

ORDINANCES OF THE ROMANIAN GOVERNMENT

GOVERNMENT OF ROMANIA

EMERGENCY ORDINANCE

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on the amendment and completion of Law no. 220/2008 on establishing the promotion system for the production of energy from renewable energy sources

Taking into account the Decision of the European Commission: State Aid SA. 33134 (2011/N) – Romania – „Green certificates for promoting the production of electricity from renewable sources” to authorize the support scheme, as a consequence of the relevant community provisions according to which this support scheme refers to state aid or is susceptible of being state aid, and the necessity of correlating Law no. 220/2008 on establishing the promotion system for production of energy from renewable energy sources, republished, as subsequently amended and completed, with the provisions of the community legislation, including the above-mentioned decision,

considering that the application of Law no. 220/2008, republished, as subsequently amended and completed, contributes to the development of investments in the field of producing electricity from renewable sources, having as effect the fulfilment of the national objective concerning the reaching of a quota of 24% of energy from renewable sources from the energy volume to be consumed by Romania in the year of 2020, provision specified in appendix I to Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 regarding the promotion of using energy from renewable sources, for the amendment and, subsequently, annulment of Directives 2001/77/EC and 2003/30/EC,

as such elements concern the public interest and represent emergency and extraordinary circumstances, which cannot be delayed,

pursuant to art. 115 para. (4) of the Romanian Constitution, republished,

The **Romanian Government** hereby adopts this emergency ordinance.

Art. I. – Law no. 220/2008 on establishing the promotion system for the production of energy from renewable energy sources, republished in the Official gazette of Romania, Part I, no. 577 of 13 August 2010, as subsequently amended and completed, is amended and completed as follows:

1. Nine new letters, letters ae) – am), shall be inserted under article 2, after letter ad), with the following content:

ae) *multi-fuel power plant* - electricity plant which produces electricity using renewable and conventional power sources, which are used in the separated or in the same combustion plants/boilers if the used energy content of conventional fuel is not higher than 10 % from total energy content;

af) *overcompensation* – situation when, considering the specific average technical and economic indicators achieved for a period of minimum 3 years for each technology, from the cost-benefit

analysis performed for the set of generation capacities using the same technology, it results an internal rate of return higher by 10% than the value considered for the relevant technology when authorizing the promotion system;

ag) *cost-benefit analysis* - analysis performed to determine the efficiency of the investments made in production of electricity from renewable sources of energy, achieved by using the discounting technique applied to the investment costs, operating costs and incomes generated during the project's lifespan;"

ah) *internal rate of return* - indicator resulted from a cost-benefit analysis expressing the return of an investment project, namely the discounting rate for which the discounted incomes equal the discounted expenditures;

ai) *energy crop*: agricultural or non- agricultural crop developed to obtain the biomass used for the purpose of producing electricity and heat.

aj) *priority access to the grid for energy produced from renewable resources* – totality of rules, commercial and technical conditions upon which for some of the energy producers, it is granted the possibility to undertake at anytime the energy produced and to sell the entire quantity of energy produced at a certain moment, depending on the capacity of the grid connection and the availability of the units/eligible resources.

ak) *guaranteed access to the grid for energy from renewable sources* – totality of rules, technical and commercial conditions upon which for the energy produced from renewable resources qualified to the Green Certificates promotion scheme, contracted on the electricity market, there is granted the access to the grid

al) *accreditation* – activity developed by ANRE based on its own regulation, by which a business operator owning power plants using renewable energy sources is granted the right to benefit from the promotion system provided by this law;

am) *qualification* – activity developed by ANRE based on its own regulation, by which the volume of electricity produced in high-efficiency cogeneration in a cogeneration plant/group is established."

2. Letter h) of article 3, paragraph (1) shall be modified and shall have the following content:

"h) landfill gas;"

3. Letter c) of article 3, paragraph (2) shall be modified and shall have the following content:

c) 7 years, for electricity produced in the wind groups/plants, which have been used before for producing electricity in other states should they be used in isolated electricity systems or should they have been operating in Romania before the application of the promotion scheme provided by the present Law;

4. Under article 3, paragraphs (3) and (4) shall be modified and shall have the following content:

"(3) The promotion system established by this law shall only be applied to the producers for the electricity produced from renewable sources, including electricity produced during the testing period, based on the accreditation decision issued by ANRE pursuant to the provisions of art. 6 para. (6), provided that the commissioning, respectively the refurbishment of groups/plants are completed until the end of 2016.

(4) In view of applying the promotion system established by this law, the accreditation of power plants can be performed in stages, depending on the commissioning of each individual power group within a power capacity containing several such power groups, case in which the application period of the promotion system regulated by means of this law shall be applied differently, depending on the accreditation moment.”

5. Letters a) and c) of article 3, paragraph (6) shall be modified and shall have the following content:

“a) electricity produced from fuel originating from biomass, industrial and/or municipal wastes purchased from abroad, irrespective of the installed power of the power plant;

.....
c) electricity produced in plants using renewable and conventional sources in the same combustion system, if the conventional fuel energy content exceeds 10% of the total energy content

6. Art 3, para (7) will be replaced by the following text:

In case of electricity produced in cogeneration from renewable sources, the producers have the obligation to opt either for the support scheme for high-efficiency cogeneration promotion based on the useful heat demand, pursuant to Government Decision no. 1215/2009 on establishing the criteria and requirements necessary for implementing the support scheme for promoting high-efficiency cogeneration based on the demand for useful thermal power, or for the promotion scheme hereunder.

7. Under article 3, three new paragraphs, (8) – (11), will be inserted after paragraph (7), with the following content:

8) In case of producers of energy from renewable sources who benefited of green certificates prior to application of the promotion system hereunder, the application periods set out under para (2) shall be shortened according to the periods during which they already benefited of GCs.

(9) The producers of electricity from the renewable sources referred to under para. (1) letters e) – g) can only benefit from the promotion system established by this law if they hold certificates of origin for the biomass used as fuel or raw material.

(10) The certificates of origin mentioned under para. (9) are issued by:

a) the Ministry of Environment and Forests, for biomass originating from forestry and associated industries, as well as for biomass originating from industrial and municipal wastes;

b) the Ministry of Agriculture and Rural Development, for biomass originating from agriculture and associated industries.

(11) The certificates of origin mentioned under para. (10) are issued based on the procedures approved by order of the minister of environment and forests and, respectively, of the minister of agriculture and rural development.”

8. Under art 4, paragraphs (6) and (9) shall be modified and shall have the following content:

“(6) ANRE accredits the producers of electricity from renewable energy sources in order to benefit from the system of promotion by green certificates, under the requirements provided in

the Regulation for the accreditation of producers of electricity from renewable energy sources in order to apply the system of promotion by green certificates.

(9) ANRE determines by order, by the latest 1st of March of each year, the annual mandatory green certificates acquisition quota relevant to the previous year based on the quantities of energy produced from renewable sources and on the final electricity consumption in the previous year, however without exceeding the level corresponding to the mandatory quotas of electricity obtained from renewable sources, as set out under art. (4).

9. Art 6 is modified and will have the following content:

“(1) The transport and system operator issues green certificates to the producers on a monthly basis, for the quantity of electricity produced from renewable sources, deducting the energy necessary for the own technological consumption of the power plant.

“(2) The producers of energy from renewable sources benefit from a number of green certificates for the electricity produced and delivered according to the provisions of para. (1), as follows:

a) 3 green certificates for each produced and delivered MWh, if the hydroelectric plants are new, or 2 green certificates for each produced and delivered MWh, if the hydroelectric plants are refurbished, for electricity from hydroelectric plants with installed power of no more than 10 MW;

b) 1 green certificate for every 2 MWh from hydroelectric plants with a maximum of 10 MW installed power, which does not fit the conditions provided at letter a);

c) 2 green certificates until 2017 and one green certificate starting 2018 for each 1 MWh produced and delivered by the producers of electricity from wind power energy;

d) 2 green certificates for every MWh produced and delivered by the producers of electricity from the sources provided in art. 3 para. (1) let. d)- g);

e) 1 green certificate for every MWh produced and delivered by the producers of electricity from the sources provided in art. 3 para. (1) let. h) and i).

f) 6 green certificates for each MWh produced and delivered by the producers of electricity from sources provided in art. 3 para. (1) let. c);

(3) The isolated electricity system shall also benefit from the green certificate promotion system regulated by this law

(4) For the high efficiency cogenerated electricity produced in plants which use renewable sources of energy provided in art. 3 para. (1) let. d) - i) and qualified by ANRE as of high efficiency, in addition to the provisions of para. (2) let. d) and e) one green certificate shall be granted for every MWh produced and delivered.

(5) For the energy produced in plants which use biomass resulting from energetic crops, in addition to the provisions of para. (2), let d), one green certificate shall be granted for every MWh produced and delivered.

(6) ANRE has the following attributions:

a) it accredits the electric groups/plants which benefit from the promotion scheme, according to the Regulation for classifying the producers of electricity from renewable energy sources for the application of the promotion scheme;

b) it elaborates the regulatory framework for the monitoring of production costs/revenues from renewable sources for electricity producers which benefit from the promotion scheme by means of green certificates.

(7) By exception to the provisions of para (2) and (4), irrespective of the type of the renewable source used, the producers of electricity benefit from:

- a) 1 green certificate for every MWh produced and delivered during testing period;
- b) a number of green certificates determined by ANRE by reducing the number of green certificates set out under para (2), reducing the reference value of the investment per installed MW and maintaining the value of the IRR considered in the calculation submitted to the European Commission during the authorization of the promotion scheme, if the power plants benefit in addition from one or several state aids.

(8) Producers of electricity from renewable sources benefit from a number of green certificates pursuant to para (2)), starting with the calendar month during which ANRE's accreditation decision was issued based on the regulation referred to under para (5) letter a).

(9) The green certificates issued by the TSO have life time of 16 months

(10) The reduction of the mechanism of the green certificates foreseen at para (7), letter b) is set up by the ANRE in the Accreditation Regulation foreseen at art. 6, para (5), let a) and will be set-up in non-discriminatory way for all the beneficiaries related to the used technology

10. Art 7 is modifying and will have the following content:

Producers of electricity from renewable sources send, on a monthly basis, to the transport and system operator, the information required to determine the quantity of electricity produced from renewable sources which benefits from green certificates in the previous month, accompanied by:

- a) protocols confirming the measured values of the electricity supplied/consumed, executed together with the network operators, in case of producers supplying electricity in electricity networks;
- b) data regarding the quantities of electricity produced from renewable sources and delivered to consumers, in case of producers supplying electricity directly to consumers, including for end own consumption, other than own process consumption;

11. Art 8 is modifying and will have the following content:

(1) The quantity of electricity for which the obligation to acquire green certificates is set up includes:

- a) electricity acquired by suppliers of electricity, both to be sold to the end consumers and for the own consumption thereof.
- b) electricity used for own end consumption, other than own process consumption, by a producer of electricity;
- c) electricity used by a producer to supply electricity to the consumers connected through direct lines to the electricity plant;

(2) The suppliers of electricity and producers referred to under para (1) have the obligation to acquire a number of green certificates every year, equal to the product of the value of the annual

mandatory green certificate acquisition quota, as determined for the year in question, subject to the provisions of art. 4 para (9), and the quantity of electricity referred to under para (1), expressed in MWh, supplied annually to end consumers.

(3) The suppliers of electricity and producers referred to under para (1) have the obligation to send, on an annual basis, to ANRE, pursuant to the regulations in force, the quantities of electricity for which they have the obligation to acquire green certificates as per this law.

12. Under article 10, paragraph (3) shall be modified and shall have the following content:

“(3) Until the meeting of the national targets provided under art. 4 para. (2), the sale of electricity produced from renewable sources benefiting from the promotion system provided by this law shall only be performed in order to cover Romania’s final gross consumption of electricity, such electricity being accompanied by guarantees of origin issued in compliance with the provisions of art. 24.”

13. Art 11, para (3) and (4) are modifying and will have the following content:

(3) Starting 2011, the trade values mentioned in par (1) are indexed annually by ANRE according to the average annual inflation rate for the previous year, determined at EU’s Euro zone level, officially communicated by EUROSTAT.

(4) Within 15 days since publication of the average annual inflation rate by EUROSTAT, ANRE approves by order the minimum and maximum values determined according to the provisions of par (1) and (3), applicable for the year in progress.

14. The title of the chapter IV is modified and will have the following text:

‘Fulfilment of the mandatory green certificates acquisition quotas’

15. Art 12 is modified and will have the following content:

(1) By the 15th of April of each year, ANRE determines, for each supplier and for each of the individual producers who have the obligation to acquire green certificates, the degree of individual fulfilment of the annual mandatory green certificate acquisition quota of the previous calendar year, based on the information about the number of green certificates acquired and on the electricity consumed/supplied for consumption, according to the provisions of art. 8 para (1).

(2) Suppliers, as well as the producers referred to under art. 8 para (1) who do not fulfil the annual mandatory quota, have the obligation to pay for the equivalent value of the green certificates not acquired to the Environment Fund Administration, at the value of EUR 110 for each non-acquired green certificate, determined in RON according to the average value of the exchange rate determined by the National Bank of Romania for the month of December of the previous year.

(3) As of 2011, the value provided under para (2) is indexed on an annual basis by ANRE according to the average annual inflation rate for the previous year, determined at EU’s Eurozone level, officially communicated by EUROSTAT.

(4) Within 15 days since the formal publication of the average annual inflation rate by EUROSTAT, ANRE approves and publishes on its website the value determined pursuant to the provisions of para (2) and (3), applicable for the year in progress.

- (5) The Environment Fund Administration issues invoices for the collection of payments generated by the application of para. (2), within 10 days from the date of the notice issued by ANRE, regarding the debtors and the amounts owed by these.
- (6) The amount generated from the application of the provisions of para. (5) shall be used by the Environment Fund Administration in view of financing investments in the production of energy from renewable sources by natural persons obtaining power capacities under 100 kW.
- (7) Suppliers and producers who sell electricity to end consumers have the obligation to inform them periodically according to ANRE regulations on the cost of green certificate acquisition for every KWh sold to end consumers.

16. Art 14 is modified and will have the following content:

- (1) The producers of electricity from renewable sources of energy sell the electricity produced on the electricity market at market value.
- (2) The electricity produced from renewable energy sources in electricity plants with installed power of maximum 1 MW per plant can be sold to suppliers in whose licensed areas the relevant plants are located, for uniquely regulated prices per type of technology. The electricity sold for a regulated price does not longer benefit from green certificates.
- (3) The suppliers referred to under para (2) have the obligation, upon the request of the producers using renewable energy sources, to purchase the electricity produced pursuant to para (2), subject to the conditions set up by ANRE.
- (4) The regulated prices and the trading regime of the electricity from renewable sources referred to under para (2) are determined by ANRE based on a methodology ,and shall be notified to the European Commission, according to the Law.
- (5) The requests to sell electricity to the producers/consumers referred to under para (3) shall be submitted to the suppliers under para (2), usually by the end of October of the year preceding the contracting one, the purchase and sale agreements being concluded for a period of at least one year.
- (6) Natural persons holding units for production of electricity from renewable sources with installed power under 50 kWh per place of consumption, as well as public authorities holding facilities for production of electricity from renewable sources, developed, entirely or in part, with structural funds, can benefit from the suppliers with whom they hold a contract to supply the energy, upon request, of the financial and/or quantitative settlement service, between the energy supplied and the energy consumed in the network, according to a methodology approved by ANRE.
- (7) The transport and system operator and/or the distribution operators provide priority dispatching for electricity produced from renewable sources, so that the actual production of electricity from renewable sources is as close as possible to the available quantity of such resources, only being entitled to restrict or suspend the production of electricity from renewable sources only based on technical and commercial regulations approved by ANRE or in extraordinary cases, provided that such action is critical for maintaining the stability and meeting the safety criteria of the National Energy System.
- (8) For the electricity using the support system provided for in the present law, contracted and sold on the energy market, it will be provided guaranteed access to the grid, except for the

energy contracted and sold at the price regulated pursuant to the provisions of para. (2), for which it will be ensured priority access to grid.

(9) ANRE establishes the technical and commercial rules which allow guaranteed, respectively priority access to the power networks pursuant to para. (7) and (8), including the possibility of transacting electricity during the operation day, at the proposal of the transport and system operator and after consulting all stakeholders.”

17. Under article 15, paragraphs (2) and (3) shall be modified and shall have the following content:

“(2) Cooperation by joint agreements such as those mentioned under para. (1) letter a) items (i) and (ii) and letter b) can also involve private operators. Such agreements are concluded for one or several years and notified to the European Commission by the line ministry within no more than 3 months as of the conclusion of each year of being in force.

(3) If electricity from renewable energy sources produced and consumed in a third party country within the joint agreements provided under para. (1) letter b) is taken into account for the meeting of the national objective concerning gross final consumption of energy from renewable sources, the line ministry shall send a request for receiving the European Commission’s acceptance, in compliance with the provisions of art. 9 para. (3) – (7) and art. 10 of Directive 2009/28/EC.”

18. Under article 15, a new paragraph, paragraph (4), shall be inserted after paragraph (3), with the following content:

“(4) The line ministry can propose to the Government the application of the provisions of para. (1) letter a) items (i) and (iii), at the proposal of another member state of the European Union or in case this is necessary for meeting the national objective concerning the gross final consumption of energy from renewable sources, in compliance with the provisions of art. 6, respectively 11 of Directive 2009/28/EC.”

19. Under article 16, paragraph (1) is annulled.

20. Art. 25 is modifying and will have the following content:

1) Producers of electricity from renewable energy sources are connected to the electricity transport/distribution network to the extent the safety of the National Energy System is not affected.

21. Art 26 will be modified and will have the following content:

(1) Business operators which develop a project of a plant for production of electricity from renewable sources, with installed capacities exceeding 125 MW and are eligible for the application of the promotion system determined hereunder, shall prepare and send according to the law the documentation necessary for a detailed analysis thereof by the European Commission, pursuant to the provisions of point 160, letter b, iii) of the Community Guidelines regarding the state aid for environment protection (2008/C82/01) published in Official Journal of the European Union no. C82 of 1 April 2008.

(2) The applicant business operators benefit from the promotion system set forth by this law only after such system has been authorised by the European Commission and only for technologies of producing electricity from the renewable sources specified in the authorisation decision, respectively after the completion of the detailed assessment provided under para. (1)

(3) The enforcement of the provisions of para. (2) shall be performed by ANRE by issuing an accreditation decision pursuant to art. 6 para. (6) letter a).

(4) For the operators referred to under para. (1), ANRE can modify the number of green certificates provided under art. 6 para. (2), in compliance with the provisions of the European Commission's decision.”

22. Under article 28, paragraph (2) is annulled.

23. After art. 28 two new articles will be inserted, art 29 and 30, having the following content:

Art 29 - (1) ANRE monitors the producers benefiting from the promotion system through green certificates and drafts public annual reports.

(2) In case the data resulted from the feasibility studies performed for the new investment projects and the results of monitoring the costs/incomes of the producers point out that the parameters specific to each technology differ significantly from the ones considered in the calculation made for authorization of the promotion system hereunder, which could lead to general overcompensation for one or several of the technologies referred to under art. 3 para (1), ANRE will propose measures to reduce the number of green certificates set out under art. 6 para (2).

(3) The actions envisaged under para (2) shall be approved by Government Decision and will be applied to the producers of electricity from renewable sources which begin production of electricity after the effective date of this law.

Art. 30. (1) The following actions are considered infringements:

- a) the failure of the producers, suppliers of electricity referred to under art. 8 para.(1) to submit, at the established deadlines, the data/information requested by ANRE according to present Law and the regulations issued to apply this law, or the submission of inaccurate or incomplete such data/information;
- b) the failure to pay for the equivalent value of the green certificates not acquired by the business operators referred to under art. 8 para (1), within the terms set out in ANRE regulations;
- c) trading of green certificates for prices which do not meet the limits set under art. 11;
- d) the unjustified refusal of the network operators to validate the measured values of the electricity supplied/consumed, according to Art. 7 letter a.

(2) The infringement mentioned under para. (1) letters a), c) and d) are fined RON 1,000 to RON 10,000, in case of natural persons, and RON 10,000 to RON 100,000, in case of legal entities.

(3) The infringements mentioned under para. (1) letter b) are fined the total equivalent value of the green certificates not acquired by a supplier or producer referred to under art. (8) para (1) multiplied three times, the minimum value of such fine amounting to RON 10,000, and the maximum value amounting to RON 100,000.

(4) The infringements are being observed and sanctioned by the authorized representatives of ANRE.

(5) The infringements under para (1) are subject to the provisions of Government Ordinance no. 2/2001, regarding the legal regime of contraventions, approved as amended and completed by Law no. 180/2002, as subsequently amended and completed.

Art. II. – (1) In order to benefit from the green certificate promotion system, electricity producers owning power groups/plants using renewable energy sources operating on the date of coming into force of this emergency ordinance must request accreditation from the Romanian Energy Regulatory Authority (*ANRE*) within 30 days and benefit from the number of green certificates specified under art. 6 para. (2) of Law no. 220/2008 on establishing the promotion system of producing energy from renewable energy sources, republished, as subsequently amended and completed, after procurement of such accreditation.

(2) Electricity producers owning power groups/plants using renewable energy sources in the form of biomass, bioliquids or biogas, operating on the date of coming into force of this emergency ordinance, are temporary accredited by ANRE for a period of 6 months to benefit from green certificates without submitting certificates of origin for such sources.

(3) Electricity producers which, on the date of coming into force of this emergency ordinance, operate for commercial purposes plants for producing electricity from renewable sources with an installed power exceeding 125 MW shall be accredited by ANRE and benefit from the number of green certificates specified under art. 6 para. (2) of Law no. 220/2008, republished, as subsequently amended and completed, corresponding to the used renewable source for a period of 24 months as of the accreditation date.

(4) Electricity producers referred to under para. (3) must prepare and send to the competent authorities the documentation necessary for the detailed assessment of the support measure granted by the European Commission, according to the provisions of art. 26 para. (1) of Law no. 220/2008, republished, as subsequently amended and completed, within no more than 3 months as of the date of the accreditation decision, any failure to observe such deadline triggering the suspension of granting the promotion system set forth by means of this emergency ordinance.

(5) The enforcement of the provisions of para. (3) shall be performed by ANRE by issuing an accreditation decision, as per the provisions of art. 6 para (6) letter a) of Law no. 220/2008, republished, as subsequently amended and completed.

(6) In case of electricity producers mentioned under para. (3), any positive differences between the number of received green certificates and the number of green certificates corresponding to them as per the individual decision of the European Decision shall be recovered within no more than 24 months as of the issuance of such decision, based on a decision issued by ANRE, stipulating the regularisation of the number of green certificates by reducing the number of received green certificates and/or by obligating such producers to acquire green certificates from the market.

Art. III. – The procedures mentioned under art. 3 para. (11) of Law no. 220/2008, republished, as subsequently amended and completed, are approved by order of the minister of environment and, respectively, of the minister of agriculture and rural development, within 60 days as of the date of coming into force of this emergency ordinance, while the regulation specified under art. 6 para (6) letter a), and the methodologies referred to under art. 14 para. (4) and (6) of Law no. 220/2008, republished, as subsequently amended and completed, are approved by order of ANRE within 30 days, respectively 120 days as of the date of coming into force of this emergency ordinance.

Art. IV. – On the date of coming into force of this emergency ordinance, the following shall be annulled:

a) Government Decision no. 443/2003 on promoting the production of electricity from renewable energy sources, published in the Official Gazette of Romania, Part I, no. 288 of 24 April 2003, as subsequently amended;

b) Government Decision no. 1479/2009 on establishing the promotion system for the production of electricity from renewable energy sources, published in the Official Gazette of Romania, Part I, no. 843 of 7 December 2009.

PRIME-MINISTER

EMIL BOC

Countersigned by:

The Minister of Economy, Commerce and Business Environment,

Ion Ariton

The President of the Romanian Energy Regulatory Authority,

Iulius Dan Plaveti

The Minister of Agriculture and Rural Development,

Valeriu Tabără

The Minister of Environment and Forests,

László Borbély

The Minister of European Affairs,

Leonard Orban

Bucharest, 12 October 2011.

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