

welcome!

Barriers and prospects for the development of microhydro power projects

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- Micro hydro (≤ 10 MW) qualifies as E-RES and benefits from RES support scheme
- 445 MW installed as of 01 January 2014
- Level of support

| COD until 31 December 2013 | COD from 1 January 2014 |
|--|--|
| 3 GCs/MW new* 2 GCs/MW refurbished | 2.3 GCs/MW new 2 GCs/MW refurbished |
| * 1 GC blocked from trading until March 2017 | |

- Alternatively, feed-in tariff system for projects ≤ 1 MW (under preparation with ANRE)

Legal Barriers / Issues

- Related to the support scheme (similar for all E-RES)
 - uncertainty, lack of predictability/stability
 - ban on freely negotiated bilateral GCs trading; GCs centralized bilateral platform recently launched by OPCOM, still under testing by the market
- Related to tax aspects
 - 1.5% tax on special constructions
 - water use tax
- Related to environmental aspects
 - Protocol executed between Ministry of Environment and WWF, providing, among others:
 - suspension of licensing/authorization of HPPs located in protected areas: 31 January 2014
 - defining exclusion areas : 31 May 2014

Legal Barriers / Issues

- Related to permitting and licensing
 - typical challenges for permitting and licensing of E-RES projects (zoning plan?)
 - **plus** specifics: water management endorsement and authorization issued by Romanian Waters Authority
 - water management endorsement subject to **financial guarantee**
 - EUR 50,000 - 1MWh
 - EUR 45,000/MW 1MW - 5MW
 - EUR 37,500/MW 5MW - 10MWwhich may be executed if construction works do not kick-off within defined timeframe.

Obligation to lease the riverbed for obtaining the water management approval

- Conditions for obtaining the water management approval:
 - **Lease** of the riverbed;
 - Depositing **the financial guarantee** for blocking the placement.
- Eligibility conditions for leasing:
 - Presenting a **technical solution** for capturing, discharging, producing electricity;
 - **Exploitation of at least 70% of the hydropower potential** of the requested sector.

Lease – sufficient for obtaining building permit? (I)

- **Order 980/2011** – obligation to **lease** the riverbed for obtaining the water management approval;
- **Law 50/1991** – obligation to obtain an **in rem right** over the land in order to request and obtain the building permit.

Lease – sufficient for obtaining building permit? (II)

- **Conflict** between Law 50/1991 and Order 980/2011 – potential problems in obtaining the building permit?
 - Obtaining the building permit – only based on an ***in rem* right** (art. 1 para. (1) of Law 50/1991);
 - Lease grants the **use** of the land, not an *in rem* right (art. 1777 of the Civil Code).
- **Potential risk** – the developer not acknowledged as rightful owner of the micro hydropower plant (if building permit obtained and finalised construction works).
- *De lege ferenda*: concession right instead of right of use

Permanent removal from forestry stock of forest lands (I)

- In principle – **forbidden** to reduce the national forest lands surface;
- **Exceptions** – for executing national interest projects, declared of public utility, **the lands necessary for the exploration and exploitation of alternative power resources** (among other);
- Condition to **compensate** them, without reducing the forest lands surface, and to **pay in advance the financial obligations** provided by the Forestry Code in art. 41.

Permanent removal from forestry stock of forest lands (II)

- **Cumulative conditions** regarding the land given as compensation:
 - **Five times higher value** than the value of the land permanently removed from the forestry stock;
 - **Surface** not lower than **three times** the surface of the land permanently removed from the forestry stock;
 - Only **from outside the forestry stock**, but in principle from **adjacent areas** (exception: lands with a surface higher than 20 ha, which must be compacted) and **appropriate for being afforested**;
 - **Not** situated in the alpine or subalpine area;
 - **Not** adjacent to the forest shelterbelts;
 - If the county has the surface of the forestry stock under 16% of the county surface – obligation for the land given as compensation to be part of the same county.

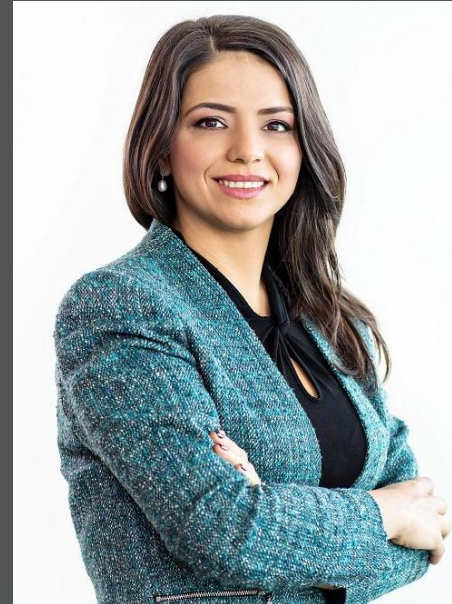
Permanent removal from forestry stock of forest lands (III)

- **Transfer of property right** – **theoretically** through handover operation (art. 38 para. (1) of Forestry Code), **practically** through barter agreement followed by the handover operation;
- **Competent authorities for approving the requests** for permanent removal from the forestry stock of forest lands:
 - **For surfaces lower than 1 ha** – heads of the specialised territorial subunits of the central public authority responsible for forestry;
 - **For surfaces between 1 ha and 10 ha** – head of the central public authority responsible for forestry;
 - **For surfaces higher than 10 ha** – Government.

Thank you!



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