

Romania - State aid for Energo-intensive Consumers

1. Introduction

The most recent measure taken by the Government that will substantially impact the renewable energy industry is Government Decision no. 495/2014 regarding the exemption of electro-intensive consumers from the green certificates payment (“**GD no. 495/2014**”), which was published in the Official Gazette of Romania on 4 July 2014 and shall enter into force on 1 August 2014. Although the intention behind GD no. 495/2014 was to implement the principles provided for in the European Commission Guidelines on State Aid for environmental protection and energy 2014-2020 (the “**Guidelines 2014-2020**”), it is apparent that the Government now intends to implement the exemption for electro-intensive consumers prior to receiving state aid clearance from the European Commission as required under the Guidelines 2014-2020.

Under European legislation, any intent of a member state to grant state aid has to be notified to the European Commission in due time in order to allow the latter to analyse the respective state aid measure and decide whether it is compliant and compatible with state aid rules. Until the European Commission establishes a state aid measure’s compatibility, the member state is under an obligation to refrain from applying it. Moreover, under Law no. 220/2008 regarding the promotions mechanism for energy from renewable sources (“**Law no. 220/2008**”), an exemption is to be approved by a government decision only after a notification has been made to the European Commission in this regard and a decision authorizing the measure has been issued.

Nevertheless, GD no. 495/2014 has already been adopted and is due to enter into force on 1 August 2014, even though the procedure for notifying the European Commission was only formally commenced by the Ministry of Economy on 30 June 2014 when a notice was sent to the Competition Council, having the framework notification form attached to it. On 1 July 2014 the Competition Council issued a notice on the compliance, fairness and fulfilment of obligations under European legislation with regards to the state aid scheme of which they were notified. The Competition Council’s note included a recommendation that the implementation of the measures provided for in GD no. 495/2014 be made subject to compliance with the European Commission decision, issued as a result of the submission of the required notification and accompanying documents by the Romanian authorities. Following the abovementioned notice of 1 July 2014 from the Competition Council, the Competition Council in turn has to launch its official procedure for notifying the European Commission.

In light of the facts presented above, the applicable timeline and even the proper application of GD no. 495/2014 is unclear at this stage.

2. Applicability

GD no. 495/2014 applies to undertakings belonging to specific sectors whose competitive position is at risk due to the costs from the funding of support to renewable energy, incurred

as a result of the undertakings' electro-intensive consumption, and their exposure to international trade. The exemption can only be granted to an undertaking if it belongs to one of the sectors listed in Annex 3 of the Guidelines 2014-2020 (e.g. the mining of hard coal, the mining of other non-ferrous metal ores and of chemical and fertiliser minerals, the manufacture of oils and fat, and the production of copper and aluminium.)

An exemption, if granted, is valid for a period of 10 years. Further, the total maximum value of the state aid provided for renewables cannot exceed 85% of the maximum value of the electricity, as provided in the European Commission Decision no. 33134/2011 for the authorization of the Romanian green certificates support mechanism. The estimated value of the support mechanism as per this decision is RON 80,713 million.

The estimated number of undertakings expected to benefit from the exemption is 300, and the estimated budget allocated to the exemption represents the equivalent in RON of EUR 750 million.

3. Conditions

The electro-intensive consumers that wish to benefit from the exemption have to apply for the exemption with the relevant authority in charge of the administration of the state aid scheme (i.e. the Ministry of Economy). The Ministry of Economy has to confirm that the applicant fulfils the eligibility criteria described in brief below before it can issue the exemption. For a ten-year period starting from the date when the Ministry of Economy issues the exemption to a consumer, detailed registration documents regarding the approved exemption in accordance with the state aid scheme have to be kept by the Ministry of Economy in order to establish whether or not the criteria set out in the Guidelines 2014-2020 were complied with.

According to the Annex of GD no. 495/2014 regarding the procedure for obtaining an exemption approval, the following eligibility criteria have to be met by undertakings in order for them to be able to qualify for an exemption approval:

- The undertaking must be registered in accordance with the Companies Law no. 31/1990;
- The main activity or one of the secondary activities of the undertaking fits the CAEN codes provided for in Annex 3 of the Guidelines 2014-2020;
- The undertaking must have no registered debts to the state budget;
- The undertaking must implement energy efficiency programs and procure an energy audit before and after the implementation of such programs¹;
- The undertaking must undertake to maintain its activity in Romania during the 10-year term of the exemption and refrain from layoffs exceeding 25% of the number of employees at the time of the obtainment of the exemption approval; and
- The undertaking must enter into a partnership with educational institutions for the creation of specializations (such as professional schools, qualifications at the workplace, and scholarships), the financing of laboratory facilities for high schools and universities, or for professional training for students and teachers in order to increase professional skill levels and attract qualified personnel.

The scope of the exemption depends on the electro-intensity² of the economic operators, as follows:

- An exemption of **85%** is granted in the case of an electro-intensity **over 20%**, meaning the exempted consumers will pay only **15%** of the green certificates as per the mandatory quota;
- An exemption of **60%** is granted in the case of an electro-intensity of **10%-20%**, i.e. the exempted consumers will pay only **40%** of the green certificates as per the mandatory quota; and
- An exemption of **40%** is granted in case of an electro-intensity of **5%-10%**, i.e. the exempted consumers will pay only **60%** of the green certificates as per the mandatory quota.

The exemptions will apply to the mandatory quota for the acquisition of green certificates applicable to energy suppliers and will be notified to the National Energy Regulatory Authority (ANRE), starting with the year in which the exemption approval was obtained by the relevant consumer.

The beneficiaries of the exemption will notify the exemption approval to ANRE, and also to every energy supplier with whom it has or will sign electricity sale and purchase agreements. The relevant supplier is exempted from the obligation to acquire a certain number of green certificates related to the quantity of energy delivered to its client (i.e. the beneficiary of the exemption).

¹The initial audit reflects the current status of the energy efficiency measures and/or the plan for implementing measures to increase energy efficiency as resulting from the audit and assumed by the beneficiary. Moreover, an energy audit will be conducted every 4 years, except for the final energy audit, which will be conducted in the last year of the state aid scheme.

² The electro-intensity is computed according to a formula provided for in article 2, para. (5) of the GD no. 495/2014;

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