

AMENDMENTS TO LEGISLATION ON ENERGY FROM RENEWABLE ENERGY SOURCES

On 6 May 2015, the Chamber of Deputies adopted a draft law which approves a number of measures in the field of energy from renewable sources (E-RES) and a number of amendments to the related legal enactments.

Amongst the most important novelties provided by this draft law we would like to emphasize the following:

1. **Feed-in tariff.** The Ministry of Energy and ANRE shall elaborate a state aid scheme (in the form of a feed-in tariff) for supporting the production of E-RES by power plants with installed capacities of **less than 500 kW**. The support scheme shall consist in regulated prices, defined for each technology, shall be elaborated within 90 days as of the date when the draft law enters into force and shall be approved by government decision within 30 days from its elaboration.
2. **Opening up of national support scheme to producers based in other EU member states.** The Ministry of Energy in collaboration with ANRE shall elaborate a mechanism for opening up the support scheme to producers from other EU member states. Such mechanism shall be approved by government decision (no timeline being set for the adoption of this decision) and, within 120 days from the date when the government decision becomes effective, ANRE shall adapt the existing regulatory framework for the purpose of its implementation.
3. **Increase in capacity threshold above which EU Commission is to be notified.** Producers with installed capacities above 125 MW that did not receive individual authorization decisions within 24 months from their accreditation may require ANRE to issue a new temporary accreditation decision until the issuance of the European Commission's authorization. Moreover, producers with installed capacities between 125 MW and 250 MW that did not benefit of the green certificates support scheme have the possibility to receive accreditation from ANRE without the need to obtain an individual authorization from the European Commission.
4. **Absence of support for energy sold at negative prices.** The support system set by Law no. 220/2008 shall not apply for the E-RES which is sold at negative prices.
5. Law no. 220/2008, regarding the support scheme for the production of E-RES, shall be amended with respect to the following aspects:
 - (i) Producers that develop power plants for E-RES with installed capacities above 250 MW and which qualify for the green certificates' support scheme must submit individual notifications and obtain the authorization of the European Commission in order to benefit of the support scheme.

- (ii) Producers (for own consumption, other than for technical purposes, and consumption by consumers with direct connection to the power plants) and suppliers have an obligation to acquire quarterly a number of green certificates equivalent to the product between the mandatory annual quota and the amount of power invoiced (or self-supplied) quarterly to the final consumers. They must inform ANRE quarterly and annually with respect to the quantity for which they have an obligation to acquire green certificates (prior to the amendment, this was an annual obligation). The repeated (minimum two times a year) lack of observance of the notification duties may result in monetary fines between RON 10,000 and 100,000 cumulated with an amount of up to 5% applied to the defaulting entity's turnover.
 - (iii) The participants mentioned at (ii) above that fail to meet the mandatory annual quota and achieve less than 90% of such quota shall be liable to pay a monetary fine equal to the product between the maximum value of green certificates (determined by ANRE each year) and the number of non-acquired green certificates (up to the threshold of 90% of the mandatory annual quota).
 - (iv) The energy produced from fuel resulted from biomass acquired by way of import may also benefit of the support scheme applicable to E-RES.
6. **Bilateral contracts (excluded from OPCOM's platforms).** Law no. 23/2014 (for the approval of GEO no. 57/2013 regarding the amendment of Law no. 220/2008), was amended, providing that:
- (i) producers of E-RES that operate power plants that benefit from the support scheme and have an installed capacity of **maximum 1 MW, and 2 MW** (in case of highly efficient, biomass based co-generation producers) respectively, may conclude **bilateral agreements** for the sale of electricity and green certificates **directly negotiated** with the suppliers of final consumers only (without the need to use OPCOM's platforms).
 - (ii) producers of E-RES that operate power plants that benefit from the support scheme and have an installed capacity **between 1 MW and 3 MW** (or **between 2 MW and 3 MW** for highly efficient, biomass based co-generation producers) and qualify as small and medium size enterprises may conclude **bilateral agreements** for the sale of electricity (but not of green certificates) **by direct negotiation** (without the need to use OPCOM's platforms). The relevant legal provisions (i.e. Law no. 346/2004) define small and medium size enterprises as those legal entities cumulatively meeting the following conditions: (i) an average number of employees per year lower than 250 and (ii) a net yearly turnover of less than Euro 50 million or assets (immovable, movable and advance costs) valuing less than Euro 43 million.

- (iii) producers mentioned at (i) and (ii) above have an obligation to inform ANRE within three (3) days from the date the contract is signed, with respect to the price and amount of electricity sold through bilateral agreements concluded by direct negotiation (producers with installed powers of over 100 kW that breach this obligation may be sanctioned with a three-month suspension of the production license, in addition to the applicable fines).

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