

NEWSLETTER
June 2013

Ordonanta de Urgenta nr. 57/2013 privind modificarea si completarea Legii nr. 220/2008

La data de 7 iunie 2013, in Monitorul Oficial al Romaniei, Partea I, nr. 335, a fost publicata Ordonanta de Urgenta a Guvernului nr. 57/2013 (denumita in continuare „*OUG 57/2013*”) privind modificarea si completarea Legii nr. 220/2008 pentru stabilirea sistemului de promovare a producerii energiei din surse regenerabile de energie (denumita in continuare „*Legea 220/2008*”).

OUG 57/2013, avand drept data de intrare in vigoare data de 01.07.2013, aduce in principal urmatoarele modificari:

1) Reglementari cu impact direct asupra furnizorilor:

➤ **Tranzactionarea certificatelor verzi**

Conform dispozitiilor OUG 57/2013, tranzactionarea certificatelor verzi este permisa exclusiv producatorilor de energie electrica din surse regenerabile si operatorilor economici care au conform legii obligatia de a achizitiona certificate verzi, respectiv: furnizorii care achizitioneaza energie electrica destinata propriului consum final sau vanzarii catre consumatorii finali; producatorii de energie electrica care utilizeaza energie electrica pentru consum final propriu, altul decat consumul propriu tehnologic; producatorii care utilizeaza energie electrica pentru alimentarea consumatorilor racordati prin linii directe de centrala electrica.

Mai departe, OUG 57/2013 restrange tranzactionarea certificatelor verzi exclusiv la pietele centralizate administrate de operatorul comercial al

Emergency Ordinance no. 57/2013 regarding the amendment of Law 220/2008

On 7th of June 2013, the Government Emergency Ordinance no. 57/2013 (hereinafter referred to as “*GEO 57/2013*”) regarding the amendment and completion of Law no. 220/2008 establishing the promotion system of renewable energy generation (hereinafter referred to as “*Law 220/2008*”) was published in the Official Gazette of Romania, Part I, no. 335, on 7th of June 2013.

GEO 57/2013, entering into force on 01.07.2013, brings the following main changes:

1) Rules impacting on the suppliers’ activity:

➤ **Green certificates trading**

According to the provisions of GEO 57/2013, the trading with green certificates is exclusively allowed to renewable energy producers and to those operators for which is stipulated the obligation to acquire green certificates, more exactly: suppliers of electricity, purchasing electricity for their final consumption or for selling it to final consumers; producers of electricity which use electricity for own final consumption, other than technological one; producers using electricity for securing the supply to consumers connected by direct grids to their generation unit.

In addition, GEO 57/2013 limits the trading of the green certificates exclusively to the centralized markets managed by the electricity

pietei de energie electrica, unde tranzactionarea urmeaza a se realiza in mod transparent, centralizat si nediscriminatoriu.

➤ **Obligatia de achizitie de certificate verzi si refacturarea valorii acestora catre consumatorii finali**

Incepand cu 01.07.2013, furnizorii de energie electrica si producatorii vor fi obligati sa achizitioneze trimestrial un numar de certificate verzi prin raportare la cota anuala obligatorie estimata pentru anul respectiv, astfel cum este stabilita de ANRE in prima decada a lunii decembrie din anul anterior.

OUG 57/2013 prevede in mod expres faptul ca, in facturile emise consumatorului final, nu va putea fi inclusa contravaloarea certificatelor verzi neachizitionate, aceasta fiind datorata potrivit dispozitiilor Legii 220/2008 de furnizorii si producatorii de energie electrica care nu isi indeplinesc obligatia de achizitie.

2) Dispozitii care vizeaza in principal producatorii de energie:

➤ **Amanarea temporara a acordarii de certificate verzi**

In perioada cuprinsa intre 01.07.2013 - 31.03.2017, se va amana acordarea unui numar de certificate verzi pentru fiecare 1MWh produs si livrat de producatorii de energie electrica din surse regenerabile, astfel:

- (i) un certificat verde (din 3) pentru centralele hidroelectrice noi, cu puteri instalate de cel mult 10 MW;
- (ii) un certificat verde (din 2) pentru centralele electrice eoliene;
- (iii) doua certificate verzi (din 6) pentru centralele electrice solare.

Recuperarea certificatelor verzi astfel amanate se va face incepand cu data de 01.04.2017 pentru energia electrica produsa din sursele regenerabile prevazute la pct. (i) si (iii) de mai sus si incepand cu data de 01.01.2018 pentru energia electrica produsa din sursa regenerabila

market operator, where the trading shall be carried on transparently, centralized and non-discriminator.

➤ **The obligation of purchasing green certificates and re-invoicing their value to the final consumers**

Starting with 01.07.2013, electricity traders and producers shall be obliged to purchase each trimester a number of green certificates by reference to the annual mandatory quota estimated for that specific year, as shall be established by ANRE at the end of the previous year, within the first decade of December.

GEO 57/2013 clearly stipulates also that the counter value of non-purchased green certificates, as due by the electricity suppliers and producers for not fulfilling their acquisition obligation according to Law 220/2008, cannot be further included in the invoice issued to the final consumer.

2) Dispositions which mainly target the energy producers:

➤ **Deferral on green certificates granting**

Between 01.07.2013 - 31.03.2017, shall be deferred the granting of a number of green certificates for each 1MWh produced and delivered by the renewable energy producers, thus:

- (i) one green certificate (out of 3) for the new hydropower plants, with installed powers of at most 10 MW;
- (ii) one green certificate (out of 2) for the wind power plants;
- (iii) two green certificates (out of 6) for the solar power plants.

The recovery of the deferred green certificates shall begin on 01.04.2017 for the electricity produced from renewable sources stipulated at points (i) and (iii) above and on 01.01.2018 for the electricity produced from the renewable source mentioned at point (ii)

<p>mentionata la pct. (ii) de mai sus; recuperarea certificatelor verzi se va efectua esalonat, pana cel tarziu la data de 31.12.2020.</p> <p><u>Modalitatea de recuperare esalonata a numarului de certificate verzi astfel amanate urmeaza a se va stabili de ANRE.</u></p> <p>➤ Garantii financiare</p> <p>Conform amendamentelor aduse de OUG 57/2013, operatorul de retea are dreptul sa solicite, la momentul emiterii avizului tehnic de racordare (ATR), constituirea de garantii financiare, cuantumul si modul de utilizare a acestor garantii urmand a fi stabilite de ANRE.</p> <p>➤ Se limiteaza aria de aplicare a sistemului de promovare</p> <p>Conform dispozitiilor OUG 57/2013, sistemul de promovare a producerii energiei electrice din surse regenerabile nu se aplica pentru:</p> <ul style="list-style-type: none"> ▪ energia electrica produsa in centrale electrice fotovoltaice situate pe terenuri care, la data intrarii in vigoare a OUG 57/2013, erau in circuitul agricol; ▪ cantitatile de energie electrica livrate suplimentar de unitatile dispecerizabile fata de cantitatile de energie electrica din notificările fizice orare transmise de producătorii de energie electrica din surse regenerabile de energie la operatorul de transport si sistem. <p>3) <u>Impactul noilor reglementari asupra consumatorilor finali:</u></p> <p>Printre obiectivele declarate ale OUG 57/2013 se numara si acela de sistare a efectului de crestere necontrolata a preturilor la clientii finali de energie electrica si mentinerea competitivitatii principalelor sectoare economice mari consumatoare de energie.</p>	<p>above; the subject deferred green certificates shall be recovered by installments, until 31.12.2020, the latest.</p> <p><u>However, the precise method for recovering such green certificates is still to be established by ANRE.</u></p> <p>➤ Financial guarantees</p> <p>According to the amendments brought by GEO 57/2013, the network operator has the right to condition the issuance of the technical connection to the grid permit, the constitution of financial guarantees, following that the quantum and the usage of these guarantees to be further established by ANRE.</p> <p>➤ The application of the promotion system is further limited</p> <p>According to 57/2013 GO's provisions, the promotion system for renewable energy is not applicable to:</p> <ul style="list-style-type: none"> ▪ electricity generated in photovoltaic power plants located on lands which, at the date GEO 57/2013 became effective, were in agricultural use; ▪ the quantities of electricity additionally delivered by the dispatching units as compared to the quantities of electricity indicated in the hourly physical notifications sent by the renewable energy producers to the transmission and system operator. <p>3) <u>The new regulations' impact on the final consumers:</u></p> <p>Among the declared objectives of GEO 57/2013 it should be reiterated the one of avoiding the uncontrolled prices growth effect to the final consumers of energy and of maintaining the competitiveness of the main energy consumers' economic sectors.</p>
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<p>In vederea atingerii acestui obiect, pe langa dispozitiile mentionate mai sus si care pot conduce indirect catre acest rezultat (spre ex. tranzactionarea centralizata a certificatelor verzi, excluderea intermediarilor, regula conform careia in facturile catre consumatori finali nu se va include contravaloarea certificatelor verzi neachizitionate, etc.), concura in mod direct posibilitatea prevazuta de OUG 57/2013 privind exceptarea de la aplicarea prevederilor Legii 220/2008 a unui procent din cantitatea de energie electrica livrata consumatorilor finali.</p> <p>Conditile de calificare pentru mecanismul de exceptare, precum si cantitatea exceptata, conditionata de aplicarea programelor anuale de crestere a eficientei energetice, vor fi aprobate prin hotarare a Guvernului si vor face obiectul unei reglementari ANRE separate.</p> <p>4) <u>Consideratii finale:</u></p> <p>Chiar daca adoptarea noilor reglementari a fost indelung asteptata pentru a reda gradul de certitudine necesar sistemului de promovare a producerii energiei din surse regenerabile, exista riscul ca interesul in dezvoltarea unor noi capacitati de productie a energiei din surse regenerabile sa scada in intensitate, avand in vedere urmatoarele dispozitii prevazute de OUG 57/2013:</p> <ul style="list-style-type: none"> - Pentru a se evita supracompensarea centralelor acreditate dupa data intrarii in vigoare a OUG 57/2013, ANRE are dreptul ca in baza rezultatelor rapoartelor de monitorizare elaborate semestrial, sa propuna Guvernului masuri de reducere a numarului de certificate verzi, acesta urmand sa fie aprobate prin hotarare de Guvern; - Dezvoltarea in viitor a parcurilor fotovoltaice se va limita la suprafetele de teren care la data de 1 iulie 2013 nu se aflau in circuit agricol avand in vedere ca sistemul de promovare a producerii energiei electrice din surse regenerabile nu se aplica pentru energia electrica produsa in centrale electrice 	<p>For reaching such purposes, besides the herein above already commented dispositions which might indirectly lead to such effect (e.g. centralized trading of green certificates, exclusion of intermediaries from trading with green certificates, the rule as per which the counter value of non-purchased green certificates cannot be further included in the invoice issued to the final consumer, etc.), is stipulated also the possibility of exempting a certain amount of electricity delivered to final consumers from the correlative obligation to pay the corresponding green certificates' value.</p> <p>The qualification conditions for the exemption mechanism, as well as the exempted quantity, conditioned by the appliance of annual programs of energy efficiency increase, shall be approved by Government Decision and shall be subject to a distinct ANRE regulation.</p> <p>4) <u>Final considerations:</u></p> <p>Although eagerly expected to reestablish the certainty of the renewable energy promotion system, GEO 57/2013 is likely to affect the interest in developing new renewable energy sources considering the following dispositions introduced by GEO 57/2013:</p> <ul style="list-style-type: none"> - in order to avoid the overcompensation of power plants accredited after the entering into force of GEO 57/2013, ANRE has the right that based on the outcomes of quarterly monitoring activity to be carried on, to propose the Government the issuance of decisions for the reduction in the number of the green certificates to be granted; - the further development of photovoltaic power plants shall be limited to those plots of land which were not in agricultural use on 1st of July 2013, considering that the promotion system for renewable energy is not applicable to electricity generated in photovoltaic power plants located on lands which, at the date GEO
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<p>fotovoltaice situate pe terenuri care, la data intrarii in vigoare a OUG 57/2013, erau in circuitul agricol;</p> <ul style="list-style-type: none">- acreditarea de catre ANRE a grupurilor/centralelor electrice care beneficiaza de sistemul de promovare prin certificate verzi se va realiza pana la nivelul valorilor anuale totale ale capacitatilor instalate in centrale electrice de productie a energiei din surse regenerabile, astfel cum vor fi stabilite pentru fiecare an calendaristic prin Hotarare a Guvernului pe baza datelor reactualizate din Planul national de actiune in domeniul energiei regenerabile (PNAER).	<p>57/2013 became effective, were still in agricultural use;</p> <ul style="list-style-type: none">- the accreditation by ANRE of the power plants/groups that benefit from the green certificates promotion system shall be carried on up to the level of the annual total values of the capacities installed in the renewable energy plants, as those shall be established for every calendar year by Government Decision based on the updated information from the National Plan of action in the renewable energy field (PNAER).
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*Yours sincerely,
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