

# ROMANIAN GOVERNMENT DECISION

H.G. nr. 1215/2009

regarding the criteria and conditions for implementing the support scheme on the promotion of high efficiency cogeneration based on the useful heat demand

Having regard to the Art. 108 of the Romanian Constitution, republished, and to the Art. 9 para. (3) of Government Decision no. 219/2007 on the promotion of cogeneration based on useful heat demand,

The **Romanian Government** has adopted this Decision.

## CHAPTER I

### General provisions

- Art.1. The present Decision establishes the legal frame compulsory for implementing the support scheme, bonus type, on the promotion of high efficiency cogeneration based on the useful heat demand, established through article 9 para. (2) of GD no.219/2007 on the promotion of cogeneration based on useful heat demand, hereinafter called the support scheme.
- Art.2. The present Decision shall apply to:
- a) producers of electricity and heat in high efficiency cogeneration;
  - b) electricity consumers;
  - c) electricity suppliers;
  - d) network operators;
  - e) the administrator of the support scheme.
- Art.3. For the purposes of this Decision, the following definitions shall apply:
- a) *Support scheme administrator* – C.N. “Transelectrica” S.A / S.C. OPCOM S.A.;
  - b) *Self consumption* – electricity or heat consumption from own production used for the activities of the undertaking, others than electricity and heat generation; self consumption does not include own technological consumption of the generation unit;
  - c) *Unmeet bonus* - amount granted as a bonus for the quantity of electricity that was not produced from high efficiency cogeneration;
  - d) *Own technological consumption of the generation unit* - electricity and/or heat consumption of a cogeneration power plant necessary in order to generate heat and electricity;
  - e) *Own technological consumption of the electricity grid* - time integral over a pre-defined interval of the difference between the total active power upon input/output from a network, from one network side or one network item;
  - f) *Regulated contracts* - sale-purchase regulated electricity contracts concluded between electricity and heat cogeneration producers and suppliers in order to cover the consumption

- of the non-eligible consumers, respectively between the above mentioned producers and network operators in order to cover own electricity consumption of the electricity grid;
- g) *The contribution for high efficiency cogeneration* - flat tariff, lei/kWh, paid each month by every electricity consumer and suppliers who exports electricity, in order to create the required funds for applying the support scheme;
  - h) *Electricity produced from high efficiency cogeneration* - electricity produced from a cogeneration process that meets the criteria for high efficiency provided by Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC, implemented through Government Decision No. 219/2007, and that is certified by ANRE;
  - i) *Exported electricity* - electricity produced in Romania and sold by suppliers to other customer/suppliers outside Romanian territory;
  - j) *Network operators* – the transmission system operator and the distribution system operators;
  - k) *Overcompensation evaluation period* – a determined period of time of 1 year, taken into account in the analysis of the over compensation or of the unmet bonus; by exception, the first period is 3 years;
  - l) *Support scheme on the promotion of electricity produced from renewable energy sources* – the promotion system approved through Government Decision 1892/2004 regarding the promotion system of electricity generation from renewable sources, subsequently modified and completed;
  - m) *Overcompensation of the activity* – the value of the aid granted for the support scheme laid down in this Decision that exceeds the amount necessary to entirely cover the costs for electricity and heat from cogeneration, including the real rate of return of maximum 9% before taxes, calculated taking into account the incomes from selling electricity and heat produced in cogeneration;
  - n) ANRE – Romanian Energy Regulatory Authority;
  - o) SEN - National Power System;

## **CHAPTER II**

### **Implementation of the support scheme**

- Art.4. ANRE draws up, within 5 months from the entry into force of the present Decision, the subsequent regulatory frame compulsory for implementing the support scheme.
- Art.5. When issuing the regulatory frame compulsory for implementing the support scheme stated in , ANRE shall aim:
- a) the commercialization of the electricity produced from high efficiency cogeneration on the competitive electricity market;
  - b) the taking over on regulated contracts of the electricity produced from high efficiency cogeneration, that was not traded on the electricity competitive market, in the limit of the demand of the electricity covered by the regulated contracts;
  - c) the promotion of investment in high efficiency cogeneration units, with prior approval of ANRE of new or refurbishment projects of the cogeneration units, within the electric capacity limits foreseen in para. (1);
  - d) the continuity of heat supply, at reasonable tariffs, to the customers.
- Art.6. ANRE regulation framework comprises at least the following regulations:
- a) Procedure for approving new or refurbishment projects for the cogeneration units;

- b) Regulation for qualifying the electricity from high efficiency cogeneration;
- c) Methodology for determining and monitoring costs and revenues of the electricity and heat from cogeneration ;
- d) Methodology for determining and adjusting the price for heat produced and delivered from cogeneration plants which benefit of the support scheme;
- e) Methodology for determining and adjusting the bonus for high cogeneration efficiency;
- f) Methodology for determining and monitoring the contribution for high efficiency cogeneration;
- g) Methodology for determining and monitoring the over-compensation of the cogeneration of electricity and heat produced from high efficiency cogeneration;
- h) Procedure on the establishment of the quantity of electricity produced from high efficiency cogeneration and traded on regulated contracts;
- i) Procedure on determining and monitoring the quantity of electricity produced from high efficiency cogeneration and injected into SEN, respectively the useful heat produced from high efficiency cogeneration;
- j) Regulation on collecting the contribution for high efficiency cogeneration and bonus payment for high efficiency cogeneration;
- k) Regulation regarding takeover of the electricity produced in high efficiency small scale cogeneration units and high efficiency microcogeneration units;
- l) Methodology on establishment of selling prices for electricity produced in high efficiency small scale cogeneration units and high efficiency microcogeneration units.

Art.7. (1) The support scheme is granted only to those generators of electricity and heat from cogeneration who submit an application to ANRE for granting this support for the electricity produced from high efficiency cogeneration.

(2) The support scheme is granted to the producers referred to in para. (1) who own and/or commercially operate cogeneration units, for the quantity of electricity produced from high efficiency cogeneration and effectively injected into SEN.

(3) The producers of electricity and heat in cogeneration from renewable sources, have the right to chose between the support scheme referred to in this Decision, and the support scheme for the promotion of the electricity produced from renewable sources.

Art.8. (1) The support scheme shall be applied during the period 2010-2023.

(2) The producers of electricity and heat from cogeneration benefit of the support scheme presented in this Decision, for a period of maximum 11 consecutive years, without exceeding the deadline provided in para. (1).

Art.9. (1) The maximum installed capacity for high efficiency cogeneration units, benefiting from the support scheme is of 4000 MW, during the period of application of the scheme.

(2) The limit from para. (1) can be modified only by decision of Government, on the basis of ANRE proposal.

(3) After reaching the limit referred to in para. (1), and in para. (2) the scheme is granted only for high efficiency cogeneration units replacing existing cogeneration units.

(4) ANRE publishes, within 6 months from the entry into force of the present Decision, the list of producers of electricity and heat from high efficiency cogeneration, as well as the installed capacity in the existing cogeneration units fulfilling the qualification conditions at the date the Decision enters into force and that is eligible for the support scheme.

(5) ANRE updates the information of para. (4), publishing within 15 days from the notification date, the title of the new or refurbishment projects for cogeneration units, approved by ANRE, that may benefit from the support scheme, as well as the overall installed capacity of the approved projects.

### **CHAPTER III**

#### **The bonus for the electricity produced from high efficiency cogeneration**

Art.10. (1) The bonus is that amount of money a producer of electricity and heat from cogeneration receives for every electricity unit (MWh) produced from high efficiency cogeneration, and injected into the SEN.

(2) The Bonus is granted on a monthly basis for the electricity produced from high efficiency cogeneration, injected into SEN sold on the competitive electricity market and/or on regulated contracts.

(3) Within 30 days from the entry into force of the present Decision, ANRE approves by order of the president the value of the bonuses granted for each year of the period mentioned in para. (2), and the procedure for bonuses adjustment.

(4) The bonuses referred to in para. (3) are calculated for three types of fuels used for electricity and heat cogeneration: solid fuel, gas supplied through the transmission network, and gas supplied through the distribution network.

(5) Annually ANRE nominates the electricity and heat cogeneration producers benefiting from the support scheme, as well as the bonuses and quantities of high efficiency electricity benefiting the following year of the support scheme, for each producer.

(6) For the producers using fuel mixes, the value of the bonus referred to in para. (5) is established based on the main fuel taken into consideration for establishing the annual quantity of high efficiency electricity referred to in para. (5).

(7) For the electricity traded on the competitive market, the bonus granting for the high efficiency cogeneration electricity is conditioned by the metering units' existence, ensuring the hourly metering of the sold electricity and heat quantities.

### **CHAPTER IV**

#### **The Contribution for Cogeneration**

- Art.11. The funds necessary for implementing the support scheme are set up by the contributions for cogeneration monthly paid by all electricity consumers and also by the suppliers who export electricity.
- Art.12. (1) Each year ANRE establishes the value of the contribution for cogeneration, based upon the incomes necessary for paying the bonus and for the administration of the support scheme, and based upon the electricity quantity necessary for covering the internal consumption curve, respectively for export.
- (2) The value of the contribution for cogeneration is yearly established through an Order of ANRE President, and can be modified each half year in compliance with para. (2).
- Art.13. (1) Electricity produced in other European Union Member States in high efficiency cogeneration and certified by guarantees of origin and sold to the electricity consumers in Romania, benefit of the return of the cogeneration contribution, on the basis of the provisions of the art. 25 and 90 of the EC Treaty.
- (2) In the case specified in para. (1), suppliers injecting electricity produced in high efficiency cogeneration, certified by guarantees of origin, into the Romanian interconnection lines, may request the refund of their respective contribution in maximum 60 days from the end of each month in which the respective electricity was traded.

## **CHAPTER V**

### **The Administration of the Support Scheme**

- Art.14. (1) CN Transelectrica SA/S.C. OPCOM S.A. is responsible for the administration of the support scheme, and its main responsibilities are: collecting the monthly contribution for cogeneration and the payment of the monthly bonuses .
- (2) Within 60 days from the setting up by ANRE of the regulation frame referred to in of this Decision, CN Transelectrica SA/S.C. OPCOM S.A. set up the procedures and commercial regulations necessary in order to fulfill the prerogatives deriving from the present Decision and submit them for approval to ANRE.
- (3) CN Transelectrica SA/S.C. OPCOM S.A. revenues for administrating the support scheme shall be included in the cogeneration contribution, their amount being yearly approved by ANRE.
- Art.15. (1) The contribution for cogeneration is collected in a dedicated account of C.N. Transelectrica SA/S.C. OPCOM S.A.
- (2) CN Transelectrica SA/S.C. OPCOM S.A. has the obligation to monthly collect the cogeneration contribution, established according to the previsions of para. (2).
- (3) The suppliers delivering electricity to customers and the suppliers with contracts of export have the obligation to monthly issue the invoices for electricity delivered and clearly mention in the invoice the cogeneration contribution as it was established according to the previsions of para. (2).
- (4) Within 5 days of cashing, but not later than 20 days from the issuance of invoice, the electricity suppliers have the obligation to transfer to C.N. Transelectrica SA/S.C. OPCOM S.A. account the value of the invoiced contribution for cogeneration.

- (5) In the case specified in art. 13, C.N. Transelectrica S.A. / S.C.OPCOM S.A. has the obligation to reimburse the contribution for cogeneration within maximum 30 days from the supplier request.
- Art.16. C.N. Transelectrica S.A./S.C. OPCOM S.A. monthly pays the bonus to producers of electricity and heat from high efficiency cogeneration who benefit from the support scheme, within maximum 30 days starting with the last day of each month.
- Art.17. (1) Each year in June, ANRE evaluates the incomes from the collection of the contribution for high efficiency cogeneration and the costs of paying bonuses, registered by C.N. Transelectrica SA/S.C. OPCOM S.A. arisen between January-Mai from the application of the scheme, as well as the incomes forecasted to arise from the high efficiency cogeneration contribution gathered and the costs estimated for paying bonuses, between June- December.
- (2) ANRE adjusts the value of the contribution for high efficiency cogeneration to be invoiced in the second half of the year if, as a result of the evaluation mentioned under para. (1), are identified deviations from the forecast values taken into consideration upon establishing the annual contribution for high efficiency cogeneration, as it is set up in para. (2), deviations that can cause a variation of more than +/- 2,5% of the cogeneration contribution value during the second half of the year.
- Art.18. (1) Non-fulfillment or delayed fulfillment of the obligations regarding the cogeneration contribution or bonus payment shall be sanctioned according to contract terms.
- (2) Applying the penalty does not absolve the suppliers and Compania Națională Transelectrica S.A. from paying the cogeneration contribution and the bonus.

## **CHAPTER VI**

### **Transitional and final provisions**

- Art.19. In order to implement the support scheme, without prejudice to regulations laid down in , ANRE establishes, at least, the following data:
- a) the list of producers of electricity and heat from high efficiency cogeneration that benefits from the support scheme, the electric capacity for high efficiency cogeneration and the annual quantity of electricity qualified as being produced from high efficiency cogeneration;
  - b) the amount of electricity produced from high efficiency cogeneration estimated to be delivered into the electrical network of SEN next year by each producer benefiting from the support scheme;
  - c) the amount of electricity produced from high efficiency cogeneration estimated to be sold on regulated contracts in the following year;
  - d) the bonus to be granted to the producers of electricity and heat from cogeneration,
  - e) the price for heat produced and delivered from cogeneration units that benefit from support scheme;
  - f) the selling price of the electricity produced from high efficiency cogeneration and covered by regulated contracts.
  - g) the annual revenue requirement forecast for the payment of bonuses for high efficiency electricity.

- h) the half yearly correction of the revenue requirement for the payment of bonuses as a result of differences between the quantities of electricity estimated to be sold and really sold;
- i) the annual cogeneration contribution forecast to be collected from suppliers of electricity customers and suppliers exporting electricity;
- j) the half year correction of the cogeneration contribution due to differences between the quantities of electricity estimated to be sold and effectively sold by producers of heat and electricity from cogeneration, electricity consumers and suppliers exporting electricity.
- k) the overcompensation of the production of electricity and heat from high efficiency cogeneration;
- l) the revenue requirement of C.N. Transelectrica SA/S.C. OPCOM S.A. to administrate the support scheme.

Art.20. In order to benefit of the support scheme, the electricity and heat producers in cogeneration are obliged to sell the electricity produced in high efficiency cogeneration on the electricity competitive market, according to the regulations issued by ANRE

Art.21. (1) Electricity produced in high efficiency cogeneration which was not sold on the electricity competitive market may be traded on regulated contracts during the period of the scheme application, in the limit of the demand of the electricity covered by the regulated contracts, according to the regulations issued by ANRE.

(2) The selling price of the high efficiency cogeneration electricity covered by regulated contracts is established each year, by Order of ANRE President at the level of 90% of the Day Ahead Market average price, in the previous year.

(3) For the period 2010-2012, the selling price of high efficiency cogeneration electricity covered by regulated contracts, can not be less than 40€/MWh, excluding VAT.

(4) The values in lei of the limit provided in para. (3) is calculated according to the provisions of Law 571/2003 regarding the Tax Code with subsequent amendments on the use of exchange rate for calculating the excise duty on electricity.

(5) In the case of electricity offer produced in high efficiency cogeneration which will be traded on regulated contracts is higher than the electricity demand that will be covered by these contracts, the amount of the electricity traded by regulated contracts for each producer will be adjusted by the ratio between the necessary amount of electricity covered by regulated contracts and the total amount of electricity offered by the producers to be traded on the regulated contracts.

Art.22. (1) ANRE establishes the price for heat produced and delivered from cogeneration plants that benefit from the support scheme at the same value as the price for separate heat production using the same fuel and with the harmonised efficiency reference value for separate heat production set by EC Decision no. 74/2007 of 21 December 2006 establishing harmonised efficiency reference values for separate production of electricity and heat in application of Directive 2004/8/EC of the European Parliament and of the Council.

(2) Within 30 days from the date of entry into force of this decision, ANRE approves by Order of the President, the heat prices for the three fuels referred to in para. (4) and the adjustment procedure.

- Art.23. (1) Annually, during the fourth quarter, ANRE analyses the costs and revenues from the high efficiency cogeneration electricity, respectively heat, estimated to be recorded the following year by each producer benefiting from the support scheme.
- (2) If, in the analysis referred to in para. (1), it is found that the application of the support scheme for the next year is estimated to record an overcompensation of the production of electricity and heat in high efficiency cogeneration, for that year, ANRE can reduce the value of the bonus established in compliance with para. (3)
- (3) If, in the analysis performed in accordance with the provision of para. (1) it is found that a power plant is fully depreciated, the bonus is no longer granted.
- Art.24. (1) Within 3 months from the end of each over compensation evaluation period, ANRE analyzes if, by the application of the support scheme during the previous year the producers of electricity and heat from cogeneration have had an over compensation for electricity and heat cogeneration or if an unmet bonus was granted.
- (2) If an over compensation or if an unmet bonus was granted, within the period provided in para. (1) ANRE notifies to the producer of electricity and heat from high efficiency cogeneration the value of the over compensation/ unmet bonus, the producer being liable to transfer the notified sum into C.N. Transelectrica SA/S.C. OPCOM S.A account, within 15 working days from notification.
- Art.25. (1) Annually, during the IV quarter, ANRE analyses the factors affecting the change of the bonuses values and of the prices for heat produced and delivered from cogeneration plants benefiting from the support scheme;
- (2) If, in the analysis referred to in para. (1), deviations of more than  $\pm 2.5\%$  are found in comparison to the forecasted values considered for bonus establishing according to the provisions of (3), ANRE approves by Order of the President, the adjusted value of the bonuses and the prices for heat, by application of the adjustment procedures.
- Art.26. (1) Beneficiaries of the support scheme are required to send to ANRE data and documents underlying the costs and the revenues, estimated and achieved, in particular:
- a) quantities of fuel burnt by types of fuel, the purchase prices of each fuel, the number of CO<sub>2</sub> certificates purchased on the market, the purchase prices of CO<sub>2</sub> certificates, the CO<sub>2</sub> certificates sold on the market, selling prices of CO<sub>2</sub> certificates, depreciation of cogeneration plant benefiting of the support scheme;
  - b) quantities of electricity for each type of contracts on the competitive and regulated electricity market, with the average price for each type of contract;
- (2) ANRE analyses the data submitted and evaluates the bonus and the overcompensation according to these data. Incomes from the sale of CO<sub>2</sub> certificates on the market are deducted from the real costs.
- (3) ANRE may require to the beneficiaries of the support scheme the transmission of any additional data / information necessary for calculation of the bonus and the overcompensation.
- Art.27. (1) For producers and household consumers, owning high efficiency microgeneration power plants and high efficiency- small scale cogeneration units and who deliver to the SEN a part of the generated electricity, the followings apply:

- a) The supplier that has commercial arrangements with the producer, respectively the consumer referred to in para. (1) is required to take over the electricity delivered into the grid, at the request of the producer or consumer, mentioned above.
  - b) The purchasing price of the electricity produced from high efficiency cogeneration and took over by the supplier under the provisions of para. (1), item a), is annually established by ANRE Order, on the basis of its own regulations.
- (2) For household consumers, the provisions of para. (1) apply only if they use electricity and heat mainly produced for self consumption and if they have meters in compliance with legal provisions.
- (3) The producers, respectively consumers, referred to in para. (1) do not receive the bonus.
- Art.28. Submitting to ANRE, and to the administrator of the support scheme incomplete or incorrect data with the purpose of obtaining benefits from the support scheme is penalised according to the legal provisions.
- Art.29. Support measures of state aid nature provided by this Decision shall be granted only after approval by the European Commission, according to European regulations in force.