



Gaps to be Filled in the Romanian Legislative Framework on Promoting Electricity Generation from Renewable Energy Sources

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Improving the legislative framework

Romania is one of the first EU candidates to transpose into its domestic legislation the provisions of Directive 2001/77/EC on promoting the electricity generated from renewable energy sources, its initial legal framework on the subject matter being rather comprehensive.

While until recently, the regulatory framework was rather at the level of secondary legislation (i.e. Government Decisions, orders or decisions adopted by the National Energy Regulatory Authority- “ANRE”), in early November 2008, Law no. 220/2008 regarding the establishment of the system for promoting the generation of electricity from renewable energy sources (“**E-RES Law**”) has been enacted by the Romanian Parliament.

The purpose of the E-RES Law is to establish the main legal framework required in order to support the electricity generation from renewable sources, its enactment being much expected as the period for which the prior promotion systems were in place was expiring and therefore it lead to legal uncertainty for potential investors on the market.

It has to be outlined that the key role within the renewable energy promotion in Romania has been played by the system of green certificates and mandatory quotas of renewable energy to be acquired by the electricity suppliers. This system consists in granting green certificates to the generators of electricity from renewable energy sources (“**E-RES**”) and imposing the obligation to the electricity suppliers to purchase each year a number of green certificates. Such number is equal to the yearly mandatory quota, established by law (e.g., 6.28% for 2009) multiplied by the quantity of energy supplied annually to end consumers. The green certificate may be traded distinctively from the amount of energy associated thereto, either on the bilateral contracts market or on the green certificates market.

Current grey areas

The E-RES Law regulates in principle certain aspects to be completed at the level of secondary legislation which should have been issued within 90 days from the enactment thereof. Moreover, the E-RES Law has not expressly amended or repealed the existing regulations and the correlation should have been achieved through such secondary legislation which nevertheless has not yet been approved.

The absence of such secondary regulations entails lack of clarity and difficulties in the implementation of the relevant E-RES promotion systems, and thus impacts on potential new renewable energy projects and related assessments and financial projections. Among the relevant expected secondary regulations, the following should be noted:

I. System for promoting energy generation from renewable sources

At the level of principle, the E-RES Law states that promoting renewable sources may be done by two ways: (a) the system of mandatory quotas combined with the trading of green certificates which translates in the obligation of the energy suppliers to purchase on an yearly basis a number of green certificates equal to the yearly mandatory quota, established by law multiplied by the quantity of energy supplied annually to end consumers and (b) the system of the fixed price.

Further on, details with respect to the promotion system to be implemented should have been regulated through a Government Decision. A draft Government Decision providing that the promoting system shall consist in the application mandatory quotas combined with the trading of green certificates was submitted for public debates but has not yet been adopted.

II. Granting of fiscal incentives for the E-RES investors

A significant number of fiscal incentives are mentioned by the newly adopted E-RES Law. However, the conditions in which such incentives may be used have to be further regulated in separate enactments.

Among the fiscal incentives provided by the E-RES Law, are listed (i) tax exemptions and reductions for investors in the E-RES area for a period of 3 years as of the commissioning of the E-RES installation, as well as (ii) exemption from the payment of the excise tax for the E-RES, according to the provisions of the EU Directive 96/2003/EC on the restructuring of the Community framework for the taxation of energy products and electricity.

The E-RES Law also emphasizes that the E-RES investors may benefit from certain incentives with regard to the strategic projects provided in the documents of energy policy of Romania, *i.e.*: (i) guaranteeing of maximum 50% of the value of the long and middle-term loans; (ii) ensuring the transportation infrastructure and the utilities necessary for the investment startup and development; (iii) creating the access ways and modifying the existent infrastructure, necessary for the investment startup and development; (iv) granting financial support from the state budget for the newly created work places.

III. Additional measures for promoting the system of renewable sources

Further on, the E-RES Law envisages the implementation through secondary legislation of additional measures for promoting electricity generation from renewable sources, such as: (i) procedures of accelerated depreciation with regard to the investments in the E-RES area; (ii) reduction with 50% of the value of fees for the issuance of the permits needed for the implementation of the investments in the E-RES area; (iii) issuance under an emergency procedure of the permits specified at point (ii) immediately above; (iv) subsidizing of 50% of the costs of the electricity consumed by the installations for the exploitation of geothermal energy; (v) supporting the local public authorities with a view to granting investment facilities, simplifying the authorization procedures, as well as setting up a unique bureau for the authorization, in order to attract direct investments in the E-RES area.

IV. Access to the transport/distribution network

In order to facilitate the generation of energy from renewable sources and its sale as well as the current limitation of the electricity network, the E-RES Law provides that the E-RES producers shall be granted with priority access to the transport/distribution network. The conditions in which the access shall be granted, the way in which the costs for the interconnection to the transport network shall be born and the conditions for the qualification of the electricity producers as E-RES producers will be subject to a subsequent regulation adopted by ANRE.

Conclusions

While the adoption of the E-RES Law constitutes a significant step forward to be taken into account by the E-RES investors that envisage entering into this market, the fact that the secondary legislation is still to be shaped and adopted continues to have impact on the development of E-RES projects in Romania.