Law No. 23 of 14 March 2014 approving the Government Emergency Ordinance No. 57 of 4 June 2013 (“GEO 57/2013”) for the amendment and supplement of Law No. 220/2008 establishing the support scheme for the generation of power from renewable energy sources („Law 220/2008”) was published in the Official Gazette, Part I, No. 184 dated 14 March 2014 („Law 23/2014”) and entered into force on 17 March 2014.

As a preliminary comment, on 19 March 2014 the Constitutional Court rejected as inadmissible the non-constitutionality objection filed by the President against Law 23/2014.

The main amendments approved by Law 23/2014 and the estimated effects are summarised herein below.

1. It is postponed only the *trading* of green certificates, not the actual *allocation* thereof

While the main postponement principles laid down by GEO NO. 57/2013 remain unchanged (such as number of postponed green certificates, postponement and recovery periods), it is specified that the *trading* of green certificates is postponed, instead of the *allocation* of green certificates, as mentioned in GEO No. 57/2013.

Hence, this provision would imply that the power producers will be allocated the entire number of green certificates to which they are entitled, but they will not be able to trade the postponed green certificates.

2. The postponing measure will not cumulate with the adjustment of the support scheme for overcompensation

The confusion created by the different interpretations given to the application of the *postponing measure* cumulatively with that of the *adjustment of the support scheme due to overcompensation* is put to an end.

Thus, Law 23/2014 expressly states that the postponing measure applies only to power plants accredited before 31 December 2013, while the adjustment measures adopted by means of Government decisions apply to the power plants accredited for the support scheme starting from 1 January of the year subsequent to the relevant Government decision.

In fact, Government Decision No. 994 of 11 December 2013 whereby the first adjustment measures were implemented expressly provides that it applies only to power plants (to be) accredited for the support scheme after 1 January 2014.

We estimate that this change will unlock to a certain extent the investments in the renewable energy sector.

3. For the period 2014-2020, the quotas of electricity generated from renewable energy sources (E-RES) benefiting from the support scheme will be established annually by Government decision following ANRE's proposal

The annual quotas of E-RES benefiting from the support scheme for the period 2014-2020 which were provided by Law 220/2008 are eliminated. These quotas will be estimated, published and communicated by ANRE to the Government by 30 June for the subsequent year and will be approved by the Government within 60 days of the communication thereof by ANRE. Exceptionally, the 2014 quota will be determined by ANRE within maximum 3 days as of the entering into force of Law 23/2014 (*i.e.* by 20 March 2014) and will be approved by the Government by 31 March 2014.

ANRE published on its website the 2014 quota of E-RES benefiting from the support scheme and it equals 11.1% of the final gross electricity consumption. The grounds presented by ANRE for such a low quota is that Romania is already close to reaching its 2020 target concerning the percentage of E-RES in the final gross electricity consumption, we can expect a low quota for the year 2014. Such a low quota will trigger an excess of green certificates on the market which will subsequently cause the decrease of the green certificates trading price.

4. Elimination of the quarterly green certificates acquisition quota

It is eliminated the obligation of the suppliers/producers to acquire on a quarterly basis a certain number of green certificates, being maintained only the annual mandatory

acquisition quota. This amendment may decrease the liquidity of the green certificates market throughout the year.

5. Elimination of the guarantee fund which was aimed at acquiring the green certificates in excess

As a consequence of eliminating the quarterly green certificates acquisition quota, it is eliminated also the guarantee fund to which the penalties for failure to fulfil said quota were paid. Considering that the guarantee fund had as purpose to buy from the power producers the green certificates which, although offered on the market, remained unsold, this amendment triggers the inexistence in the current regulations of a mechanism for dealing with the excess of green certificates. Nevertheless, we note that the guarantee fund has never been operational.

6. The green certificates may be invoiced to consumers after the acquisition thereof by the suppliers/producers

The value of the green certificates may no longer be invoiced to consumers independently from their acquisition and it is no longer calculated based on the average weighted price registered on the green certificates market during the previous 3 months. According to Law 23/2014, the value of the green certificates may be invoiced to the power consumers only after the acquisition thereof by the suppliers/producers. Additionally, said value is calculated based on the price for which the green certificates were acquired by the respective supplier/producer.

By 1 September of each year, the value of the green certificates corresponding to the previous year must be set off in equal instalments. This value is calculated based on (1) the mandatory acquisition quota, (2) the supplied/consumed electricity and (3) the average weighted price for the green certificates used by the respective supplier/producer in the relevant year.

7. Decrease of the green certificates validity to 12 months

The validity of the green certificates is decreased from 16 months to 12 months. Although it is not expressly mentioned in Law 23/2014, we estimate that, in case of the green certificates postponed from trading, the 12 months validity period will start running only from the date the postponement is ceased.

8. Limitations to the postponement measure in case of power plants having benefited from investment aids

In case of the power plants having benefited from investment aids, the postponement measure will be applied only to the extent that it does not lead to a sub-unitary number of green certificates.

9. New Regulation for accessing the electricity market to be adopted by the Government

Upon the proposal of the Energy Department, the Government will adopt a *Regulation for accessing the electricity market up to the safety limit of the National Electric Power System*. In the absence of any details on this regulation, the scope thereof is unclear at this moment.

10. Elimination of the accreditation limits

Law 23/2014 repeals the provisions of the GEO 57/2013 entitling the Government to establish for each calendar year, the aggregate installed capacity up to which new power plants may be accredited for the green certificates support scheme.

The inexistence of such an accreditation limit, corroborated with an expected low annual quota of E-RES benefiting from the support scheme will trigger an excess of green certificates on the market.

11. Execution of PPAs by producers operating small power plants

As of 17 March 2013, the following categories of producers may conclude power and green certificates sale-purchase agreements by means of direct negotiations with the suppliers supplying electricity to final consumers:

- (1) the power producers operating power plants accredited for the green certificates support scheme and the aggregated capacity whereof does not exceed 1 MW per producer; and
- (2) the power producers operating high efficiency cogeneration plants based on biomass the aggregate installed capacity whereof does not exceed 2 MW per producer.

12. Estimated mandatory acquisition quota for the year 2014

ANRE published on its website the estimated mandatory quota for the green certificates acquisition for the year 2014, and it amounts to 0.237 green certificates/MWh.

sorin.vladescu@tuca.ro

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

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.