

## Chapter 23

### Energy

#### 1. General

The first steps taken for the deregulation of the Romanian energy sector were marked by the reorganization of Regia Nationala de Electricitate (“RENEL”), entity which, in 1998, used to control the whole energy sector. This reorganization consisted in establishing Compania Nationala de Electricitate („CONEL”), Compania Nationala „Nuclearelectrica” and Regia Autonoma pentru Activitati Nucleare. Further on, in 2000, CONEL restructuring process began.

Adopting GEO No. 63/1998 on the electric and thermal power, as well as GEO No. 29/1998 on the establishment, organization and functioning of the National Electricity and Heat Regulatory Authority represented a turning point for the creation of the legal framework for later development in the energy sector. GEO No. 63/1998 was the first legal instrument after 1990 issued with the purpose to unitarily regulate the electric and thermal power sector in Romania.

During the past decade, regulation in the energy sector has seen substantial changes by the passing of Law No. 325/2006 on the organization and operation of public services of central thermal energy supply and Electricity Law No. 13/2007. Such enactments have regulated the separation of electricity-related activities (including CHP Combined Heat and Power-co-generated thermal energy), where the National Authority of Energy Regulation (“ANRE”) is the regulatory authority, from central thermal energy, where the National Authority for Regulation of Public Utilities Community Services (“ANRSC”) is the regulatory authority. Moreover, in 2012, by the passing of Law 123/2012, the new Electricity and Natural Gases Law, the centralized trading of energy became mandatory.

Despite the notable efforts made for the deregulation of the national energy system, a multitude of issues are still pending, awaiting to be addressed by the competent authorities, in order to reach the final goal: the completion of sector deregulation.

The energy market became gradually accessible to competitors. Currently – starting with July 1<sup>st</sup>, 2007, the electricity and natural gases supply was fully liberalised. Prices for energy continue to be regulated only in respect of household consumers, and even in this case, the prices are undergoing a process of deregulation that shall result in the complete liberalization at the end of 2017, in case of electricity, and at mid-2021, in case of natural gases.

#### 2. Main Regulations

- Electricity and Natural Gases Law No. 123/2012 (“Law No. 123/2012”) as amended to date;
- Law No. 51/2006 which came into force in March 2007 on public community services, subsequently completed and amended (“Law No. 51/2006”);

- Law No. 325/2006 on the public service for thermal power supply (“Law No. 325/2006”);
- Law No. 121/2014 regarding energy efficiency (“Law No. 121/2014”);
- Law No. 111/1996, on the safe carrying out of nuclear activities, with subsequent amendments, republished (“Law No. 111/1996”);
- Law No. 220/2008 the promotion system for the generation of energy from renewable energy sources, with subsequent amendments (“Law No. 220/2008”);
- Government Decision No. 219/2007 regarding the promotion of cogeneration based on demand of useful thermal energy;
- Government Decision No. 1215/2009 establishing the criteria and conditions required for implementing the support system for the promotion of high-efficiency cogeneration based on demand of useful thermal energy.

### **3. Electricity and thermal power**

#### **3.1. General**

Law no. 123/2012 regulates the activities in the energy sector, *i.e.* generation, transmission, distribution, supply and trading, operation of the energy market, as well as the construction and exploitation of relevant installations, and the import and export of electricity.

##### **3.1.1. Generation, transmission, distribution, supply and trading of electricity**

###### **a) Generation of electricity**

Electricity and thermal power generation may be carried out by business entities with domestic or foreign capital, licensed according to the law.

The main obligations of the electricity generators are as follows:

- (i) to ensure the electricity delivery and the system technological services in compliance with the licenses, contractual clauses and regulations in force;
- (ii) to offer under non-discriminatory terms the entire electric power available on the competitive market;
- (iii) to offer under non-discriminatory terms the system technological services;
- (iv) to maintain satisfactory fuel/water (as the case may be) reserves in order to comply with their obligations of generation and continuous supply of electricity;

- (v) to comply with the operational requirements of the transmission system operator and to establish their own levels of operative management;
- (vi) to draft and send to ANRE annual activity reports.

Electricity generators have mainly the following rights:

- (i) to have access to the electricity networks of public interest according to the law;
- (ii) to obtain passageway for their own electric lines;
- (iii) to trade the electricity and system technological services on the regulated and competitive market;
- (iv) to establish and maintain their own telecommunication systems for the connection to their generation units, customers or the operative management levels.
- (v) to trade the co-generated thermal energy.

#### **b) Electricity transmission**

The electricity transmission is carried out by the transmission system operator. The transmission system operator must draft prospective transmission grid development plans, in compliance with the current stage and the future trends of electricity consumption and sources, by encompassing the relevant financing sources and achievement means of transmission installations investments, taking in account the territorial planning applicable to the areas crossed by their transmission installations. The plans are subject to the competent authorities' endorsement – ANRE - and to the relevant ministry's approval.

The electricity transmission network (which is the network with nominal voltage of more than 110 kV) is of national and strategic interest, being in the public property of the State. The land where the transmission network is placed belongs to the State for the entire existence period of the network, except for those belonging to the network operator (i.e. Transelectrica). The transmission system operator provides the transmission public service for the whole transmission network users, under non-discriminatory conditions, ensuring access to transmission networks to any applicant meeting the legal requirements.

The transmission system operator manages the transmission and transit public system on the entire Romanian territory.

#### **c) Electricity distribution**

Distribution represents the transport of electricity through distribution networks of high, medium or low voltage, with a nominal voltage of maximum 110 KV in view of delivering electricity to customers, without including the supply activity. The electricity distribution networks are developed on the grounds of economic efficiency principles, in compliance with the urbanism plans, rights in real property, environmental protection, health and life of the individuals and energy saving principles and regulations, according to the technical and safety norms included in the technical prescriptions.

Distribution operators are licensed entities, having the following main powers:

- (i) to ensure the users' access, under technical connection conditions;
- (ii) to operate, upgrade, rehabilitate and develop electricity distribution networks, observing the technical regulations in force;
- (iii) to ensure the operative management in accordance with the distribution license;
- (iv) to perform works for the development of electricity distribution networks through optimum development programs, based on perspective studies, upon consultation, as the case may be, with the transmission system operator in view to ensure the viability, safety and efficiency of the distribution networks;
- (v) to ensure the transit of electricity through electric distribution networks, at the demand of and upon informing the transmission system operator, for such country areas where there is not enough capacity in the distribution networks, for the evacuation of the electricity from power plants, including co-generation power plants, in view of connecting to neighboring countries' power systems, based on bilateral agreements, in case of incidents occurring in the operation of national energy system or in case of refurbishing and maintenance works which render temporarily unavailable the transmission system;
- (vi) to monitor the safe functioning of the electric distribution networks along with the distribution service performance indicators;
- (vii) to make available information regarding its own activities, information that are useful to the network users, without revealing confidential commercial information obtained via its activities.

#### **d) Electricity supply**

Electricity supply represents an activity by which a licensed legal entity sells electricity to customers (retail supply) and/or to trade electricity on the wholesale electricity market (electricity trading).

Pursuant to Law no. 123/2012, all wholesale trading of electricity (except for import-export operations) must be performed transparently and publicly on the Romanian centralized power market.

The retail supply of electricity is carried out based on the supply contracts concluded between the supplier and customer for this purpose, in compliance with the applicable laws. The contract concluded between the supplier and household customers for this purpose should include at least the minimal clause set up by the regulatory authority in the standard contracts.

Mention should be made that, through Government Decision No. 638/2007, the electricity market and the natural gas market must be equally open for all consumers. However, the Romanian Government maintained regulated prices for electricity supplied to certain categories of customers. Starting with 1 January 2014 and until the end of 2017, only household consumers still benefit of regulated prices for supply.

In addition to household customers, the customers who did not exercise their right to choose a supplier, as well as small non-household customers benefit of the universal service, according to which they pay reduced tariffs approved by the energy regulator, compared with other types of consumers. The universal service is provided by last resort suppliers, in view to guarantee a supply service compliant with a minimum quality standard, at reasonable, transparent, easily comparable and non-discriminatory tariffs.

#### **e) Electricity trading**

The electricity trader represents the legal or natural person that buys and sells electricity exclusively on the wholesale market or by means of import / export operations. The electricity trader represents a new type of participant to the electricity market, which has been recently defined in the Romanian legislation and which is currently undergoing various legislative implementation procedures.

After the full implementation of the new concept of trader of electricity, suppliers of electricity should be entitled to perform both retail supply of electricity to end customers and wholesale trading of electricity, while traders of electricity will perform exclusively wholesale trading of electricity.

#### **3.1.2. Prices and tariffs**

The necessary costs required for the operation of the companies in the field of electricity generation, transmission, distribution and supply as well as the co-generated thermal energy, the development and environmental protection costs including a reasonable profit rate are covered by the electricity prices. The prices and tariffs for electricity may include the cost of the units and services financed by the entities aiming at the power and fuel consumption reduction at the consumer-end level which represent a feasible option meant to avoid ungrounded costs, in order to build new energy sources or networks.

As regards electricity generated and sold on the domestic market, the following prices and tariffs categories are applied:

- (i) the prices resulting from the competitive market mechanisms;
- (ii) regulated tariffs for co-generated thermal energy, generated in co-generation plants;
- (iii) regulated tariffs for electricity transmission, system and distribution services;
- (iv) regulated tariffs/prices for electricity supply to household consumers until the complete deregulation of tariffs;
- (v) regulated tariffs for acquiring system technological services until the implementation of a competitive market for system technological services;
- (vi) regulated tariffs for network connection;

- (vii) prices/tariffs for electricity supplied by the last resort suppliers to small non-household customers (i.e. non-household customers having less than 50 employees and an annual turnover or a net assets value of maximum EUR 10 million);
- (viii) regulated tariffs used by the electricity market operator;
- (ix) prices resulting from adjustment formulae included in sale-purchase agreements for thermal energy or in concession, joint-venture or partnership agreements.

The regulated tariffs for electricity household consumers are the same all over the country until the complete liberalization of electricity supply tariffs, at 31 December 2017, , and they are set by ANRE. The proposals of regulated prices and tariffs are set up by the entities acting on the electricity market, in compliance with the methodologies set up by ANRE and are communicated to the latter together with their substantiation. The principles that are applicable when establishing the regulated prices and tariffs for electricity are:

- (i) prices / tariffs must be based on objective criteria, and must be determined in a transparent manner, excluding any discriminations;
- (ii) prices / tariffs must cover economically justified expenses;
- (iii) prices must ensure a reasonable rate of return for the invested capital;
- (iv) the connection tariff may only include only costs regarding connection works;
- (v) the regulated prices and tariffs for end consumers must allow them to choose the type of price/tariff which is the most favorable to their needs.

### **3.1.3. Authorizations and licenses**

Developing new energy capacities and refurbishment of existing ones are subject to authorization. Electricity generation, transmission, system service, distribution, supply and trading, as well as the activities of the electricity market operator and those for the supply of system technological services are performed under licenses granted in accordance with the law and the Regulation for granting authorizations and licenses in the electricity sector, adopted by ANRE Order 48/2013 as amended to date.

ANRE issues:

- (i) setting up authorizations for building of new energetic capacities for electricity generation including electricity and heat in cogeneration, or the refurbishment of such in case the installed power of capacities exceeds 1MW; and
- (ii) licenses for:
  - a) commercial exploitation of electricity production capacities
  - b) commercial exploitation of electric and thermal energy co-generated production capacities;

- c) performing electric transmission services and system services;
- d) performing electricity distribution services;
- e) electricity market operator activity;
- f) electricity supply activity; and
- g) electricity trading activity.

For the distributed generation installations and for small generators of electricity, the criteria applicable in order to issue authorizations takes into consideration the limited capacity to generate electricity and the potential impact on the safe functioning of the distribution network. Network distribution installations of medium voltage are authorized based on an annual program.

In order to ensure fairness in the electricity transactions, the license for electricity supply may not be granted to companies operating as transmission system operators or distribution operators.

In case of a fundamental change of the conditions existing on the date of the authorization or license issuance, as well as in case of certain events substantially affecting or making impossible the power generation, transmission or distribution on the electricity market, ANRE may decide the amendment of authorizations or licenses, ensuring the equal treatment of all license holders, based on the particular circumstance which triggered the amendment.

In case of changes in the authorization or license holder status – resulting from transformation, change of the name, registered offices, modification of the registered capital, etc. or adjustments of its patrimony that affect the issued authorization or license, the holder shall notify ANRE on the adjustment request, within 30 days as of the occurrence of the such event. A split-up or merger regarding the authorization or license holder needs to be notified to ANRE with at least 60 days prior to the date of effective operation of split-up or merger.

In case the authorization or license holder fails to meet its legal obligations, or if the conditions, limitations, restrictions or duties set out by the authorization or the license are breached, ANRE shall order a term for ensuring the compliance or the suspension or withdrawal of the authorization or license, as the case may be.

ANRE suspends the holder's authorization or license if, among others, another entity has suspended any of the documents based on which the license was issued or if the concerned energetic capacities endanger the individuals, property and/or the environment. ANRE will withdraw the authorization or license in case, among others, of the holder's inability or bankruptcy, as well as upon the cessation of the concession or lease of the energetic capacity, or upon the sale of the energetic capacity by the holder, or in case of annulment/expiry of any of the documents based on which the license was issued.

### 3.1.4. Concession/Expropriation

The land necessary for setting up and operation of the energetic capacity may be the authorization holder's property, a third party's private property or public property. If the land needed for setting up and operating the energetic capacity is the private property of a third party, the applicant for the establishment authorization may either acquire an ownership right or other rights (such as superficies right) over the land or initiate the legal procedure for land expropriation by virtue of public use and obtain its concession over the duration of the energetic capacity existence.

State public or private properties, as well as public activities and services of national interest, may make the object of an energetic concession in consideration of a royalty paid to the conceding authority. The relevant ministry for the State public or private properties or for the public activities or services of national interest acts as conceding authority.

The content of the tender book for the granting of the concession of the electricity distribution service was approved by Government Decision No. 109/2005 while Government Decision No. 1048/2004 as further amended approved the terms of reference of the distribution service concession framework agreement and of the procedure for granting the concession of the distribution service.

Mention should be made that Law no. 123/2012 provides in favour of entities holding an authorization or a license in the energy field certain legal rights over the land plot located in the vicinity of the sites where the relevant power plant is set up (e.g. a right of use for carrying out the works necessary for the setting up and upgrading of the power plant and a right of passage for installing the electricity networks or other equipments related to the energetic capacity and for access to the place where such equipment shall be installed).

According to Law no. 123/2012, the use and easement right over the land plot pertaining to State property may be exercised against no consideration (i.e. free of charge) for the entire period of the generation capacities operation. The private landowners affected by the exercise of such use and easement right may request the authorization/license holder to agree on appropriate means of compensating them in this respect in accordance with the provisions of Government Decision 135/2011 for approval of the procedural rules regarding the terms and conditions referring to the duration, content and limits of exercising the use and easement rights over private property affected by energy capacities, of the frame convention, as well as of the procedural rules for determining the amount of compensation and payment method thereof.

Entities holding an authorization or license in the energy field are provided with a right of way to the generation facility which can be located underground, on the land surface or aerial. It should be noted however that Law no. 123/2012 does not institute in the relevant entity's benefit a right with respect to the land where the connection installation of the generation facility to the power grid shall be installed (e.g. the land under the poles sustaining the power lines, the land on which the underground connection lines are located etc.). Consequently, the authorization/license holder has two options:

- (i) in case the relevant land is held by a private owner, the authorization/license holder should conclude a superficies agreement for a consideration to be mutually agreed or it can require the relevant authority to expropriate the land and to conclude a concession agreement subsequently; or
- (ii) in case the land belongs to the public domain/private domain of the State, the authorization/licence holder can aim to conclude a concession agreement with the relevant authority, obviously subject to appropriate tendering being performed by the authority.

With respect to the superficies right over private third parties' real estate, pursuant to the current Civil Code:

- (i) in case the superficies right was granted for a certain price, unless the parties have otherwise agreed, the superficies price shall be in line with the free market price, considering the status and the location of the land, the type of construction as well as other relevant criteria. Moreover, unless the parties have agreed otherwise, the superficies price shall be paid on a monthly basis.
- (ii) unless the parties have agreed otherwise, the landowner shall acquire the ownership right over the construction at the end of the superficies agreement, having the obligation to pay to the superfiary the value of the relevant construction as at the superficies agreement termination date. In case the construction does not exist as at the moment the superficies right is granted and the value of the construction is equal or exceeds the value of the land, at the end of the superficies agreement, the land owner can request the superfiary to purchase the relevant land for a price equal to the value of the land in case the construction would have existed on the land. However, the superfiary can refuse to purchase the land if it dismantles the construction and removes it from the land.

It is worth mentioning that the superficies agreements concluded prior to the current Civil Code entering into force (i.e. 1 October 2011) continue to be regulated during their entire duration by the provisions of the Civil Code in force at the time of concluding the relevant superficies agreements.

### **3.1.5. Authorities and Powers**

The national energetic strategy is set forth by the relevant ministry and approved by the Government, by consultation of the non-governmental organizations, the social partners and the business environment. The national energetic strategy defines the objectives of the electric energy sector on a medium and long term period and also the optimum means for reaching these objectives, while assuring a sustainable development of the national economy.

The competent ministry elaborates the national energetic policy and ensures its fulfillment, according to the provisions of the Electricity and Natural Gases Law, by exercising, inter alia, the following main powers:

- (i) drafting programs and plans for the implementation of the Government policy in the electricity sector, including energy efficiency plans and plans for the promotion of renewable energy sources;
- (ii) drafting bills or legislative proposals for the energetic sector;

- (iii) drafting the program for the set-up of safety fuel stocks and ensuring their observance by the economic operators;
- (iv) ensuring the monitoring of compliance with the undertakings assumed through the European Union Accession Treaty for the energy sector and coordinates the transposition and implementation of these undertakings by the relevant institutions;
- (v) coordinates the cooperation with similar entities from other countries and with international bodies active in the energy sector;
- (vi) supervising on a regular basis the performances and the quality of the technology and installations from the energetic system and initiating measures in order to increase their level;
- (vii) establishing the institutional framework for the efficient and competitive performance of the activities of the companies under its subordination or coordination that perform activities in the energy sector;
- (viii) ensuring the drafting of studies to be used for determining the priorities regarding strategic investments in the energy sector;
- (ix) drafting programs for diversifying the main sources of energy and proposes to the Government to take measures in this direction;
- (x) promoting and facilitating, together with ANRE, the cooperation between the electricity market operator, the transmission system operators and their regional correspondents, in view to create a competitive internal electricity market;
- (xi) taking measures to develop facilities for generation of electricity allowing the use, in conditions of economic efficiency, of low efficiency fuels from internal resources, as well as the use of renewable energy sources.

The National Energy Regulatory Authority (“ANRE”) is the competent authority in the energy field (including electric and thermal energy as well as natural gas), an autonomous public institution, with legal personality, functioning under parliamentary control, its activity being fully financed from its own incomes, obtained from tariffs for licenses and authorizations granting as well as from contributions of the international bodies or of legal entities, which is independent from a decisional, organizational and operational point of view. ANRE has, inter alia, the following powers in the electric and thermal energy sector:

- (i) issues, amends, suspends or cancels authorizations and licenses in the field of electric and thermal energy;
- (ii) drafts and approves the calculation methodologies for regulated tariffs and prices;
- (iii) approves the regulated tariffs applicable to transmission and distribution services;

- (iv) sets up the tariffs applicable to household consumers, as well as the calculation methodologies required for the set up of prices and tariffs by the “last option” suppliers;
- (v) approves the regulated tariffs for the sale-purchase of thermal energy produced in high efficiency cogeneration that benefits from national support schemes, as well as the prices for the thermal energy produced in cogeneration plants meant for the centralized thermal energy supply system – SACET;
- (vi) sets up framework supply agreements and for sale and purchase of electricity and thermal energy on the regulated market, the framework agreements regarding transmission, system service and distribution of electricity;
- (vii) approves the technical and commercial regulations for operators in the energy field, including the performance standards for transmission, distribution and supply services of electricity and thermal energy;
- (viii) approves the conditions for access to cross-border interconnection capacities, including procedures for their allocation and congestion management;
- (ix) supervises the enforcement by operators in the electricity and thermal energy sector of specific national and European Union’s regulations, of the prices and tariffs system and applies sanctions in case of their breach;
- (x) provides for the administrative-judicial settlement of pre-contractual disputes procedure and settles disputes related to the conclusion of contracts by the operators in the electricity and thermal energy field, for the supply of electricity and thermal energy, for the network connection contracts and for the sale - purchase contracts of thermal energy produced in cogeneration, as well as any disputes which may arise at the conclusion of addenda, concluded further to the enactment of new legal provisions;
- (xi) settles, based on its own procedure, any complaints against the transmission system operator and, also, against the distribution operators regarding their obligations under the applicable law, as well as the disputes between the transport and system operator and the owner of the transport network;
- (xii) drafts the regulation regarding the ascertainment, notifications and sanctions for breaches of regulations in the field;
- (xiii) notifies the Competition Council as regards the abuse of dominant position and the failure to comply with competition related legal provisions;
- (xiv) creates and manages a data base at a national level, necessary for the performance of its activity and for the delivery of information to other authorities in preparing the development strategy of the electricity sector, as well as in relation with the cross-border electricity trading activity;
- (xv) approves the regulation regarding connection of users to public interest networks;

- (xvi) publishes annual reports on its activity and the results of its oversight activity;
- (xvii) monitors the electricity market and publishes annual reports regarding its monitoring activity, problems discovered, solutions applied and results obtained in this regard;
- (xviii) approves the electricity supply regulation;
- (xix) approves the investment plans and the multi-year development plans of the transmission network;
- (xx) implements the relevant decisions issued by ACER – the Agency for Cooperation of Energy Regulators and of the European Commission in the energy sector;
- (xxi) approves regulations in the field of promotion of renewable energy production, promotion of high efficiency cogeneration and promotion of energy efficiency and monitors their application and the efficiency of the promotion systems.

### 3.1.6. Renewable and unconventional power sources

ANRE regulates the technical usage conditions of renewable energy sources, such as: solar energy, hydro-electric energy, wave energy, geothermal energy, wind energy, biomass, landfill gas, biogas, alcohol fuel, and promotes the integration of renewable energy sources and their use by the end consumers. The development and use of the generation of electricity from renewable energy sources or from high-efficiency cogeneration are encouraged by various support systems implemented in compliance with the European Union rules, after their endorsement by the European Commission (such as the so-called green certificates system, the high-efficiency cogeneration bonus scheme or, the *feed-in tariff* system for small renewable energy producers or for electricity from high-efficiency cogeneration).

In accordance with the provisions of Law no. 123/2012, production of electricity from renewable sources or from high-efficiency cogeneration is deemed as a priority of the Romanian energetic system for the purposes of electricity take-over and acquisition. In this respect, in view of promoting renewable electricity production or high-efficiency cogeneration, the Romanian Government approves through its energy strategy various support measures proposed by the relevant ministry (i.e. the Ministry for Energy, SMEs and Business Environment) in this respect.

It is worth mentioning that, according to the provisions of Law No. 220/2008, the promotion of energy generated from energy renewable sources process requires the yearly establishment by Government Decision of the mandatory quotas of renewable energy benefiting from the green certificates support scheme. Also, a *feed-in tariff* support system is currently being endorsed by the European Commission and is expected to be implemented in 2015 for the energy produced in power plants having an installed capacity of less than 1 MW, or 2 MW in case of high efficiency cogeneration power plants based on biomass.

The measures set forth by the Law No. 220/2008 aim to support generation of electricity from renewable energy sources and apply to:

- (i) hydro-energy generated in facilities having an installed power of maximum 10 MW;

- (ii) wind-power;
- (iii) solar power;
- (iv) geothermal energy;
- (v) biomass;
- (vi) bioliquid;
- (vii) biogas;
- (viii) landfill gas and;
- (ix) sewage treatment plant gas.

The benefits under Law No. 220/2008 are applicable for a period of:

- (i) 15 years for the electricity generated by new capacities;
- (ii) 10 years for the electricity generated by refurbished hydro-power capacities of maximum 10MW installed capacity;
- (iii) 3 years for electricity generated by not-refurbished hydro-power plants of maximum 10MW installed capacity;
- (iv) 7 years for the wind energy generated by capacities used already in other countries.

The benefits (i.e. green certificates) are granted as of the date when the producers of electricity using the above mentioned renewable energy sources are accredited by ANRE and start generating electric energy from renewable sources, only if the relevant power plants are commissioned/refurbished until the end of 2016.

#### **3.1.6.1. Mandatory quotas / Green certificates system**

The system of mandatory quotas represents a promotion mechanism of energy production from renewable energy sources, whereby suppliers and (in limited situations) producers of electricity are obliged to purchase a minimum number of green certificates pro rata with their sales to their end customers. The accomplishment of the mandatory quotas can be evidenced through the green certificates acquired in accordance with the law. The “green certificate” represents a title attesting the production of a quantity of electricity from energy renewable sources.

Each electricity supplier and (in limited situations) producer that must comply with the mandatory quota have the obligation to acquire annually a certain number of green certificates equivalent to a mandatory quota of green certificates established by ANRE yearly, multiplied by the annual amount of electricity supplied to end consumers (expressed in MW). The mandatory quota of green certificates is annually adjusted by ANRE taking into account the actual amounts of electricity supplied to end consumers by

suppliers. In case suppliers or (in limited situations) producers fail to meet the green certificates quotas, they shall have to pay penalties.

Pursuant to Law No. 220/2008 the green certificates are issued monthly by the transmission system operator as follows:

- (i) in case of hydro-power plants having an installed capacity of maximum 10MW:
  - a) 2.3 green certificates for each 1 MWh generated by new hydro-power plants;
  - b) two green certificates for each 1 MWh generated by refurbished hydroelectric plants;
  - c) one green certificate for each 2 MWh generated from hydro-power plants which are not new or refurbished;
- (ii) 1.5 green certificates until 2017 and 0.75 green certificates starting with 2018 for each 1 MWh generated by wind energy producers;
- (iii) two green certificates for each 1 MWh generated by the producers of electricity from geothermal energy, biomass, bioliquid and biogas;
- (iv) one green certificate for each 1 MWh generated by the producers of electricity landfill gas and from sewage treatment plant gas;
- (v) 3 green certificates for each 1 MWh generated by producers of electricity from solar energy.

Between 1 July 2013 and 31 March 2017, a number of green certificates are suspended from trading for each 1 MWh produced and delivered into the electricity network by producers accredited by ANRE until 31 December 2013, as follows:

- a) one green certificate for new hydropower plants, having an installed capacity of up to 10 MW;
- b) one green certificate for wind power plants;
- c) two green certificates for solar power plants.

The recovery of the green certificates shall be made gradually, until 30 December 2020, starting with 1 April 2017 for hydropower and solar producers and starting with 1 January 2018 for wind power producers.

Other main provisions of Law 220/2008 in its amended version are the following:

- (i) in case of an investor developing a renewable electricity generation unit with an installed capacity exceeding 125 MW and which fulfills the conditions for the application of the promotion system provided by Law 220/2008, the European Commission shall evaluate the incentive measures the relevant investor shall benefit of (the 2014 EU Guidelines on State aid for environmental protection and energy have increased the threshold for obtaining the European Commission's approval to 250

MW installed capacity, this new threshold being currently subject to approval in the Romanian Parliament);

- (ii) in case of overcompensation (defined as the situation in which, considering the specific average technical-financial indicators determined annually for each technology, from the cost-benefit analysis of the generation capacity results an internal rate of return (“IRR”) exceeding with 10% the value considered for the relevant technology as at the date the promoting system was authorized) ANRE may propose measures to decrease the number of green certificates to be issued to the relevant renewable electricity producer and the Government shall adopt a decision in this regard;
- (iii) renewable electricity producers already benefiting from state aids shall receive a number of green certificates established by ANRE by reducing the standard number of green certificates *pro rata* with the ratio between the value of the state aid and the aggregate benchmark value of the investment computed per installed MW;
- (iv) all producers of renewable electricity benefit only of one green certificates per MWh generated and delivered into the grid during the trial period;
- (v) generation of electricity from geothermal energy, biomass, bio-liquids, biogas or from landfill gas, sewage treatment plant gas and qualified as being of high-efficiency or from biomass using energetic crops, as the case may be, could benefit of additional green certificates;
- (vi) the minimum trading value of a green certificate between 2008 and 2025 shall be of EUR 27 and the maximum trading value of the green certificate shall be of EUR 55, these values being adjusted annually based on the average inflation index registered for the precedent year, computed at Euro Zone level and officially communicated by EUROSTAT;
- (vii) the costs entailed by the investments for consolidation of the electricity network upstream of the connection point, in view of creating the necessary technical conditions for connecting the user are considered regulated assets and are acknowledged by ANRE.

Until the 15<sup>th</sup> of April each year, ANRE establishes for each supplier as well as for each producer which has the obligation to purchase green certificates, the mandatory quota of green certificates related to the previous year period. The suppliers and producers that did not meet the mandatory annual quota of green certificates will be obliged to pay EUR 110 (value that is subject to annual indexation) for each non purchased green certificate, calculated in RON at the exchange rate established by BNR.

The producers and suppliers of energy generated from renewable energy sources can sell green certificates on the centralized green certificates’ spot market or on the centralized market for green certificates bilateral contracts.

Further to a recently approved state aid scheme, large consumers of electricity, operating in various electro-intensive industries nominated in the 2014 EU Guidelines on State aid for environmental protection and energy, have been exempted from the obligation to pay a quota of green certificates. Based on the degree of

electro intensiveness of the industry, a beneficiary of the state aid scheme may be exempted from paying the following quotas of green certificates:

- a) 85% of the standard purchase quota of green certificates, for an electro intensiveness that exceeds 20%;
- b) 60% of the standard purchase quota of green certificates, for an electro intensiveness between 10 – 20%;
- c) 40% of the standard purchase quota of green certificates, for an electro intensiveness between 5 – 10%.

The exemption is granted however subject to several conditions being fulfilled the beneficiary, such as: does not register any debt towards the Romanian State; performs periodically energy audits; layoffs must not exceed 25% of the number of employees at the moment of qualification for the exemption measure, etc.

### **3.2. Energy efficiency**

Law No. 121/2014 sets up the general framework for ensuring the efficient use of energy. Its purpose is to create the necessary legal framework for the elaboration and application of a national policy for efficient use of energy, regarding energy efficiency and environmental-related aspects, and the principles supporting its sustainable development. The law established a national indicative target, namely an increase in energy efficiency by 19% until 2020.

The Romanian National Regulatory Authority in the Energy Field (“ANRE”) was established as the responsible authority in this field, as an autonomous public institution, with legal personality, functioning under the coordination of the Parliament and operating in the energy efficiency sector through the Department for Energy Efficiency.

In order to comply with the energy efficiency national policy, companies using annual energy quantities exceeding a threshold of 1,000 tons energy in oil equivalent must draft programs for the improvement of energy efficiency, to perform every four years an energy audits elaborated by a person authorized by ANRE and to appoint an energy manager, certified by ANRE or to conclude an energy management contract with a certified individual or legal person. Also local public authorities in towns with over 5,000 inhabitants are obliged, by law, to draft programs for improving the energy efficiency, while local public authorities in towns with over 20,000 inhabitants must, in addition, appoint a certified energy manager or to conclude an energy management contract with a certified individual or legal person.

The national program for energy efficiency, elaborated by ANRE, must be updated every three years and is approved by the Government.

According to the law, obligations and incentives for energy producers and consumers are instituted, meant to promote the efficient use of energy. Energy consumers, legal entities except SMEs, that have energy consumption under the energy equivalent of 1,000 tons of oil are bound to:

- (i) draft energy audits every four years, based on which various measures for energy efficiency should be implemented;

- (ii) submit with ANRE by 30 April each year a declaration regarding their total energy consumption .

### **3.3. Special regime of thermal power produced at a centralized level**

By virtue of Law No 51/2006 that included in the area of the local administration public services the generation, transmission, distribution and supply of thermal power in a centralized system, Law No. 325/2006 was issued. Under this enactment, the public services for the generation, transmission, distribution and supply of thermal power in a centralized system (called according to Law No. 325/2006 “public utility community services”) cover all actions taken and activities performed locally, under the supervision, coordination and control of the local administrative authorities, with a view to providing a centralized supply of thermal power for heating and preparation of hot water for domestic consumption or for consumption in institutions, social-cultural establishments and companies.

These services are established and organized in all the cities/towns having a centralized public system for thermal power supply, irrespective of their size.

The local systems designated for production, transport, distribution and supply of thermal power are part of the local zoning infrastructure and are part of the local public property.

#### **3.3.1. Authorities and competencies**

The power to get forth, organize, manage, coordinate and control the operation of the public services of thermal energy supply is an exclusive right of the local public administration authorities. The public service which manages the thermal power supply is accomplished by the centralized system of thermal power supply (“SACET”). SACET is formed by a unitary technological and functional ensemble consisting of constructions, installations, equipments, means of transport, distribution, supply of thermal power. Additionally, these public authorities have the power and the responsibility to monitor and control the management of public services, as well as the operation and exploitation of the related infrastructure.

The operators managing, using and operating the energetic systems of local interest, irrespective of their organization, property or subordination form, that perform one or several activities specific to the public services of thermal energy supply, fall under the jurisdiction of the ANRSC. Exceptionally, operators that perform activities of thermal power production in cogeneration, exclusively or together with other activities specific to the public services of thermal energy supply, fall under the jurisdiction of ANRE.

ANRSC is an autonomous public institution of national interest with legal status, coordinated by the Ministry of Regional Development and Public Administration. Its main task is to regulate and control the operators’ activity regarding their compliance with the service performance indicators, substantiation of prices and tariffs, users’ protection, and the efficient operation of the public and/or private property of the local administrative authorities, related to such services. Licensing / authorization of the energetic services operators of local interest is granted by ANRSC, except for operators acting in the production of thermal power in cogeneration. The latter operators’ category needs to be authorized by ANRE.

### 3.2.2. Management of thermal power supply

The management of thermal power service supply system via SACET may be organized as follows:

- (i) direct management;
- (ii) indirect or delegated management.

The management form is chosen by county or local council decision or by community development associations, as the case may be, according to the law.

The local public authorities may associate with other local public authorities or with third parties, Romanian or foreign legal entities, to establish public or mixed capital companies, in order to manage the public service of supplying thermal energy via SACET.

In case of direct management, the local public administration authorities or community development associations shall undertake all tasks and responsibilities regarding the organization, leadership, administration and financing the public service of supplying thermal energy via SACET. Direct management is ensured either by specialized departments organized within the county or local council, as the case may be, or by community development associations authorized according to the Law No. 51/2006, as amended up to date.

In case of delegated management, the local public administration or community development associations may fully or partially transfer their services management responsibilities, as well as the management and operation of SACET to one or several supplier/provider operators, a company with public, private or mixed shareholding by delegating to them, by means of concession or by public-private partnership by concluding a management delegation contract, the right to operate the public services of thermal energy supply . During the period of management delegation contract, the public and/or private movable and immovable assets belonging to the local administrative authorities, destined for certain services, will be entrusted to the operator who was granted the management delegation contract. The latter shall pay royalties to the local public administration authorities, at a rate agreed upon the contract execution.

Delegation of the public services of thermal energy supply management may be performed by:

- (i) concession of the service;
- (ii) public private partnership.

According to Law No. 325/2006, management delegation must comply with standard regulations for public services of thermal energy supply delegation approved by ANRSC' President Order No. 91/2007.

If the contract is terminated, the service operator must ensure continuity of the public service for a determined period of time, i.e. no longer than 12 months.

### 3.2.3 Prices and tariffs

Prices and tariffs are calculated, adjusted or modified with respect to the methodology approved by the relevant authority.

Prices and tariffs shall provide cover for the production, transmission, distribution, supply, exploitation, maintenance, modernizing and refurbishment costs, as well as a 5 per cent maximum profit margin. The competent regulatory authorities will set the prices and tariffs for thermal power produced and supplied to the users, based on the proposal of the economic operators that produce, transport, distribute and provide thermal power to end consumers, based on the prior endorsement of the involved local public administration authorities.

The prices for thermal power produced by renewable sources, used through SACET are approved by ANRSC.

The prices for thermal power produced in cogeneration, used through SACET are approved by ANRE's chairman except if methodologies of calculation and adjustment of the price have been adopted in concession contracts or partnership contracts.

Based on Law No. 325/2006 the national reference price for thermal energy delivered to the population has been established on the principle in accordance with which the local prices for thermal power supply are the same for consumers in similar supplying conditions. The local prices for thermal power must be approved by local public administration authorities or community development associations as the case may be.