

SUMMARY OF THE FINAL REPORT ON THE PROJECT

**“Supportive measures for the effective and efficient operation
of the Register of guarantees of origin”
(Reference: 03MAP290)**

**compiled on behalf of
the Federal Ministry for Economic Affairs and Energy**

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Part 1 Background

On 01/01/2013, the electronic Register of guarantees of origin for electricity from renewable resources was put into operation at the Umweltbundesamt (Federal Environment Agency, hereinafter referred to as: "UBA"). In addition to issuing, transmitting and cancelling guarantees of origin for electricity (hereinafter referred to as: "GO"), the Register of guarantees of origin has the important role of facilitating the recognition of GO issued by other EU and non-EU countries and to allow their import into the German register. In this context, the requirements of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2004 (Renewable Energy Directive, hereinafter referred to as: "RES Directive") must be complied with. One of these requirements provides that a GO issued by a Member State in conformity with the RES Directive must, as a matter of principle, be recognised by the other Member States. Only in case of well-founded doubts about the accuracy, reliability and veracity of the GO may a Member State refuse to recognise them.

In order to meet the requirements arising from the different legal and factual circumstances to be considered when transferring GO between various registers, it is necessary to put in place a communication and transfer system connecting the individual registers. Due to the electronic design of the registers, an electronic communication and transfer system has been established in practice. Already before the introduction of the Register of guarantees of origin, an electronic interface run by the Association of Issuing Bodies (AIB) facilitating the transfer of GO within Europe was operated within the framework of the European Energy Certificate Systems (EECS). This interface continues to be active and the Register of guarantees of origin has been linked to this interface via the so-called AIB Hub since July 2013. In this way, it was made technically possible to import foreign GO into the respective domestic register.

Before a foreign GO can be transferred into the domestic register, it must first be recognised by the UBA. However, when it came to the practical application and implementation of the criteria to be used in the legal assessment in the context of a recognition procedure in 2013, the UBA had to enter uncharted territory. The Register of guarantees of origin put into operation on 01/01/2013 gave rise to several questions regarding the recognition, which, apart from the UBA as the competent register body, also concerned the affected market players.

Within the framework of the project "Supportive measures for the effective and efficient operation of the Register of guarantees of origin" the project partners examined whether the GO systems of selected countries principally meet the re-

quirements for recognition. For this purpose, the GO and electricity labelling systems implemented by twelve foreign register bodies were surveyed. This does not mean that the countries which were not selected for the assessment are not recognised by the UBA. All other countries are assessed by the UBA itself. The results of the survey conducted by the project partners are briefly outlined in the following.

Part 2 Legal framework as the basis of assessment within the recognition procedure

The recognition procedure for foreign GO is shaped to a decisive extent by the underlying legal framework. In this context, the UBA must primarily observe the following requirements: Pursuant to Art. 15 RES Directive, all EU Member States are obliged to implement a GO system for the purpose of providing final consumers with information on the sources of electricity (electricity labelling). In order to transpose this requirement into national law, the Federal Republic of Germany introduced a set of regulations in various legislative areas. Thus, the German legislator subjects the recognition of foreign GO to the requirements under sec. 79 subs. 2 EEG (Renewable Energy Sources Act), sec. 3 subs. 3 HkNV (Ordinance on Guarantees of Origin for Electricity from Renewable Energy Sources) and sec. 18 HkNVD (Implementing Ordinance on Guarantees of Origin for Electricity from Renewable Energy Sources). Furthermore, Art. 15 RES Directive must be complied with, e.g. by means of interpreting national law in conformity with the Directive.

Part 3 Methodology

Three essential steps were carried out in the framework of this project. As a first step, fundamental questions regarding the assessment performed by the UBA in the context of the recognition procedure (see section 3 A.) were clarified in order to be able to subsequently undertake the evaluation for selected countries (see section 3 B.). As a third step, the findings obtained from the survey so far were updated (see section 3 C.).

A. Clarification of fundamental legal questions and establishment of a set of criteria

To be able to determine whether the GO from the countries selected are eligible for recognition, the project partners established a set of "tools" for the assessment (see II.). This was necessary because the legal framework governing the recognition of foreign GO provides for various content requirements (see I.) which had to be included in the assessment.

I. Clarification of preliminary legal issues

First, selected fundamental preliminary legal issues which arose in connection with the recognition procedure were examined. To this end, the requirements under the RES Directive were primarily analysed and interpreted and individual questions identified in this context were examined in detail. One of findings thus obtained was that the UBA is subject to an audit requirement in the context of the recognition procedure. Moreover, the scope of application of the assessment regarding the eligibility for recognition was reviewed and the extent of the assessment to be performed within the framework of the recognition procedure was determined.

II. Establishment of a set of criteria

The findings obtained in the context of surveying the preliminary legal questions were used as the point of departure for establishing a set of criteria for recognising foreign GO which was developed jointly by BBH and the Öko-Institut.

How the individual requirements are to be evaluated in the context of a recognition procedure cannot be derived solely on the basis of the results gained from reviewing the preliminary legal questions. This applies to setting up an adequate assessment programme which comprises the relevant requirements on the one hand, and to the evaluation of the results of the assessments on the other hand.

From the point of view of the project partners and with regard to the evaluation of the results of the assessments, any and all requirements relevant for the assessment are to be met cumulatively. The only exception – due to its special status – is the content to be assessed under sec. 18 subs. 1 sentence 4 HkNDV (obligation of transfer by means of an electronic interface), which is likely to be a specification of the requirement stated under Article 15 subs. 5 RES Directive.

With regard to setting up an adequate assessment programme which comprises the relevant requirements, the project partners transposed the individual requirements into an adequate assessment scheme which served as a set of criteria for the assessment of individual countries. Compliance with the requirements could be checked on the basis of this set of criteria.

Certain individual requirements relevant for the assessment could be included into the assessment scheme as a separate item without further specification, since compliance with these requirements could be easily checked. The requirement

that a GO by definition refers to one MWh of electricity (Article 15 subs. 2 (1) sentence 4 RES Directive) serves as an example. Such requirements are thus equivalent to an individual assessment criterion.

Other requirements relevant for the assessment, however, call for access to a range of factual information in order to adequately check that they are complied with. In order to factor in the increased assessment intensity, the project partners made use of a number of criteria through which certain factual information could be included in the respective assessment. An individual requirement relevant for the assessment is thus represented by several criteria in the assessment scheme. The following requirements may serve as examples for criteria relevant for the assessment: no use of the GO for compliance with the objectives under Art. 3 RES Directive, the GO was issued by a competent body purs. to Art. 15 RES Directive, the GO comprises all data required purs. to Art. 15 subs. 6 RES Directive or the GO has not been used twice.

B. Assessment of the eligibility for recognition of GO from selected countries

I. Selection of the countries to be assessed

In cooperation with the UBA, the following countries were selected for assessment: Sweden, Norway, Finland, Iceland, Denmark, France, the Netherlands, Slovenia, Italy, Belgium (Walloon Region), Belgium (Flanders) and Croatia. The selection of individual countries took into account the countries' relevance for the German Register of guarantees of origin. However this selection does not allow any conclusion for recognition of GO from other countries. All other countries are assessed by the UBA itself.

The countries were assessed separately by making use of the established set of criteria. To this end, the results from the project "Concerted Action – Renewable Energy Sources Directive (CA-RES)" were evaluated. Furthermore and in addition to the applicable legal framework within the individual countries, the standard energy sector practice in the respective countries was analysed. Further need for clarification arose in the case of some countries, which was met by communicating directly with the responsible contacts at the respective competent bodies.

II. Results of the assessments

In the opinion of the project partners and according to the results, there should, at present, not be any well-founded doubts regarding the accuracy, reliability or veracity of GO from any of the assessed countries, which would justify a refusal of the application for recognition. While there have been criteria which were only met to a certain extent in a variety of cases, this did not result in a recommendation against the decision to recognise the respective GO in any case. Furthermore, the assessments generally included notes on aspects that called for further discussion and aspects which will have to be assessed again in the future.

Overall and as a matter of course, only those criteria relating to the functioning of the Register of guarantees of origin in general and to the system of electricity labelling could be assessed. Whether, as a result, recognition should be given in all individual cases also depends upon the issuance of the individual GO. Against this backdrop, the general eligibility for recognition cannot serve as an indicator for the recognition in individual cases. Instead, individual assessments still have to be conducted for every GO.

III. Aggregated summaries in English

The results of the individual assessments of countries have been presented in an aggregated form as short summaries in English. These country-specific aggregated summaries are intended for publication on the UBA website.

C. Updating the results of the assessments as regards the eligibility for recognition of GO from selected countries

The results of the country-specific assessments merely represent snapshots of the matter at hand. In case of changes to the factual or legal situation in the countries, the UBA will have to evaluate them with regard to the future eligibility for recognition of the respective GO. This is due to the fact that the recognition pursuant to sec. 18 HkNDV is to be assessed on grounds of the current situation and case by case. Therefore, the project partners updated the results of their assessments based on the factual and legal situation prior to July 2014 between the end of July 2014 and August 2014.

Part 4 Continuation and update of the assessments

The project partners recommend the UBA, the German body keeping the Register of GO and statutorily appointed to decide on the eligibility for recognition, to regu-

larly update the results of the assessments of individual countries that have already been conducted beyond the end of the project term. To the extent that there is no specific indication for changes to the factual and legal situation in the individual countries giving rise to a re-evaluation of the assessments, it is recommended to conduct at least an annual update. In this regard, it might be advantageous to request information on changes to the factual and/or legal situation from the foreign register bodies. Whether further countries should be assessed depends on whether the UBA holds it necessary and whether GO are to be imported from countries other than the assessed. The set of criteria developed by the contractors, which has been converted into a format that specifically serves the future use by UBA, could be used for such assessments.