

Romania: Changes to Romania's Renewable Energy Laws

The sun is setting and the wind is stopping to blow for renewable energy support schemes (E-RES) in Central and Eastern Europe.

Until 4 June 2013, Romania was considered the place to be for investors in renewable energy. Green money not only from Europe, but also from Asia and the US poured into green energy projects in Romania, focusing initially on wind and later on solar. Although confronted with continuous policy changes, the Romanian renewable energy industry remained dynamic, with more than 2,000 MW installed in wind capacities and with several other thousand MW in the pipeline. Some dark clouds started appearing on Romania's bright renewable energy sky when neighboring Bulgaria first cut its support scheme for renewable energy effective as of 1 July 2012 (however only with respect to new projects) and shortly thereafter introduced a prohibitively high fee for the access to the grid amounting to up to 39% of the feed-in tariffs earned from renewable energy projects.

Apparently encouraged by the example of its neighbors across the Danube and pushed by a strong industrial lobby invoking concerns about the high cost of energy in Romania due to the generous national support scheme, the Romanian government started to work on ways to overhaul its national support scheme to make it less attractive and thereby less costly. It should be noted that Romania is today far from meeting the green energy targets it has assumed towards the European Commission (EC) in its National Renewable Energy Action Plan (NREAP) and may, thus, fall short of meeting the 20-20-20 targets it has pledged to fulfill.

Implemented in 2005, Romania's renewable energy sources (RES) support scheme consisting of tradable green certificates (GCs) combined with mandatory acquisition quotas was improved in 2008 and subsequently in 2010, but was only applicable as of mid-2011, upon state aid clearance from the EC. At the time of its adoption, the Romanian RES support scheme was insofar considered "safe" as it already provided for a mechanism to avoid overcompensation and embedded a clear timeline for revision and adjustments, the latter always subject to prior approval from the EC. Since according to the letter of the law the first revision of Romania's RES support scheme was only scheduled for 1 January 2014, investors felt on safe ground when taking their investment decisions in late 2012 or early 2013.

The sun sets

On 4 June 2013, however, the Romanian Government approved by way of an Emergency Ordinance new measures applicable to the RES sector as of 1 July 2013. The new measures (described herein) aim at discouraging future investments in the renewables sector, but they are also impacting operational investments, thus breaching investors' legitimate expectations.

- Temporary suspension of the number of GCs granted to certain technologies

Starting with 1 July 2013, the issuance of a certain number of GCs will be deferred, as follows:

- new hydro-power plants (below or at 10 MW): 1 GC deferred;
- wind: 1 GC deferred;
- solar: 2 GCs deferred.

The deferred GCs shall be recovered starting with March 2017 for new hydro-power plants and solar, and with January 2018 for wind. The recovery of the deferred GCs



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will be done in steps, according to a methodology to be adopted by the regulator.

- Limitation of RES installed capacity

Accreditation of RES power plants by the Romanian Energy Regulatory Authority (ANRE) in order to benefit from the support scheme will be capped to a level determined annually by the Government on the basis of the updated data in NREAP. If the cap is reached during any calendar year, the regulator will deny the accreditation for the exceeding capacities until the next year (when accreditation will also be done within the limits approved by the Government).

- GCs trading barriers

Drastic measures are being taken with respect to GC trading, both by limiting the offtakers (only electricity suppliers to end consumers are considered eligible to acquire GCs) and by banning bilateral GC trading. Similar to the measure taken mid-July 2012 with regard to the power sector, GC trading will only be allowed on the centralized market operated by the power market operator OPCOM. The main consequence of this measure is that producers may not enter into forward GC offtake contracts and hence may not secure the project cash flow for project finance purposes.

- Exclusions from the support scheme

Two severe limitations are regulated in the amendment. On the one hand, photovoltaic (PV) plants erected on land that has the status of "agricultural" land as of 1 July 2013 will not benefit from the GC support scheme. On the other hand, RES dispatching units (ie RES plants with installed capacity above 10 MW and PV plants above 5 MW) will not be granted GCs for the electricity that generated positive imbalances in the system. This measure will dramatically affect wind power producers.

- Financial guarantees

As an attempt to avoid that capacities are blocked in the system by projects that will not be realized, network operators will have the right to request financial guarantees upon the issuing of grid connection permits. The amount of the financial guarantees will be determined by the regulator.

- Market monitoring and overcompensation measures

The monitoring carried by the regulator to determine whether the support scheme may trigger the overcompensation of certain technologies will be done twice a year; the first monitoring report that could result in the measures detailed below shall cover the year 2012 (ie, the report published on ANRE's website on 29 March 2013). That report concluded that certain technologies are overcompensated, and recommended that the number of GCs should be reduced as follows: wind from 2 GCs to 1.5 GCs; PV from 6 GCs to 3 GCs; small hydropower plants from 3 GCs to 2.3 GCs.

The measures aimed at correcting the overcompensation (ie reduction of the number of green certificates allocated to the respective technology) shall be applicable only to new entrants. It is expected that the conclusions of the 2012 monitoring report shall be applicable starting with fall 2013.

See you in court

The new RES measures will enter into force on 1 July 2013. Although Romania's Government foresees notifying the EC of these changes, it is unclear if the measures will be suspended until the EC expresses a position.

In Bulgaria, renewable energy sector investors have already challenged the highest

access fee to the grid in court and have won in the first instance (however, this did not yet lead to the suspension of the fee since appeals are pending). It is likely that the Government Emergency Ordinance amending Romania's RES support scheme will be tested in court, likely also in investment arbitration. With Romania being a party to numerous bilateral investment treaties, as well as to the Energy Charter Treaty, the path to an international forum for those foreign firms which invested into Romania's RES has been paved.