

Short presentation of the most relevant amendments brought to the green certificates support scheme

On 30 March 2017, the Romanian Government approved Government Emergency Ordinance No. 24 for the amendment of Law No. 220/2008 establishing a system for the promotion of electricity generation from renewable sources, published in the Official Gazette No. 224 dated 31 March 2017 (“**GEO 24/2017**”). The final approved version includes certain amendments in comparison to the draft published on the official website of the Ministry of Energy on 16 February 2017.

The new provisions are mostly favorable to the renewable energy producers as they regulate several methods for ensuring the sale of the producer’s green certificates until the expiry of the support scheme in 2031.

We shall present below the most relevant amendments included in GEO 24/2017.

Amendment of the computation formulae of the mandatory acquisition quota

GEO 24/2017 includes a new mechanism for computing the total number of green certificates, which must be purchased by the power suppliers.

Thus, the mandatory acquisition quota of green certificates shall be computed based on the final estimated annual power consumption, as well as on the „*annual green certificates static quantity*“. The static quantity is a fix number representing the annual average number of available green certificates (i.e. those issued until 2031 and those delayed from trading starting with 1 July 2013, which shall be reinserted gradually), which shall be reviewed every two years. For the period 2017-2018, the static quantity is fixed at 14,910,140 green certificates.

Through ANRE Order No. 27/2017 regarding the establishment of the estimated mandatory green certificates acquisition quota, the mandatory quota linked to 1 April – 31 December 2017 is set at 0,358 green certificates/MWh. It is an increased quota in comparison to the previous one set at 0,320 green certificates/MWh, regulated by ANRE Order No. 119/2016, which remains applicable for the period 1 January 2017 – 31 March 2017.

Extension of the validity period of green certificates

In order to help the producers avoid the risk of not turning their green certificates into profit due to the expiry of the over 12 months’ issued and unsold green certificates, GEO 24/2017 prolongs the validity period of green certificates from 12 months until 31 March 2032. This measure is applicable in the case of green certificates issued starting with 1 April 2017, as well as in relation to those delayed starting with 1 July 2013.

Trading of green certificates

According to GEO 24/2017, starting with 1 September 2017, the green certificates shall be traded either on the anonymous centralized green certificates markets (spot or long term), or on the centralized market for power sustained through the support scheme, where the energy quantities are sold simultaneously with the linked green certificates.

In order to implement the new legal regime, GEO 24/2017 stipulates the following principles:

- bilateral green certificates sale purchase agreements which shall be concluded after 31 March 2017 shall have a maximum validity duration until 31 August 2017;
- bilateral green certificates sale purchase agreements which were concluded before 31 March 2017 shall be enforceable until their expiry term;
- starting with 31 March 2017, contracting parties are prohibited to conclude addenda for the prolongation of the validity of the existing agreements in order to increase the number of traded green certificates.

Breach of this obligation is sanctioned by fine, as follows: (i) between 1-5% of the financial turnover of the previous year for economic operators; and (ii) between Lei 10,000 and 1,000,000 in case of legal entities newly established which have not registered a turnover within the previous year.

Changes with respect to the moment the green certificates are registered in the bookkeeping accounts of the producer

As opposed to the present legal regime, green certificates issued after the entry into force of GEO 24/2017, will be registered into the bookkeeping accounts of the green certificates producer only at the moment when these certificates are traded on the market and not at the moment when they are issued. This will directly impact the way the income tax is paid.

Prohibition of green certificates trading

According to the new provisions, green certificates may be traded only once between producers and suppliers. The only exception covers the situation when the producers are in a deficit of green certificates undertaken to be sold in the future to suppliers. In this case, that respective producer may purchase the green certificates difference from the centralized markets.

Prolongation of the delay period and of the reinsertion period of the delayed green certificates

GEO 24/2017 continues the series of delay measures on green certificates trading, establishing a new delay of two green certificates from the portfolio of photovoltaic producers until 31 December 2024.

The reinsertion period for green certificates is prolonged for all categories of producers, as follows:

- **Hydro and wind** – the new reinsertion period will be 1 January 2018 – 31 December 2025, instead of 1 January 2018 – 30 December 2020, in equal monthly installments; and
- **Photovoltaic** – the new reinsertion period will be 1 January 2025 – 31 December 2030, instead of 1 January 2018 – 30 December 2020, in equal monthly installments.

The result of the prolongation of the delay period triggers several rights for the producers whose accreditation/license expires prior to 31 March 2031, as follows: (i) the right to trade the delayed green certificates even after the accreditation decision expires; (ii) the right to trade the green certificates received for the production of renewable energy covering the 15 years' accreditation period, even after the accreditation expiration date, until March 31 2032.

New obligations for suppliers regarding the green certificates invoicing regime

The power suppliers have the following obligations:

- The green certificates will be invoiced to the final consumer at a value equal to the weighted average price on the centralized anonymous spot market, and, afterwards, at the moment of regularization, at the weighted average price of the green certificates used by the supplier for the fulfilment of the mandatory green certificates acquisition quota for the previous year, which cannot exceed the weighted average price of the transactions that took place on the centralized anonymous spot market for the previous year; and
- The maximum financial contribution linked to green certificates which can be included in the consumers' invoices for green certificates cannot exceed 11, 1 Euro/MWh.

For further questions, please contact us.



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Deloitte in mass media

New obligations for employers who post workers in EU, an article by Gabriela Ilie, Senior Associate Reff & Associates and Adrian Stoian, Manager Fiscal Services Deloitte for Wallstreet.ro:

<https://pro.wall-street.ro/articole/detasarea-salariatilor-reglementari-si-obligatii-noi-pentru-angajator-1893>

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