

Chapter 23

Energy

1. General

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

Adopting GEO No. 63/1998 on 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 a legal framework for later development in the energy sector. GEO No. 63/1998 was the first legal instrument after 1990 issued with the purpose of unitarily regulating the electric and thermal power sector in Romania.

During the past decade, regulation in the energy sector has seen substantial changes through 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 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, through Law 123/2012, the new Electricity and Natural Gas Law, centralized trading of electricity became mandatory.

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

The energy market became gradually accessible to competitors. Currently – starting with July 1st, 2007, the electricity and natural gas supply were fully liberalised. Prices for energy continue to be regulated only in respect to household consumers, and even in this case, prices are undergoing a process of deregulation that should result in the complete liberalization at the end of 2017, in the case of electricity, and at the end of 2018, in the case of natural gas.

2. Main Regulations

- Electricity and Natural Gas Law No. 123/2012, as amended to date (“**Law No. 123/2012**”);
- 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, as amended to date (“**Law No. 325/2006**”);

- Law No. 121/2014 regarding energy efficiency, as amended to date (“**Law No. 121/2014**”);
- Law No. 111/1996, on the safe operation 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, as amended to date;
- Government Decision No. 1215/2009 establishing the criteria and conditions required for implementing a support system for the promotion of high-efficiency cogeneration based on the demand of useful thermal energy, as amended to date.

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 electricity generators are as follows:

- (i) to ensure electricity delivery and the technological services of the system, in compliance with licenses, contractual clauses and the regulations in force;
- (ii) to offer under non-discriminatory terms the entire electric power available on a competitive market;
- (iii) to offer under non-discriminatory terms the technological services of the system;
- (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 and system operator and to establish their own levels of operative management;
- (vi) to draft and send to ANRE annual activity reports.

Electricity generators have the following main 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 electricity and technological services on a regulated and competitive market;
- (iv) to establish and maintain their own telecommunication systems for connection to their generation units, customers or the operative management levels.
- (v) to trade co-generated thermal energy.

b) Electricity transmission

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 future trends of electricity consumption and sources, by encompassing the relevant financing sources and the means for achievement of transmission installation investments, taking into account the territorial planning applicable to 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 a nominal voltage of more than 110 kV) is of national and strategic interest, and 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 transmission public service for the entirety of 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 territory of Romania.

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 supply activity. Electricity distribution networks are developed on the grounds of economic efficiency principles, in compliance with 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 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 order 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 country areas where there is not enough capacity in the distribution networks, for the evacuation of 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 the transmission system temporarily unavailable;
- (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 is 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 trades 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 supply contracts concluded between the supplier and customer for this purpose, in compliance with applicable laws. A contract concluded between the supplier and household customers for this purpose should include at least the minimal clauses 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 from regulated prices for supply.

In addition to household customers, customers who did not exercise their right to choose a supplier, as well as small non-household customers benefiting from the universal service, 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 of guaranteeing a supply service compliant with a minimum quality standard, at reasonable, transparent, easily comparable and non-discriminatory tariffs.

e) Electricity trading

An electricity trader represents a legal or natural person who buys and sells electricity exclusively on the wholesale market, or by means of import/export operations, and who benefits from more permissive licensing procedures vis-à-vis suppliers of electricity.

Suppliers of electricity are entitled to perform both retail supply of electricity to end customers and wholesale trading of electricity, while traders of electricity 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, 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 in order to build new energy sources, or networks aiming at the reduction of power and fuel consumption at the consumer-end level, which represent a feasible option meant to avoid ungrounded costs.

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

- (i) the prices resulting from 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 de-regulation 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 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 asset value of a maximum of 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 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 applicable when establishing 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 discrimination;
- (ii) prices / tariffs must cover economically justified expenses;
- (iii) prices must ensure a reasonable rate of return for invested capital;
- (iv) the connection tariff may only include costs regarding connection work;
- (v) 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

The development of new energy capacities and the 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 12/2015, as amended to date.

ANRE issues:

- (i) setting up authorizations for the construction 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) the commercial exploitation of electricity production capacities
 - b) the commercial exploitation of electric and thermal energy co-generated production capacities;
 - c) performing electricity transmission services and system services;
 - d) the performance of electricity distribution services;
 - e) electricity market operator activity;
 - f) electricity supply activity; and
 - g) electricity trading activity.

For distributed generation installations and for small generators of electricity, the criteria applicable 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 electricity transactions, a 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 power generation, transmission or distribution on the electricity market, ANRE may decide on the amendment of authorizations or licenses, ensuring equal treatment to 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 name, registered offices, modification of registered capital, etc. or adjustments of its patrimony that affect the issued authorization or license, the holder should notify ANRE on the request for adjustment, within 30 days of the occurrence of such an event. A split-up or merger regarding the authorization or license holder needs to be notified to ANRE at least 60 days prior to the date of effective operation of the 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 orders 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 individuals, property and/or the environment. ANRE withdraws 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 the set up and operation of energetic capacity may be the authorization holder's property, a third party's private property or public property. If the land needed for the set up and operation of energetic capacity is the private property of a third party, the applicant for establishment authorization may either acquire an ownership right, or other rights (such as superficies right), over the land, or initiate a legal procedure for land expropriation by virtue of public use, and obtain a concession for the duration of the energetic capacity's 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 State public or private properties, or for public activities or services of national interest, acts as the conceding authority.

The content of the tender book for the granting of a concession of electricity distribution 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 a concession of 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 a plot of land located in the vicinity of sites where the

relevant power plant is set up (e.g. a right of use for carrying out works necessary for the set up and upgrade of the power plant, and a right of passage for installing electricity networks or other equipment related to the energetic capacity, and for access to the place where such equipment is installed).

According to Law No. 123/2012, the use and easement right over a land plot pertaining to State property may be exercised against no consideration (i.e. free of charge), for the entire period of operation of the generation capacities. Private landowners affected by the exercise of such use and easement rights may request the authorization/license holder to agree on appropriate means of compensation in this respect, in accordance with the provisions of Government Decision 135/2011 for the approval of 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 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 aurally. 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 is 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 they 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 should 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 acquires ownership rights over the construction at the end of the superficies agreement, with 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 at the moment the superficies right is granted, and the value of the construction is equal to 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 superficies agreements concluded prior to the entry into force of the current Civil Code (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 conclusion of the relevant superficies agreements.

3.1.5. Authorities and Powers

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

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

- (i) drafting programs and plans for the implementation of 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 its observance by economic operators;
- (iv) ensuring the monitoring of compliance with 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) coordinating te cooperation with similar entities from other countries, and with international bodies active in the energy sector;
- (vi) supervising the performances and the quality of the technology and installations of the energetic system on a regular basis, and initiating measures in order to increase their level;
- (vii) establishing the institutional framework for the efficient and competitive performance of the activities of companies under its subordination or coordination which perform activities in the energy sector;
- (viii) ensuring the drafting of studies 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 measures in this direction;
- (x) promoting and facilitating, together with ANRE, cooperation between the electricity market operator, the transmission system operators and their regional correspondents, in view of the creation of 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 granted, as well as from contributions of 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 regulated tariffs for the sale-purchase of thermal energy produced in high efficiency cogeneration which benefits from national support schemes, as well as the prices for thermal energy produced in cogeneration plants meant for the centralized thermal energy supply system – SACET;
- (vi) sets up framework supply agreements 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 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 network connection contracts and for 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 applicable law, as well as disputes between the transport and system operator and the owner of the transport network;
- (xii) drafts 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 to 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, discovered problems, applied solutions and results obtained in this regard;
- (xviii) approves electricity supply regulation;
- (xix) approves the investment plans and 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-power, 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, is encouraged by various support systems implemented in compliance with European Union rules, after their endorsement by the European Commission (such as the so-called green certificates system, including additional green certificates granted to producers of electricity from high-efficiency cogeneration, the high-efficiency cogeneration bonus scheme).

In accordance with the provisions of Law no. 123/2012, the 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) in this respect.

It is worth mentioning that, according to the provisions of Law No. 220/2008, the promotion of energy generated from renewable energy sources requires the yearly establishment by Government Decision of mandatory quotas of renewable energy benefiting from the green certificates support scheme. Also, a *feed-in tariff* support system was being developed by ANRE and is expected to be implemented for the energy produced in power plants utilizing renewable sources having an installed capacity of less than 500 kW, however, this scheme appears to have been sidelined in the short term.

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 electricity generated by new capacities;
- (ii) 10 years for 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 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.

(A) Mandatory quotas/Green certificates system

The system of mandatory quotas represents a mechanism to promote 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 mandatory quotas can be evidenced through green certificates acquired in accordance with the law. A “green certificate” represents a title attesting the production of a quantity of electricity from renewable energy sources.

Each electricity supplier, and (in limited situations) producer, who must comply with the mandatory quota has the obligation to annually acquire a certain number of green certificates, equivalent to a mandatory quota of green certificates established yearly by ANRE, multiplied by the annual amount of electricity supplied to end consumers (expressed in MWh). The mandatory quota of green certificates is annually adjusted by ANRE to take into account the actual amounts of electricity supplied to end consumers. In case suppliers, or (in limited situations) producers, fail to meet green certificates quotas, they must 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 from 2018, for each 1 MWh generated by wind energy producers;
- (iii) two green certificates for each 1 MWh generated by producers of electricity from geothermal energy, biomass, bioliquid and biogas;
- (iv) one green certificate for each 1 MWh generated by 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 were 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, with 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 green certificates is 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 are the following:

- (i) in case of an investor developing a renewable electricity generation unit with an installed capacity exceeding 250 MW, and which fulfills the conditions for the application of the promotion system provided by Law 220/2008, the European Commission evaluates the incentive measures the relevant investor benefits from;
- (ii) overcompensation is defined as a situation in which, considering the specific average technical-financial indicators determined annually for each technology, from the cost-benefit analysis of generation capacity, an internal rate of return (“IRR”) results which exceeds by 10% the value considered appropriate for the relevant technology as at the date the promoting system was authorized. In case of overcompensation ANRE may propose measures to decrease the number of green certificates issued to the relevant renewable electricity producer and the Government adopts a decision in this regard;
- (iii) renewable electricity producers already benefiting from state aid 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 from only 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 from additional green certificates;
- (vi) the minimum trading value of a green certificate between 2008 and 2025 is EUR 27, and the maximum trading value of the green certificate is EUR 55, and these values are adjusted annually based on the average inflation index registered for the precedent year, computed at the Euro Zone level and officially communicated by EUROSTAT;
- (vii) costs entailed by investment 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 15th of April each year, ANRE establishes for each supplier and producer who have the obligation to purchase green certificates, a mandatory quota of green certificates related to the period of the previous year. Suppliers and producers who do not meet the mandatory annual quota of green certificates are obliged to pay EUR 110 (a value that is subject to annual indexation) for each non purchased green certificate, calculated in RON at the exchange rate established by BNR.

Producers and suppliers of energy generated from renewable energy sources can sell green certificates on the centralized green certificate spot market, or on the centralized market for green certificate bilateral contracts.

Based on a state aid scheme enacted in 2014, large consumers of electricity, operating in various electro-intensive industries nominated in the 2014 EU Guidelines on State aid for environmental protection and energy, may be exempted from the obligation to pay part of the standard 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 exceeding 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 subject to several conditions being fulfilled by the beneficiary, such as: it does not register any outstanding debt towards the Romanian State; it periodically performs 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 a 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, energy efficiency and environment-related aspects, and the principles supporting 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 national energy efficiency policy, companies using annual energy quantities exceeding a threshold of 1,000 tons oil-equivalent energy must draft programs for the improvement of energy efficiency, and perform every four years an energy audit 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 energy efficiency, while local public authorities in towns with over 20,000 inhabitants must, in addition, appoint a certified energy manager, or 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, and meant to promote the efficient use of energy. Energy consumers and legal entities (except SMEs) with 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 to 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 which included in the area of the local administration of public services the generation, transmission, distribution and supply of thermal power in a centralized system, Law No. 325/2006 was issued. Under this enactment, 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 the 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 cities/towns with a centralized public system for thermal power supply, irrespective of their size.

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

3.2.1. Authorities and competencies

The power to set forth, organize, manage, coordinate and control the operation of 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 a centralized system of thermal power supply (“SACET”). SACET is formed by a unitary technological and functional ensemble consisting of construction, installations, equipment, and means of transport, distribution and 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 related infrastructure.

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

The management of thermal power service supply systems 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.

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, local public administration authorities or community development associations undertake all tasks and responsibilities regarding the organization, leadership, administration and financing of 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 a concession or by a public-private partnership through concluding a management delegation contract, the right to operate the public services of thermal energy supply. During the period of the management delegation contract, the public and/or private movable and immovable assets belonging to the local administrative authorities, destined for certain services, are entrusted to the operator who was granted the management delegation contract. The latter pays royalties to the local public administration authorities, at a rate agreed upon in 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 provide cover for the production, transmission, distribution, supply, exploitation, maintenance, modernization and refurbishment costs, as well as a 5 per cent maximum profit margin. The competent regulatory authorities set the prices and tariffs for thermal power produced and supplied to users, based on the proposal of the economic operators that produce, transport, distribute and provide thermal power to end consumers, and 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 the methodologies of calculation and adjustment of 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 was established on a principle in accordance with which the local prices for thermal power supply are the same for consumers in similar supply conditions. Local prices for thermal power must be approved by local public administration authorities or community development associations as the case may be.