

LEGAL ALERT

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LAW NO. 134/2012 APPROVING THE EMERGENCY ORDINANCE NO. 88/2011 ON AMENDING AND COMPLETING THE RENEWABLE ENERGY LAW NO. 220/2008 WAS PUBLISHED IN THE OFFICIAL GAZETTE NO. 505 FROM JULY 23, 2012

Bryan Jardine
Ciprian Glodeanu
WOLF THEISS
Bucharest

Introduction

The Law no. 134/2012 approving the Emergency Government Ordinance no. 88/2011 on amending and completing the Renewable Energy Law no. 220/2008 was published in the Official Gazette no. 505 from July 23, 2012. This is the enactment that closes the circle regarding the full application of Law no. 220/2008.

We will highlight below the main provisions of the Law no. 134/2012:

Priority Access to the grid for renewable energy producers will be granted **only if** it does not impact the safety of the National Energetic System ("**NES**"). This is also the case for distribution and dispatching of renewable energy ("**RES-E**"), which can be rejected only if the NES safety is endangered.

➤ **Green certificates ("GCs")**

Each quarter of the year, the energy suppliers must report to the Energy Regulatory Body ("**ANRE**") the fulfillment of the GCs mandatory quota. Therefore, the purchasing of GCs by the suppliers must occur **quarterly** and not yearly as before. If a supplier fails to

meet its GCs quarterly quota, it will have to pay, in maximum forty five (45) days as of the elapse of the quarter, the maximum price set by ANRE for the respective year for each un-purchased GC. Such amounts will be allocated to a special fund, which appears to act as "*buyer of last resort*" for the GCs not sold due to the failure of the suppliers to fulfill the mandatory GCs quota. After the expiration of the forty five (45) days period, the suppliers will no longer have the possibility to pay the maximum price approved by ANRE for the respective year, but will be subject to the 110 EUR per un-purchased GC penalty.

The newly created fund will acquire the GCs on a pro rata basis from all producers, who apply for such procedure. The price will be at least the minimum price paid for a GC; after purchase by the fund, the GCs will become null. The fund will be functioning after a decision is issued by ANRE to this effect, but not later than ninety (90) days as of the entering into force of this new legislation.

The RES-E suppliers must send on a **quarterly** basis information to ANRE about the amount of energy for which they must purchase GCs. ANRE will publish on its website and will send to the market operator a list with the suppliers that failed to meet their quarterly quota. ANRE will also inform the market operator regarding the number of un-purchased GCs.

On the electricity bill received by the final consumers, the value of the GCs is to be reflected separately from the electricity.

➤ **Biomass**

A new concept of **forestry waste** is introduced and is considered a source of biomass, consequently granting the producer one (1) additional GC for each MW produced and injected into the grid. The legislation provides a detailed definition for the concept of **forestry waste**.

➤ **State aid**

The reduction of GCs in case the producer received state aid is to be applied up to the value of the state aid received by the producer, using the average value of a GC. This value is to be computed by taking the average of the maximum and minimum value of trading GCs, asset by the present legislation. The reduction will **not** be applicable if the project is commissioned before January 1, 2013 and have benefited from state aid until the approval of the support scheme by the European Commission.

➤ **Special provisions**

The production facilities having an installed capacity of less than 10 MW will benefit from simplified procedures for obtaining licenses or endorsements from ANRE.

➤ **Overcompensation**

In case of **overcompensation**, ANRE may propose restrictions in order to limit the amount of GCs. Please note that this kind of restrictions may **only** affect the new beneficiaries of GCs. This restriction will be approved by a Decision of the Romanian Government.

The earliest date for reducing the number of GCs is January 1, 2014 for solar and January 1, 2015 for the other technologies.

The monitoring period related to overcompensation procedure is twelve (12) months after the coming into force of this legislation.

➤ **Provisions regarding over 125 MW instalments**

The developers of RES-E projects with an installed capacity exceeding 125 MW, who have entered into a connection agreement on the enactment date of the Emergency Ordinance no. 88/2011 (i.e. October 19, 2011) will be benefiting from GCs for a period of twenty four (24) months. During this period, such projects will have to obtain the individual authorization from the European Commission. After achieving such authorization, the project will benefit of GCs during the entire period set forth by the law (e.g. 15 years for new equipment).

We are available to further discuss and clarify the facts and comments presented herein at your convenience.

To assist the renewable energy community in exploring untapped opportunities in CEE-SEE, Wolf Theiss released its third edition of the "Guide to Generating Electricity from Renewable Sources in Central, Eastern and Southeastern Europe", first published in March 2010.

Wolf Theiss' updated Guide provides a detailed overview of the legislative changes over the last year in 14 jurisdictions including Albania, Austria, Bosnia & Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Kosovo, Macedonia, Romania, Serbia, Slovak Republic, Slovenia and Ukraine.

To obtain a copy or to view the guide, please go to <http://www.wolftheiss.com/index.php/Publications.html>.

To request a hard copy of the guide please contact marketing-bucharest@wolftheiss.com

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Founded in 1957, Wolf Theiss is one of the leading European law firms in Central and Eastern Europe with a focus on international business law. Its 12 offices, in **Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Romania, Serbia, Slovakia, Slovenia and Ukraine** employ 300 lawyers, working for local and international industrial, trade and service companies, as well as banks and insurance companies. Combining law and business, Wolf Theiss develops comprehensive and constructive solutions on the basis of legal, fiscal and business know-how.

Wolf Theiss' lawyers have worked extensively in other countries in the region and have established a network of contacts in **Kosovo, Macedonia, Moldova, Montenegro, Poland**, and **Turkey** with local law firms and other service providers to advise and assist our clients on a whole range of domestic and cross-border energy matters involving transactions, regulatory issues, and the resolution of disputes.

Wolf Theiss is the only law firm with an Energy & Utilities practice covering the regions of Central & Eastern Europe and South-Eastern Europe (CEE/SEE).

Wolf Theiss has been named "Energy Law Firm of the Year" at the first annual Romanian Energy Awards organized by The Diplomat on 4 April. Moreover, Ciprian Glodeanu, Wolf Theiss Romania partner received the "Energy Lawyer of the Year" special award at the second edition of the AvocatNet.ro Awards.

We start each assignment by listening to you and understanding what it is you want to achieve. Then we find the quickest, most effective route to make it happen.

WOLF THEISS SI ASOCIATII
Societate civila de avocati /
Attorneys-at-Law
Bucharest Corporate Center
Gheorghe Polizu str. 58-60, 13th Floor
Sector 1, RO-011062 Bucharest, Romania



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