

Cover article: "Renewable Energy market in Romania – the Latest Legislative Developments"

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Romania's renewable energy Law no. 220/2008 currently awaits new important changes in the context of the approval by the EU Commission of the support scheme promoted by said law. This month's cover article focuses on the most relevant amendments to be introduced in this area, as envisaged by the draft Government Emergency Ordinance recently published to such end on the website of the Romanian Energy Regulation Authority.

Legislative Retrospective

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in the following areas:

- Banking and Finance
- Dispute Resolution
- Employment



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- Voicu & Filipescu welcomes new team members: following the recruitment process for our internship program Growth Catalysts, five law school students have recently joined our firm as trainees, the professional development of whom will be closely supervised by our lawyers.
- Voicu & Filipescu recommended in all practice areas covered for Romania by the international legal directory Legal500 EMEA 2011. Our lawyers received strong recognition for their activity in Banking, Finance and Capital Markets, Corporate and M&A, Dispute Resolution, Energy, IT, Telecoms and Media, PPP and Public Procurement, Real Estate.

RENEWABLE ENERGY MARKET IN ROMANIA – THE LATEST LEGISLATIVE DEVELOPMENTS

GENERAL OVERVIEW

In implementing projects based on renewable power sources, Romania has acted in accordance with the provisions of the EU Directive 2001/77/CE, which regulates the general rules for developing such projects.

The recent draft of "Romania's Energy Strategy for the period 2011-2035" (the "Draft National Strategy"), posted for public debate on the Ministry of Economy, Commerce and Business Affairs website, reiterates the main objectives of the 2007-2010 National Strategy, such as the energetic security, the competitiveness on the energy market on the internal and regional markets, long-lasting development of the energy sector, including by promotion of the renewable energy.

The updated estimate on Romania's renewable energy potential, according to the Draft National Strategy, is as follows¹:

The renewable energy source		The estimated potential per year	Energy type
Solar:	Thermo	60x10 ⁶ GJ	Heat
	Photovoltaic	1200 Gwh	Electricity
Wind		23000 Gwh	Electricity
Hydro out of which: - under 10 MW		40000 Gwh	Electricity
		6000 Gwh	Electricity
Biomass and biogas		318x10 ⁶ GJ	Electricity
Geothermal		7x10 ⁶ GJ	Heat

LAW 220

For the last three years, Romania's renewable energy Law no. 220, first published in 2008, has undergone a series of amendments, the latest in June 2010, and currently awaits important changes in the context of the approval by the EU Commission of the support scheme promoted by Law 220, delayed due to a failure by the Romanian authorities to consult the Commission at the right time.

¹The draft Romanian Energy Strategy for the period 2011 – 2035, posted on Ministry of Economy, Commerce and Business Affairs website http://www.minind.ro/anunturi/strategia_energetica_20112035_20042011.pdf

In continuation to the public consultation on the proposed new set of amendments to Law 220 initiated end of April – beginning of May 2011 by ANRE (the Romanian Energy Regulation Authority, in Romanian “Autoritatea Nationala de Reglementare in domeniul Energiei”) on its website, the energy regulator has recently published the draft Government Ordinance amending and supplementing Law 220. The amendments are purported to reflect EU Commission requirements addressed to Romanian authorities during their discussions.

Most relevant amendments are summarized below:

(1) Reduced number of green certificates for certain renewable sources

For certain renewable sources, the number of green certificates has been reduced to:

- (a) 2 green certificates, instead of 3 green certificates, per MWh produced and delivered by using geothermal energy, biomass, biogas or bioliquid;
- (b) 1 green certificate, instead of 3 green certificates, per MWh produced and delivered by using gas resulted from processing of waste, or from fermentation of mud within wastewater treatment plants.

However, the draft Government Ordinance provide that an additional green certificate per MWh shall be granted for energy from biomass resulting from energy crops which are defined as agriculture and non-agriculture crops that are mainly destined to the production of bio fuels or the production of biomass to be used for generating electricity and heat.

(2) Reduced support scheme timeframe for projects which obtained green certificates under the old support scheme.

For the renewable sources energy projects which obtained green certificates under the old support scheme (i.e. the support scheme granting 1 green certificate per MWh, applicable until the starting of the application of the support scheme under Law 220), the duration of the applicability of the support scheme under Law 220 shall be reduced with the periods during which such projects benefited from the old support scheme.

(3) Projects which benefit of state aid

Irrespective of the used renewable source, energy projects which have been granted state aid shall benefit of a number of green certificates to be calculated by ANRE, by reducing the number of green certificates through means of diminishing the reference value of the investment for each MW with the value of the aid granted for each MW but maintaining the value of the internal profitability rates in the calculation provided to EC for the purpose of the support scheme authorization process.

(4) Validity period of green certificates

The draft Government Ordinance stipulates that the validity period of the green certificates issued by the transport and system operator is of three years.

(5) ANRE supervision to avoid overcompensation

The draft Government Ordinance specifies that overcompensation exists when the internal rate

of return exceeds 10% of the value considered for the purpose of the support scheme EC authorization.

If ANRE determines from feasibility tests for new investment projects and data obtained by supervising producers costs/incomes that specific parameters for each technology differ significantly from the parameters taken into account for the purpose of the support scheme EC authorization and this may lead to overcompensation for one or more renewable technologies, the regulator may propose the reduction of the green certificates granted on the basis of the support scheme for the respective technology. However, such measures shall apply from January 2012.

(6) Projects exceeding 125 MW

A business entity which develops a project for producing electricity from renewable sources with installed power larger than 125 MW and fulfilling the conditions for the application of the promotion system, must submit documentation for a thorough analysis by the European Commission of the aid measure, in compliance with the provisions of the Community Guidelines on State Aid for Environmental Protection.

(7) Testing period

Regardless of the used renewable source, energy producers shall benefit of 1 green certificate per MWh during the test period of the production capacity.

(8) Extended range of market participants bound to purchase green certificates

The obligation to purchase green certificates is extended to a larger range of market participants so that the whole final consumption is covered and not only the one ensured by energy suppliers to end-consumers, as follows:

- suppliers, for both the energy sold to end-consumers and the energy used for the supplier's own consumption;
- producers, for the energy used for their own consumption, other than the their own technological consumption;
- producers, for the energy delivered to consumers connected directly to the power plant.

Though in the public consultation stage the range of market participants included the end-consumers, for the energy they acquired directly from the electricity wholesale market, this category has been removed from in the draft Government Ordinance.

(9) Access to grid

Renewable energy producers are connected to the electrical power transport/supply grid insofar the safety of the National Energy System is not affected. The priority criteria for the access to the grid of the renewable energy producers has been removed in the draft Government Ordinance.

It is expected that the envisaged EU Commission authorization following the new amendments mentioned above will unlock the market of green energy and streamline the projects. Ultimately, the

investments in the green energy will support and strengthen Romania's position as a net electricity exporter in a global environment where most countries are electricity importers.

banking - legislative retrospective

Interest rates paid on mandatory minimum reserve funds. Circular Letter no. 17 of the National Bank of Romania on the interest rates to be paid as of the application period between April 24 and May 23, 2011 on mandatory minimum reserve funds in lei and US dollars was published in the Official Gazette of Romania part 1 no. 349 of May 19, 2011.

According to such, as of the above mentioned application period, the annual interest rate for the mandatory minimum reserves in lei is of 1.86%, while the annual interest rate for the mandatory minimum reserves in US dollars is of 0.51%.

dispute resolution - legislative retrospective

Government Emergency Ordinance no. 46/2011 on the amendment and supplementing of Art. 17 of the Government Emergency Ordinance no. 44/2008 on the performance of economic activities by authorized individuals, individual enterprises and family businesses was published in the Official Gazette of Romania, part 1, no. 50 of May 20, 2011. By said act the possibility has been introduced for authorized individuals to hire third parties by means of individual labor agreements concluded in compliance with the law. Furthermore, the Government Emergency Ordinance no. 46/2011 stipulates that authorized individuals shall not be deemed as employees of third parties with whom they collaborate, which provision also applies to the situations when such collaboration is an exclusive one.

employment - legislative retrospective

Law no. 62/2011, i.e. the Law on Social Dialogue, published in the Official Gazette of Romania of May 10, 2011, came into effect as of May 13, 2011. Said law regulates a variety of labor law aspects, such as those referring to labor unions, employers' associations, collective bargaining agreements and labor conflicts. The novelties introduced by this law, which in our opinion will significantly impact the Romanian labor market, include the following:

- As regards the term for objecting to a dismissal decision, a 45 calendar days period is stipulated to such end (compared to the 30 days term set forth by the Labor Code). It remains to be seen how this inconsistency between the terms set forth by the new Law on Social Dialogue and the Labor Code will be settled.
- As regards collective bargaining, the Law on Social Dialogue provides that collective bargaining agreements will no longer be concluded on a national level; however, collective bargaining agreements can be concluded for particular areas of activity, groups of companies or for a particular company. Said areas of activity are to be decided by the Government. From a practical standpoint, each company will be included in one area of activity or another depending on the activity object under which such company is registered with the trade registry, as per the provisions of the articles of association and the classification code under the national classification of activities.

We find it relevant to mention that at the present moment no collective bargaining agreement on a national level is registered with the Ministry of Labor, whereas the social partners had not reached any agreement to such end by the time when the Law on Social Dialogue entered into effect, while following said moment such collective labor agreement on a national level can no longer be concluded.

The Law on Social Dialogue expressly abolished, among others, the following laws:

- Law on Labor Unions no. 54/2003;
- Law on Employers' Associations no. 356/2001;
- Law no. 168/1999 on the Settlement of Labor Conflicts;
- Law no. 130/1996 on Collective Bargaining Agreements.

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