

**From:** Brigitta.Renner@ec.europa.eu [mailto:Brigitta.Renner@ec.europa.eu]  
**Sent:** Thursday, October 03, 2013 5:49 PM  
**To:** Romania PermRep StateAid

**Subject:** SA.37177 (2013/PN) - Romania - Green certificates

Dear Mr. Sabau,

On 2 August your authorities pre-notified the above mentioned measure.

Following our preliminary examination and in application of point 15 of the Notice on Simplified Procedure, I would like to inform your authorities that the Notice on Simplified Procedure was found to be inapplicable to the pre-notified measure, due to the fact that there are many amendments to the initial support scheme that need to be assessed, and the Commission already received several complaints concerning the measure, on which it will have to adopt a position. Therefore the pre-notified measure does not appear to qualify for a treatment under this Notice. It follows that the pre-notified measure, once notified, will be treated under normal procedures as laid down in the Council Regulation 659/1999 and further worked out in the Best Practices Code.

It is our understanding that in the view of the Romanian authorities the following amendments will be covered by this notification:

1. Temporary suspension of GC until 2017-2018;
2. Changes concerning the adjustment mechanism;
3. Limiting the accreditation of electricity producers to the annual level established by the Government based on a national program aimed at reaching the 2020 targets;
4. Introducing the possibility of the grid operators to request financial guarantees in view of the connection to the network;
5. Transactions on the centralised market (OPCOM) allowed only for producers of electricity from renewable sources and suppliers obliged to acquire them (eliminating intermediaries, and bilateral transactions);
6. No support granted to photovoltaic installed on land that is used in the agricultural circuit at the end on 2013;
7. No support granted for electricity delivered to the network in addition to the hourly quantities indicated by the producers to the TSO;
8. The quantity of electricity that can benefit from support will be regulated based on firm contracts with each accredited producer.

We assessed all the information provided by your authorities on this matter: the documents submitted as part of this pre-notification, but also the documents submitted by the Romanian authorities in the cases SA.36317 (2013/CP) SA.36728 (2012/PN), SA.37169 (2013/N) and SA.37179 (2013/PN).

The draft notification was found to be incomplete, as further detailed below. However, prima facie the respective amendments do not seem to raise significant issues in terms of compatibility, their main effect being a reduction of the support granted. Considering this, and in view of allowing the Commission to adopt a decision on the matter as soon as possible, we suggest that your authorities formally notify the measure and include all the additional information requested directly in the notification.

**Additional information requested:**

1. In your formal notification, please confirm that the Commission can use the information provided by the Romanian authorities as part of other State aid cases (in particular SA.36317, SA.36728, SA.37169 and SA.37179) for the assessment of the measure being subject to this notification.
2. The Romanian authorities have explained the reasons why the respective amendments were deemed necessary. In addition, we would need information on the impact such amendments have on the approved support scheme. Please explain for each of the notified amendment which is its expected impact on the scheme.
3. From the information provided by your authorities it seems that most amendments could be considered as tightening of criteria. Your authorities are invited to explain to what extent these amendments have an impact on the selectivity of the support measure (e.g. to what extent it is likely to impact on the number and type of beneficiaries).
4. Your authorities are also invited to estimate the overall impact of the notified amendments on the rate of return of the projects benefiting of support (e.g. as it was done in the case SA.36728 (2012/PN) concerning the Cogealac wind park). Please demonstrate that support will still have an incentive effect (e.g. that the rate of return would remain reasonable, avoiding any overcompensation, but would still be sufficient to ensure the viability of the renewable energy sources concerned). In this context, it would be appreciated if your authorities could provide updated data on the levelised costs and revenues of the supported renewable energy sources in a similar form to the data included in the Commission decision in the case SA.33134 (see table 4 on page 8 of the decision).
5. In addition we would welcome several clarifications concerning the current design of the support scheme. In particular, your authorities are invited to clarify which amendments will apply to existing beneficiaries and which amendments will apply to new beneficiaries (e.g. will the temporary suspension of green certificates until 2018 apply to both existing and new beneficiaries? would the reduction of the support level indicated in the draft Government decision provided to us apply to both existing and new beneficiaries?).
6. It is our understanding that currently the green certificates must be traded on the centralised market (and the producers of electricity from renewable energy sources do not have any more the option of concluding bilateral contracts). Please clarify if our understanding is correct. Furthermore, please clarify if the transactions on the centralised green certificate market continue to be performed in the way described in the Commission decision in the case SA.33134 (see recital 51 of the decision).
7. Furthermore, we note that electricity produced from renewables that can be traded by using regulated contracts will be pre-notified separately (there is already a pre-notification covering regulated prices for small-efficiency cogeneration from biomass – case SA.36860, 2013/PN). Also the foreseen exemption for energy intensive users will be notified separately, and the guarantee fund. Should our understanding be correct, please clearly mention in the notification that these amendments are outside the scope of the notification.

**Additional clarifications:**

As concerns the adjustment of the support level, the Commission agrees that support systems for renewable energy sources need to have a certain flexibility, allowing the Member States to adjust the support level to the changing economic realities, so as to avoid the risk of overcompensation. Such adjustments should be made in a predictable manner, after an appropriate public consultation.

To the extent the adjustment mechanisms are mentioned in the Commission decision approving the scheme and the adjustments are performed in line with respective mechanism, and are aimed simply at adjusting the support level to the new costs and prices observed on the market (e.g. maintaining the same rate of return for the beneficiaries), such adjustments can be considered as covered by the decision approving the scheme. To the extent the adjustments are performed in a different manner and/or are aimed at reducing or increasing the support level and the associated rate of return, such adjustments need to be notified. In case of doubt, it is always safer to notify.

For further information please see the Commission decision in the case SA.35565 - Amendments to the Renewables Obligation (RO) scheme, in particular recitals 35-36 - [http://ec.europa.eu/competition/state\\_aid/cases/247529/247529\\_1431564\\_120\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/247529/247529_1431564_120_2.pdf).

In its decision form 2011 concerning the Romanian support system for renewable energy sources based on green certificates (the case SA.33134) the Commission has not concluded on the existence of aid in the respective support system. Please note that if following the assessment performed under this case the Commission would conclude that aid is involved, such aid might be considered illegal aid. As explained during our previous meetings, this will not have any impact on the compatibility assessment of the measure – the compatibility of the measure will be assessed based on the criteria established in the Environmental Aid Guidelines (similarly to the assessment performed in the case SA.33134).

This e-mail does not include a definitive position of the European Commission itself, but only a preliminary view of the services of DG Competition as regards your pre-notification, based on the information available at this stage and pending any additional comments your authorities or any third party might bring forward in the course of the notification procedure.

Should you need any additional clarifications please feel free to contact the case team – Diana Barglazan and Anca Cimpeanu (in copy).

Kind regards

Brigitta Renner