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## Energy & Natural Resources - Romania

### Renewable Energy Investors Await Green Light on Incentives

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#### Introduction

In early November 2008 Parliament enacted Law 220/2008, transposing the provisions of the EU Renewable Energy Directive (2001/77/EC) into national legislation and creating a comprehensive legal basis for the development of electricity generation from renewable sources.

Before the new law was enacted, Romania's regulatory framework mainly comprised secondary legislation in the form of (i) government decisions and orders, and (ii) decisions adopted by the National Energy Regulatory Authority. However, the establishment of a new framework had been widely expected, as the provisions on promoting such energy projects were about to expire, presenting potential investors with a troubling lack of legal certainty.

The promotion of the renewable energy sector in Romania has centred on a system of green certificates and a mandatory quota regime that requires electricity suppliers to acquire energy from renewable sources. Certificates are granted to generators of electricity from renewable sources and electricity suppliers must purchase a set number of certificates every year. This number is calculated by multiplying an official figure - 6.28% for 2009 - by the quantity of energy supplied annually to end users. Such certificates can be traded - either on the bilateral contracts market or on the certificates market - at a value that is independent of the amount of energy that they represent.

#### Grey Areas

The law requires the approval of certain implementing legislation within 90 days of its enactment; however, such secondary legislation has not yet been approved. Moreover, the law does not expressly amend or repeal the existing regulations.

The lack of an unambiguous body of implementing regulations presents problems for the implementation of incentive schemes, which in turn affects potential renewable energy projects and related assessments and financial projections.

#### Expected Secondary Legislation

##### ***Promoting green energy to suppliers***

In principle, the law provides that energy from renewable sources may be promoted through a quota and certificate system or a fixed-price system.

Details of the system to be implemented must be confirmed by an official government decision. A draft decision providing for the use of a certificate and quota system was submitted for public consultation, but has not yet been adopted.

##### ***Tax incentives for investors***

The law mentions a number of tax incentives for renewable energy projects. However, the conditions applying to such incentives will be specified in further regulatory instruments.

Among other fiscal measures, the law provides for (i) tax exemptions and reductions for investors in the sector for three years from the commissioning of the installation; and (ii) excise tax exemptions under the provisions of the EU Energy Tax Directive (2003/96/EC).

The law also emphasizes that investors may be eligible for incentives in respect of strategic projects under the national energy policy. If so, the government will undertake to:

- guarantee up to 50% of the value of the long-term and middle-term loans supporting the project;
- ensure that adequate transport and utilities infrastructure is in place for the start-up and development phases;
- modify existing infrastructure and create new access roads as necessary to support start-up and development; and
- supply funds from the state budget to support job creation.

#### **Additional measures**

The law envisages further support for renewable energy projects by guaranteeing:

- accelerated depreciation deductions on investments;
- a 50% reduction in the fees payable for permits required for investment projects;
- an expedited procedure for the issuance of such permits;
- a 50% subsidy for the cost of the electricity consumed by geothermal energy installations; and
- support for local public authorities in attracting direct investment by:
  - facilitating the provision of investment facilities;
  - simplifying authorization procedures; and
  - establishing a dedicated bureau for authorizations.

#### **Access to transport and distribution network**

The law states that producers of energy from renewable sources will be granted priority access to the transport and distribution network. However, an implementing regulation from the energy regulator is needed to determine:

- the conditions on which access will be granted;
- the allocation of interconnection costs; and
- the criteria for designating producers of energy from renewable sources.

#### **Comment**

The adoption of the law constitutes a significant step forward and will be welcomed by potential investors. However, the fact that much of the implementing legislation has yet to be proposed in its final form continues to affect the development of the sector.

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