



News alert NH Bukarest/Romania

Romania: Green Certificates (“GC”) are fully allocated to accredited producers of energy of renewable sources (“E-RES”)

Law 220/2008 is applicable with the amendments of GEO 88/2011 as approved and published by the methodological norms of ANRE - the Romanian Energy Regulatory Authority.

After a press release on 15.07.2011 the EU Commission approved the support scheme given by Law 220/2008, as per the last amendments made in 2010 and the amendments suggested in the draft of the Government Emergency Ordinance, as detailed below.

The EU Commission decision was published in the Official Journal of the EU on 23 August 2011 (OJ C 244, 23.8.2011, p.2)¹.

As the Government Emergency Ordinance was published in the Official Gazette no. 736/19.10.2011 (“**GEO 88/2011**”), we can now gladly announce that the main legal frame of the **GC issuance is fully in force**.

Furthermore, on 01.11.2011 three important acts were published in the Official Gazette no. 768, 769 and 770: the orders of the President of ANRE for approving two of the Methodological Norms for the full applicability of Law no. 220/2008. The Methodological Norms approved are:

- for the issuance and allocation of the GC (approved by Order of the President of ANRE no. 43/20.10.2011);
- for the E-RES producers' accreditation, in the application of the support scheme (approved by Order of the President of ANRE no. 42/20.10.2011);
- for establishing the annual quota of acquisition of GC (approved by Order of the President of ANRE no. 45/20.10.2011).

Later, in the Official Gazette no. 784/04.11.2011 the Methodological Norms for organising and functioning of the GC market was published, which were already approved by the president of ANRE.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:244:0002:0003:EN:PDF>

News alert NH Bukarest/Romania

For a good understanding of the support scheme we will not refer to the previous newsletters, but we will show once again what the EU Commission approved so far, therefore what is applicable since the publishing of the GEO no. 88/2011, as follows:

The support scheme given by Law 220/2008 establishes a mixed system of **mandatory quota** and **trade of GC**.

The energy from renewable sources for each EU state shall reach by the year 2020 a target of consumption for the end-consumers, according to the EU Renewables Directive². For Romania this was established at 24% of the total final consumption, quota which Romania's Government increased up to 35% for year 2015 and up to 38% for the year 2020³⁴, as the 35% was already fulfilled by Romania with the hydro power plants over 10 MW installed capacity.

Mandatory quota

Law 220/2008 implemented another mandatory quota, this time for the energy suppliers⁵ that have the obligation to acquire annually a certain number of GCs, respectively the mandatory quota given by ANRE annually, from the quantity of electricity⁶ supplied that year to the end-consumers. Therefore the quotas given by ANRE, according to the latest amendments, as to the Decision of the EU Commission are the following:

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
mandatory quota	10%	12%	14%	15%	16%	17%	18%	19%	19.50%	20%

Table 1

This means that, in order to fulfill the mandatory quota, the suppliers have the obligation to participate in the cycle of trading GC, as shall be shown below, either by negotiating a number of

² DIRECTIVE 2009/28/EC of the European Parliament and the Council dated 23 April 2009; on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC.
³ The national plan for the energy strategy for the period of 2007-2020 was approved by the Government Decision no. 1069/2007.
⁴ The national plan for the energy strategy for the period of 2007-2020 was approved by the Government Decision no. 1069/2007.
⁵ The energy suppliers are the legal entities which obtained from ANRE a license for the supply of energy.
⁶ Quantity expressed in MWh.

News alert NH Bukarest/Romania

GC to be purchased from a E-RES producers, by participating on the centralized market, or in case the supplier fulfills also the conditions for being a E-RES producer (as accredited) he could compensate from its actual production.

According to Order no. 45/20.10.2011 the mandatory quota is determined by ANRE yearly, in two phases.

The first phase

In this phase ANRE will publish the general fulfillment quota in the first 10 days of December for the following year. The calculation is made based on the estimation⁷ of trade of GC.

The second phase

In the first 10 days of February, ANRE starts the calculation of the general fulfillment quota for the previous year. The final results are published by ANRE based on the calculation made according to the actual issued GC and the total electricity sold for the previous year.

According to the amendments of GEO 88/2011 in Law 220/2008, article 12 stipulates that ANRE shall establish an individual fulfillment quota until the 1st of March. This quota is related to each individual supplier. All the necessary formulas for the calculation mentioned per supplier are provided by Order no. 45/20.10.2011.

For an error of 10%, ratio between the estimated calculation and the final calculation, ANRE has to reconsider and modify the general fulfillment quota in December of the current year.

ANRE, as competent authority, shall apply penalties in the amount of 110 EUR for each missing GC to each supplier which does not fully comply with acquiring GCs in the percentage of the delivered annual electricity, as per Table 1.

The penalties are paid into the Environmental Fund and are used for a separate scheme of support, for small E-RES producers of power plants with an installed capacity of up to 100kW⁸. The value of the penalties shall be indexed according to the annual average index-rate of

⁷ The estimation includes in the calculation method for all the produced E-RES, the traded GC and the supposed traded GC. The supposed traded GC include as well the GC which were not allocated, as the E-RES producer opted for the regulated price.

⁸ The support scheme released under *de minimis* aid rules are implemented by the Administration of the Environmental Fund.

EUROSTAT.

Trade of GC

The beneficiaries of GCs are the accredited E-RES producers. Therefore, the beneficiaries of GC are licensed legal entities having the possibility to opt for obtaining GC. Of course, for being accredited additional steps are necessary.

The E-RES producers are being accredited according to ANRE Order no. 42/20.10.2011. A licensed E-RES producer can be accredited in one or two steps, as detailed in the note below. For both steps the application has to be filed within 60 days prior to the start of electricity production, the E-RES producers have to file (a) the documents referring to the financial investment intended; (b) the origin certificate; (c) the studies and some statements. ANRE has a term of 30 days to approve the accreditation and will send the approval by fax or e-mail.

Furthermore, the E-RES producers have to inform the grid operator with which the connection contract was concluded, as well as Transelectrica and OPCOM.

Note:

- The accreditation can be obtained by E-RES producers in two steps, preliminary and final.
 - a. The **preliminary accreditation** is released by ANRE in case the start of production is desired and the power plant is still in the probation period.⁹
 - b. The **final accreditation** is released after the commissioning of the power plant, by filing, among other documents, the protocol for the commissioning of the power plant and the protocol from the grid operator that electricity is being introduced in the system.
- For the period of the preliminary accreditation, any E-RES producer, no matter of the source, will benefit of 1 GC per MWh electricity introduced in the system.

The GCs are the certificates which attest that 1MWh of electricity from renewable sources have been introduced in the national electricity system¹⁰. The GCs are tradable titles with a **validity**

⁹ The preliminary accreditation cannot be issued for longer period than the establishment approval's validity period.

¹⁰ One of the reasons for which the EU Commission approved the support scheme, as this is differentiating this support scheme from the NOx certificates (as the Romanian state is not intervening in the trading process by having a profit in any way).

News alert NH Bukarest/Romania

period of 16 month.

One important aspect to be taken into consideration by the interested investors is that, the EU Commission did not approve all the sources given by the Romanian state in Law 220/2008 with the amendments of 2010, but the support scheme shall be applicable for the sources as shown below, provided by GEO 88/2011:

Source		Installed power	No. of GC/MWh [GC]	Applicable support period [years]
Hydro	new power plants	< 10 MW	3	15
	refurbished power plants		2	10
	not refurbished power plants (commissioned and not upgraded prior to 2004)		0.5	3
Wind	until year 2017	n/a	new power plants	15
			second-hand	7
	from year 2018		new power plants	15
			second-hand	7
Solar	new power plants	n/a	6	15
Biomass	new power plants from all types of bio-waste	n/a	2	15
	new power plants from energy crops		3	
	high efficiency		+1 for the other biomass plants	
Landfill gas	new power plants	n/a	1	
Sewage treatment plant gas	new power plants	n/a	1	
Geothermal	new power plants	n/a	2	15
	approved by EU Commission			
	necessary further notification to EU Commission			

Table 2

News alert NH Bukarest/Romania

Therefore, as shown in Table 2, the E-RES producers who choose to install new power plants have the possibility to benefit from the support scheme for 15 years, except second hand wind turbines¹¹, which will take advantage of the support scheme only for a period of 7 years. For the hydro power plants commissioned and not refurbished prior to 2004 (old power plants), the support scheme is only applicable for a period of 3 years. If these old power plants are refurbished they will benefit from the support scheme for 10 years.

E-RES producers which are already producing green energy and to which 1 GC/MWh was already allocated, prior to the issuance of the decision of the EU Commission, will have no prolongation of the support period. Therefore the period in which they already obtained 1 GC/MWh shall be deducted from the support periods mentioned in Table 2 above.

Note:

- E-RES producers, to whom 1 GC/MWh was already allocated, shall request from ANRE the accreditation, latest until 20.11.2011.
- The commissioning of the power plant shall take place prior to 31.12.2016 in order to benefit of the support scheme.

Furthermore, the support scheme is not applicable to:

- Electricity produced from **imported** industrial and/or city waste (regardless of the installed power);
- Electricity produced in power plants with an accumulation **mechanism implying pumping the water previously pumped into the superior basin;**
- Combustion plants, if the energy content of the **conventional fuel** used exceeds 10% of its total content;
- Electricity related to the technical consumption of the plant.

As shown above, the E-RES producers who meet with all the conditions can obtain from 0.5 to 6 GCs/1MWh for the electricity produced and introduced in the national electricity system. The GCs' are issued monthly by Transelectrica to the E-RES producer. The E-RES producers keep records of the electricity introduced in the national electricity system. Based on these recorded measurements, Transelectrica issues the GCs, but only with the condition that the certificates of

¹¹ The only source which was approved by the EU Commission approved second-hand technology which were used in isolated systems and were not introduced in Romania before, are not older than 10 years and meet the environmental protection norms.

News alert NH Bukarest/Romania

origin for the electricity produced are obtained priority.

Note:

- Intended power plant projects with an installed capacity of more than 125MW (big E-RES producers), need an individual notification to the EU Commission. Big E-RES producers shall be accredited by ANRE based on published positive decision of the EU Commission.
- The support scheme of GCs can be cumulated with subsidies¹². In case of overcompensation¹³ a correction is necessary. In this case the number of GCs will be reduced with a reduction factor.
- The reduction of the number of GC is calculated as follows:
 1. The specific investment aid (“SIA”) is **divided** by the number of MW from the installed power = SIA resulted (“SIAr”).

$$\text{SIA} / \text{xMW} = \text{SIAr}$$

2. SIAr is **divided** by the specific reference investment (“SRI”)¹⁴ = reference value (“Rv”).

$$\text{SIAr} / \text{SRI} = \text{Rv}$$

3. Rv is **multiplied** with the correction factor (“Fcor”)¹⁵ = reduction of the number of GC.

$$\text{Rv} * \text{Fcor}$$

$$\text{Reduced no of GC} = \text{GCs} - \left(\left(\frac{\text{SIA}}{\text{xMW}} * \frac{1}{\text{SRI}} \right) * \text{Fcor} \right)$$

- The support scheme of GCs cannot be cumulated for producers of high efficiency cogeneration installations which are benefiting from the cogeneration promotion scheme¹⁶.

¹² Subsidies are considered only the non-refundable amounts received by the E-RES producers.

¹³ Overcompensation is defined by Law 220/2008 as for E-RES producers to which in the results of the benefit-cost analysis of the internal rate of return is a difference of 10% than in the figures given by second row from Table 2, Annex 11 of Order no. 42/20.10.2011.

¹⁴ SRI is given in Table 1, Annex 11 of Order no. 42/20.10.2011.

¹⁵ The correction factor is given in row 3 of Table 2, Annex 11 of Order no. 42/20.10.2011.

¹⁶ The high efficiency cogeneration scheme based on useful heat demand regulated by Government Decision no. 1215/2009 and approved by the Commission on 17.09.2009, OJ C 31, 9.2.2010, p. 8.

News alert NH Bukarest/Romania

In this case, producers shall opt for one of the two schemes.

After fulfilling the other conditions, the E-RES producer can choose how to trade the GCs. The possibilities to trade GCs are to freely negotiate the contracts with a supplier which has to fulfill the mandatory quota shown above, or, it can choose to trade them on the centralized market, or even both.

The price limit for the GCs, as per Law no. 220/2008 is between 27 EUR/GC and 55 EUR/GC. This price limit is indexed annually. The indexation is made according to the inflation parameter of the previous year, communicated by EUROSTAT.

Note:

- The lowest price of 27 EUR/GC provided by Law no. 220/2008 is not guaranteed by the state, nor by the authorities involved.
- GEO 88/2011 newly introduced the possibility to sell the electricity to the suppliers in the same area where the E-RES producers are licensed, **at the regulated prices per type of RES¹⁷, only** for E-RES producers with installed capacities of **up to 1MW**. The sale offers shall be sent yearly to the suppliers, until latest October, for the current year of the offer. All the contracts of sale-purchase of energy shall be concluded for a period of **at least one year**.
- It is now explicitly mentioned that natural persons who are owners of a small power plant (less than 1 MW) can be accredited¹⁸ and take advantage of the support scheme.

Therefore, the E-RES producers which develop an installed capacity of up to 1 MW have the possibility to choose from which support scheme to apply for: *regulated prices or trading GC*.

The EU Commission gave a term of 90 days for ANRE to approve all the secondary legislation in the matter of renewable energy and trade of GC as shown above. As the most important Methodological Norms are published Law 220/2008 is applicable.

¹⁷ The regulated prices shall be separately provided by methodological norms issued by ANRE, which will be notified to the EU Commission.

¹⁸ The accreditation of natural persons, E-RES producers can be made by the suppliers with which they contracted.



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News alert NH Bukarest/Romania

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