

Energy

LEGAL FRAMEWORK AND REGULATORY AUTHORITY

1. Which are the main legal enactments governing the Romanian power sector?

The power sector is regulated mainly by Title I of the Power and Gas Law No. 123/2012 (Energy Law).¹ The Energy Law implements Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (Power Directive).²

The Energy Law was significantly amended by Law No. 155/2020.³ Part of these changes are aimed at implementing the regulatory framework necessary for the development of an integrated EU energy market through common energy market rules and a cross-border infrastructure, as per Regulation 2019/943⁴ and Directive 2019/944.⁵

2. What authority regulates the power sector?

The Romanian power sector is regulated by the National Authority Regulating the Energy Field (ANRE), an independent authority, under the control of the Parliament, which operates based on its own organisation and operation regulations.

ANRE is entirely financed from its own income deriving from fees (charged when issuing authorisations and licenses), annual contributions of the participants to the power market and funds granted by international bodies.

¹ The Energy Law was published in the Official Gazette of Romania, Part I, No. 485 of 16 July 2012, and was subsequently amended and supplemented.

² The Power Directive was published in the EU Official Journal L 211 of 14 August 2009.

³ Law No. 155/2020 for amending and supplementing Power and Gas Law No. 123/2012 and amending and supplementing other normative acts, published in the Official Gazette of Romania, Part I, No. 665 of 27 July 2020.

⁴ Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity was published in the EU Official Journal L 158 of 14 June 2019.

⁵ Directive (EU) 2019/944 on common rules for the internal market for electricity was published in the EU Official Journal L 158 of 14 June 2019.

POWER MARKET

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1. Who can perform activities in the power sector and which licensing requirements should be observed?

The participants in the power sector are the operators licensed by ANRE to carry out the activities specific to such sector as briefly described below:

- Generation is carried out by legal entities licensed by ANRE, through the operation of generation capacities the construction of which was also authorised by ANRE (if the capacity is above 1 MW). The producers are permitted to trade the power they generate on the wholesale market, as well as to supply it to final consumers directly connected to their generation capacities. The main power producers on the Romanian market are Hidroelectrica, Nuclearelectrica and CE Oltenia.
- Transmission is a natural monopoly activity carried out by Transelectrica, the Romanian Transmission and System Operator (TSO). Based on the concession granted by the Ministry of Economy, Transelectrica operates the entire power transmission grid (i.e. the grid having a voltage exceeding 110 kv) belonging to the public property of the State.
- Distribution entails the transportation of power through the high, medium and low voltage grid having a voltage of up to 110 kv. Similarly to transmission, distribution is, as a rule, a natural monopoly activity carried out by eight entities holding (i) the concession awarded by the Ministry of Economy over the distribution service in a certain area and (ii) the distribution license issued by ANRE. Nevertheless, Law No. 155/2020 provides for the possibility to distribute power without holding a license issued by ANRE for (i) distribution system operators of closed distribution systems (based on a decision issued by ANRE confirming the qualification as closed distribution system), (ii) distribution system operators or administrators of industrial parks within the industrial parks created according to Law No. 186/2013 on the setting-up and the functioning of the industrial parks, (iii) distribution system operators or administrators of free zones within the free zones created according to Law No. 84/1992 on the free zones regime, all of the above irrespective of the power, as well as for (iv) other economic operators holding distribution networks that supply places of consumption, outside the industrial parks, respectively the free zones indicated above, with approved powers of less than 3MW in aggregate. The license is also not required in case of electrical networks located outside the limits of the industrial park, the free zone respectively, up to the delimitation point from the distribution network of the distribution operator holding the concession or from the transmission network, provided that the approved powers of the consumption places located outside the limits of the industrial park, the free zone respectively, are below 3MW in aggregate and written notice was given to the distribution operator holding

the concession in the region where such industrial park or free zone is located, with respect to the provision of the distribution service through such electrical networks. ANRE may also grant a distribution license to operators holding distribution networks within an area subject to concession by another operator, provided the first has obtained the written approval of the distribution operator holding the concession, within the same period of concession. The distribution operator holding the concession may withhold the approval provided such is technically and economically justified, in which case it also has the obligation to ensure the connection of the users of the rejected distribution operator, in economic conditions at least equal with those of the connection solution part of the rejected application.

- Trading entails power sale or acquisition exclusively on the wholesale power market and may be carried out by entities which hold a specific trading license issued by ANRE.
- Supply can be carried out by entities holding the power supply license issued by ANRE.⁶ As a general rule, the suppliers can sell the power on the competitive market at negotiated prices. However, ANRE appoints several last resort suppliers, from among the licensed suppliers, which are under an obligation to supply power, under terms regulated by ANRE, to certain categories of consumers.

2. Are there any unbundling and independency requirements imposed on the activities in the power sector?

In line with the principles laid down by the Power Directive, the Energy Law imposes unbundling of distribution and supply activities, as well as measures for ensuring the independency of the TSO from the power generation and supply activities.

Unbundling is required of vertically integrated undertakings carrying out both distribution and supply activities, except for vertically integrated undertakings serving less than 100,000 connected customers, or small isolated systems.

Distribution operators part of vertically integrated undertakings, are required to become independent from activities not connected to power distribution, at least in terms of legal form (legal unbundling), organisation and decision making process (functional unbundling).

All eight distribution and supply operators have completed the unbundling of distribution and supply activities through a spin-off into two separate entities, one for each activity.⁷

⁶ The holders of an existing supply license may currently carry out both supply and trading activities.

⁷ Similar provisions were also reflected in the former Energy Law which relied on now repealed Directive 2003/54/EC and which imposed the unbundling of the distribution and supply activities by 30 June 2007.

As regards the TSO, the Energy Law imposes criteria to be observed for ensuring its independency from the power generation and supply activities in line with relevant EU legislation. As such, while initially (in August 2014), Transelectrica was certified as an “independent system operator”, further to a reassessment carried out in 2015 by the European Commission, Transelectrica was certified as a transmission and system operator, as per the property separation model.

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3. To what extent is the power market liberalised?

In line with EU regulations, further to its progressive liberalisation, the power supply market was fully liberalised for non-household customers as of 1 January 2014 and for household customers as of 1 January 2021.

At the same time, there are also other categories of consumers that may be supplied with power by last resort suppliers, based on regulated agreements and prices endorsed by ANRE (e.g. non-household customers with less than 50 employees and an annual turnover/accounting value of assets not exceeding EUR 10 million). Also, ANRE continues to regulate the natural monopoly activities in the power sector (i.e. transmission and distribution) which are carried out based on agreements and tariffs established by the regulatory authority.

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4. Which are the applicable rules for trading power?

Power transactions are performed (i) under a wholesale system (for suppliers’/traders’ acquisitions of power from producers or from other suppliers/traders for re-selling purposes) or (ii) under a retail system (for acquisition of power by end customers for their own consumption). While the former energy law (in force until 19 July 2012) allowed for wholesale power transactions both by means of bilateral agreements concluded through direct negotiations (including import/export agreements), as well as on the centralised markets operated by the Power Market Operator OPCOM S.A. (OPCOM), the current Energy Law requires transactions to be concluded in a transparent, public, centralised and nondiscriminatory manner. Thus, as a rule, wholesale trading can only be performed on the centralised markets operated by OPCOM, based on specific rules approved by ANRE.

By way of exemption:

- Certain categories of renewable producers benefiting from the support system are allowed to conclude bilateral agreements (as presented herein below);

- Government Emergency Ordinance No. 74/2020⁸ established a derogation from the ban set out by article 23 of the Energy Law, with respect to power generation projects commissioned after 1 June 2020. Thus, the operators of these projects may conclude bilateral agreements through direct negotiations, outside the centralised markets.
- Law No. 155/2020 provided two new exceptions from trading on the centralised markets, whereby: (i) a market participant combining electricity from several energy sources may enter into bilateral contracts with the owners of those sources; (ii) a market participant combining the loads of several customers may enter into bilateral contracts with them and their suppliers.

On the retail market, suppliers sell power to end customers based on bilateral agreements, either at negotiated prices or at prices endorsed by ANRE.

PROMOTION OF GENERATION OF POWER FROM RENEWABLE ENERGY SOURCES THROUGH THE SYSTEM OF MANDATORY QUOTAS COMBINED WITH GREEN CERTIFICATES TRADING

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1. Has Romania implemented any support scheme for promoting the generation of power from renewable energy sources? If so, what type of support scheme is currently implemented?

Romania undertook towards the EU the obligation to reach certain percentages of power generated from renewable energy sources out of the total final power consumption, namely 35% in 2015 and 38% in 2020. In view of encouraging the investments in the renewable energy sectors (which are essential for fulfilling such targets), Romania implemented the system of mandatory quotas for green certificates acquisition combined with green certificates trading.

However, only renewable projects which were commissioned or refurbished by the end of 2016 were eligible to benefit from the green certificates support scheme.

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2. What is the legal framework governing the green certificates support scheme?

The main piece of legislation regulating the support scheme is Law No. 220/2008

⁸ Government Emergency Ordinance No. 74/2020 for amending and supplementing Power and Gas Law No. 123/2012 was published in the Official Gazette, Part I, No. 416 of 19 May 2020.

establishing the system for promoting the power produced from renewable sources of energy, as further amended and supplemented (Renewable Energy Law).⁹

The support scheme was notified to and approved by the European Commission in July 2011. However, during the authorisation process, the Romanian authorities undertook to bring some amendments to the then existing legal framework with the purpose of aligning it with the clearance to be obtained from the European Commission. Hence, the support scheme became applicable starting 1 November 2011 after the amendment of the Renewable Energy Law through Government Emergency Ordinance No. 88/2011 (GEO No. 88/2011)¹⁰ and after the issuance by ANRE of secondary legislation for the implementation thereof.

The Renewable Energy Law has been amended by means of Government Emergency Ordinance No. 57/2013 (GEO No. 57/2013),¹¹ introducing severe limitations have been introduced to the support scheme effective as of 1 July 2013.

Whereas the limitations introduced by GEO No. 57/2013, as further approved by Law No. 23/2014,¹² have led to dysfunctionalities of the green certificates market (in principle, an excess of green certificates which caused financial difficulties for producers) and considering also the ongoing concern for the financial impact on the final consumers (who bear the costs of such scheme), further changes have been enacted through Government Emergency Ordinance No. 24/2017 (GEO No. 24/2017)¹³, as well as Law No. 184/2018 approving GEO No. 24/2017 (Law No. 184/2018).¹⁴

3. What is the applicability period of the support scheme?

The support scheme shall apply for a period of (i) 15 years for power generated by

⁹ The Renewable Energy Law was republished in the Official Gazette of Romania, Part I, No. of 577 of 13 August 2010.

¹⁰ Government Emergency Ordinance No. 88/2011 for amending and supplementing Law No. 220/2008 establishing the system for promoting the power produced from renewable sources of energy was published in the Official Gazette of Romania, Part I, No. 736 of 19 October 2011.

¹¹ Government Emergency Ordinance No. 57 of 4 June 2013 amending and supplementing Law No. 220/2008 for the establishment of the system for promoting the energy from renewable energy sources, was published in the Official Gazette of Romania, Part I, No. 335 of 7 June 2013 and is in force as of 1 July 2013.

¹² Law No. 23/2014 for the approval of Government Emergency Ordinance No. 57 of 4 June 2013 amending and supplementing Law No. 220/2008 for the establishment of the system for promoting the energy from renewable energy sources was published in the Official Gazette of Romania, Part I, No. 184 of 14 March 2014.

¹³ Government Emergency Ordinance No. 24/2017 amending and supplementing Law No. 220/2008 for the establishment of the system for promoting the energy from renewable energy sources, was published in the Official Gazette of Romania, Part I, No. 224 of 31 March 2017.

¹⁴ Law No. 184/2018 for the approval of Government Emergency Ordinance No. 24/2017 amending and supplementing Law No. 220/2008 for the establishment of the system for promoting the energy from renewable energy sources was published in the Official Gazette of Romania, Part I, No. 635 of 20 July 2018.

new units, (ii) 10 years for power generated by refurbished hydropower plants, with an installed capacity of no more than 10 MW, (iii) 7 years for wind power generated by units previously used on the territory of other states, if such units are used in the isolated energy systems or have been commissioned prior to application of the support scheme regulated by the Renewable Energy Law, (iv) 3 years for power generated by non-refurbished hydropower plants with a maximum installed capacity of no more than 10 MW.

These periods shall be diminished accordingly in the case of power producers that received green certificates prior to the entry into force of the Renewable Energy Law and shall also consider any periods during which the application of the support scheme was suspended or interrupted.

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4. How many green certificates are issued to renewable power producers?

The number of green certificates to be distributed by the TSO for each MWh of power generated by power plants using renewable sources of energy (with the exception of the power used for own technological consumption) varies depending on the renewable energy source, as follows: (i) three green certificates for each MWh of power generated in the new hydropower units having an installed capacity of maximum 10 MW, two green certificates for each MWh of power generated in the refurbished hydropower units having an installed capacity up to maximum 10 MW and one green certificate for each 2MWh of power generated in other hydropower units than the new and refurbished units mentioned above, having an installed capacity of maximum 10MW; (ii) two green certificates up to 2017 and one green certificate as of 2018 for each MWh of wind power; (iii) two green certificates for each MWh of power generated from geothermal energy, biomass, liquid biofuel, biogas (an additional green certificate/MWh is awarded for biomass resulting from energetic cultures), (iv) one green certificate for each MWh of power generated from landfill gas and sewage treatment plant gas; and (v) six green certificates for each MWh of solar power. During testing period, irrespective of the renewable source of energy used, TSO shall award one green certificate/MWh.

However, for the period 1 July 2013 – 31 March 2017, GEO No. 57/2013, as amended by Law No. 23/2014, postponed the allocation from trading of: (i) one green certificate for each MWh of power generated in wind power plants and in new hydro power plants with installed capacities not exceeding 10 MW and (ii) two green certificates for each MWh of photovoltaic energy. Subsequently, Law No. 184/2018 extended the postponement from trading of two green certificates for each MWh of photovoltaic energy until 31 December 2020.

The gradual recovery of the postponed green certificates should have started on 1 April 2017 (for photovoltaic and hydro energy) and 1 January 2018 (for wind energy), with finalisation planned not later than 31 December 2020. However, as per the latest amendments introduced by Law No. 184/2018, the recovery of the postponed certificates in the case of wind and hydro energy shall be made on monthly equal tranches starting 1 January 2018 until 31 December 2025, while for photovoltaic energy, the recovery process of the postponed green certificates shall be made on monthly equal tranches starting 1 January 2021 until 31 December 2030.

These postponement measures apply to all power producers already accredited for the support scheme by 31 December 2013.

In addition, ANRE had the obligation to monitor, on an annual basis, the producers benefiting from the support scheme to assess whether any overcompensation is registered for one or more technology(ies) and to propose to the Government that the number of green certificates for the respective technology(ies) be decreased by means of Government decision. The first monitoring report referred to the year 2012 and, based on its conclusions, the Government adopted Decision No. 994/2013 approving the measures for reducing the number of green certificates in the situations stipulated under Article 6, para (2) letters a), c) and f) of Law No. 220/2008 establishing the promotion system for the production of power from renewable energy sources.¹⁵ According to this decision, the power producers in the wind, solar and hydro sectors, accredited after 1 January 2014, shall benefit from a reduced number of green certificates, as follows: (i) wind power plants - 1.5 green certificates/MWh until 2017 and 0.75 green certificates/MWh starting with 2018; (ii) solar power plants - 3 green certificates/MWh and (iii) new hydro power plants with installed capacities not exceeding 10 MW - 2.3 green certificates/MWh.

Subsequently, no other similar reduction measures due to overcompensation have been introduced.

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5. Is there any specific exclusion from the application of the support scheme?

The main exclusion from the application of the support scheme was introduced by GEO No. 57/2013 and refers to the photovoltaic plants built on lands qualified as agricultural lands on 31 December 2013. No such restrictions apply to other types of renewable technologies.

Further amendments brought to the Renewable Energy Law in 2015 introduced a new

¹⁵ Government Decision No. 994/2013 was published in the Official Gazette of Romania, Part I. No. 788 of 16 December 2013.

exclusion from the application of the green certificates promotion system in respect of the electricity generated from renewable sources sold at negative prices.

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6. How many green certificates are issued to power producers benefiting from State aid?

In the case of power plants benefiting from one or several forms of State aid(s) (including EU grants), the number of green certificates awarded to such producers is reduced in order to maintain the internal rate of return considered during the authorisation process of the green certificate promotion system by the European Commission.

However, in this scenario, to the extent the reduction in the number of green certificates leads to a sub-unitary number of green certificates, the postponement measures are not applicable.

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7. Are there any market players under a legal obligation to purchase the green certificates?

Power suppliers have the obligation to purchase a number of green certificates equal to the quantity of power purchased for end customers and for own consumption purposes (including the power produced in Romania and sold by suppliers by means of bilateral cross-border transactions to consumers/suppliers located on the territory of states with which Romania has bilateral agreements in this respect) multiplied by the mandatory quota of green certificates acquisition determined by ANRE for the respective year. Similarly, power producers have the obligation to purchase a number of green certificates equal to the quantity of power used for own consumption purposes (other than technological consumption and the consumption necessary for the extraction, preparation and manipulation of raw materials, in the case of producers that perform such activities in connection with raw materials used for power generation) and for supplying consumers connected directly to the power plant, multiplied by the mandatory quota of green certificates acquisition determined by ANRE for the respective year. Such acquisitions of green certificates should be made on a quarterly basis.

The mandatory quota of green certificates acquisition is first estimated by ANRE in December of the previous calendar year, while the final quota is determined by ANRE no later than 1 March of the subsequent year.

As per Law No. 184/2018, ANRE shall establish the mandatory quota of green

certificate acquisition so that the average impact on the final consumer's invoice does not exceed EUR 11.7/MWh in 2018, EUR 12.5/MWh in 2019, EUR 13/MWh in 2020 and 2021 and EUR 14.5/MWh as of 2022. As of 2023, such average impact on the consumer's invoice could be reduced by means of Government decision, further to ANRE's proposal in this respect. As per Law No. 184/2018, this calculation method of the mandatory quota of green certificate acquisition is aimed at ensuring that all green certificates estimated to be issued between 1 April 2017-31 December 2031 (including those postponed from trading) are sold by the beneficiaries, provided the annual power consumption does not fall below the average values registered between 2017-2022.

8. What are the sanctions for failing to meet the mandatory quotas for green certificates acquisition?

As of 2018, the amount to be paid by the power suppliers and producers failing to observe the annual mandatory quota of green certificates acquisition is EUR 70 for each green certificate that was not acquired. These amounts shall be collected by the Environmental Fund Administration¹⁶ and shall be further allocated to natural persons for investments in renewable power generation units having an installed capacity up to 100 KW.

In addition, the electricity suppliers and producers failing to meet the annual acquisition quota for the previous quarter in a percentage of at least 90% compared to the annual mandatory quota are sanctioned as follows:

- For first breach - a written warning;
- For the second breach registered in the last five consecutive years following the first breach - a legal fine computed as the maximum value of the green certificates annually established by ANRE and the number of non-acquired green certificates (up to a percentage of 90% of the mandatory acquisition quota);
- For the third breach registered in the last five consecutive years following the first breach, a fine ranging between 1% and 5% of the turnover registered in the previous year and the suspension of the issuance of green certificates up to the number of green certificates that were not acquired.

9. Who bears the costs entailed by the application of the support scheme?

The value of the green certificates acquired by suppliers for meeting the mandatory green certificates acquisition quota is invoiced by suppliers to consumers.

¹⁶ The Environmental Fund Administration is an economic-financial instrument targeted at supporting and performing environmental protection projects and programs, in accordance with the applicable laws in the environmental field.

The invoiced value is calculated as the mandatory green certificates acquisition quota estimated by ANRE for that year multiplied by the invoiced quantity of power and the price of green certificates (which is calculated as the weighted average price of the green certificates registered on the anonymous spot market in the previous month or such last available weighted average price).

By 1 September each year, the invoiced value for the previous year is settled based on the mandatory green certificates acquisition quota established by ANRE for the previous year, the supplied power and the weighted average price of the green certificates used by the supplier to comply with its acquisition quota in the previous year, which price cannot exceed the weighted average price of the certificates registered on the anonymous spot market in the previous year.

However, as per GEO No. 57/2013, as amended by Law No. 23/2014, certain final consumers may be exempted from the obligation to pay the green certificates value for part of their energy consumption. The requirements for qualifying for the exemption, as well as the exempted quantities were approved through Government decision and authorised by the European Commission on 15 October 2014.

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10. What rules apply to trading renewable power?

As a matter of principle, renewable power is traded following the general trading rules described above. Mention should be made that, further to GEO No. 24/2017, ANRE has issued specific regulations for the organisation and functioning of a new market, i.e. the centralised market for the power benefiting from the support system - an anonymous centralised market ensuring the competitive, transparent, public, non-discriminatory and centralised trading of renewable power associated with the green certificates corresponding to such power; on this market, the price of power is established in a competitive manner, while the price of the associated green certificates is the closing price of the last trading session which took place on the anonymous green certificates spot market.

By way of exemption from trading power on the centralised markets:

- In accordance with GEO No. 24/2017 (as amended by Law No. 184/2018 and Law No. 155/2020), power producers benefiting from the support scheme which operate power plants, the aggregated capacity whereof does not exceed 3 MW per producer, may conclude power sale purchase agreements by means of direct negotiations with the suppliers to the final consumers.
- Additionally, pursuant to Law No. 184/2018, in view of improving their financial and production performance, two or more producers may participate in the competitive

power market as a single aggregate entity, with the observance of the relevant competition regulations. The trading conditions were established by Order No. 160/2019¹⁷ issued by ANRE and further detailed by the procedure published on the OPCOM website.

Until the fulfilment of the national targets regarding the percentage of power obtained from renewable energy sources out of the total final energy consumption, the power produced from renewable sources which benefits from the promotion system may be traded only with a view to covering the gross final consumption of power in Romania.

11. Which rules apply to green certificates trading?

GEO No. 57/2013 introduced the same principles as those imposed by the Energy Law in 2012 for power trading: green certificates must be traded in a transparent, centralised and non-discriminatory manner, on the centralised markets managed by OPCOM. Consequently, as of 1 July 2013, green certificates could no longer be traded through sale purchase agreements concluded by means of direct negotiations.

New trading rules have also been implemented by means of GEO No. 24/2017 and on 1 September 2017, a new ANRE regulation was enacted for the organisation and functioning of the green certificates market with a view to implement these new rules. Thus, green certificates shall be traded on the anonymous centralised green certificates market¹⁸ administered by OPCOM, on any of its segments (either the anonymous spot market or the anonymous centralised market of bilateral agreements).¹⁹

In accordance with the current legal framework, green certificates may be sold solely by renewable power producers and a green certificate may be subject to a single transaction between the producer, as seller, and the supplier, as buyer; however, where it did not generate the contracted number of certificates, the producer may purchase the missing number of certificates on the centralised markets.

As a matter of principle, all operators which have the obligation to acquire a certain quota of green certificates should purchase annually and quarterly, on the spot market, at least 50% of the number of green certificates necessary to reach said quota.

¹⁷ Order No. 160/2019 for the approval Regulation on the functioning of the centralized market for electricity from renewable sources supported by green certificates, was published in the Official Gazette of Romania, Part I, No. 582 of 16 July 2019.

¹⁸ Such market entails a trading system which allows each participant to submit firm offers regarding quantity and price without having its identity revealed to the other market participants and, at the same time, know the quantities and prices proposed by the other participants.

¹⁹ In addition, as abovementioned, they may also be traded on the centralised market for the electricity which benefits from the support system.

Exceptionally, the power producers operating power plants accredited for the green certificates support scheme, the aggregated capacity whereof does not exceed 3 MW per producer may conclude directly negotiated green certificate sale purchase agreements with the suppliers of final consumers (such transactions are also supervised by OPCOM).

While, initially, the trading value of the green certificates varied between EUR 27 (minimum legal value) and EUR 55 (maximum legal value) per green certificate, as of the entry into force of GEO No. 24/2017 and up to 31 March 2032, such legal trading value ranges from EUR 29.4 to EUR 35 (calculated at the average exchange rate set by the Romanian National Bank for the previous year).

Furthermore, all the green certificates issued as of 1 April 2017, as well as those postponed from trading shall be valid and may be traded until 31 March 2032²⁰ and they gain value only the moment they are traded.

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12. Are there any specific rules regarding renewable energy projects having an installed capacity exceeding a certain threshold?

As per the 2011 form of the Renewable Energy Law, developers of power plants generating renewable energy which had an installed capacity of more than 125 MW had to obtain individual clearance from the European Commission before accessing the support scheme, further to which the number of green certificates to be awarded to such developer could be modified.

However, producers which on the date of entry into force of GEO No. 88/2011 (i.e. 19 October 2011) already operated or benefited from a connection agreement for power plants generating renewable energy that had an installed capacity of more than 125 MW were accredited by ANRE and received the number of green certificates provided by the Renewable Energy Law for a period of 24 months.

These producers had the obligation to notify the European Commission within three months as of accreditation, and any positive differences between the number of green certificates received during the 24-month period and that provided by the authorisation decision of the European Commission had to be settled within 24 months as of such decision.

Meanwhile, however, new EU guidelines have been issued which raised the 125 MW threshold to 250 MW and the Renewable Energy Law was aligned with such EU

²⁰ Prior to the entry into force of GEO No. 24/2017, green certificates had a validity of 12 months as of their issuance.

guidelines.

PROMOTION OF THE PRODUCTION OF HIGH EFFICIENCY COGENERATION POWER

1. What is the legal framework governing the support scheme for the promotion of high efficiency cogeneration power?

The system for promoting high efficiency cogeneration of power and heat, was initially regulated at European level by Directive 2004/8/EC,²¹ and has been implemented in Romania starting 2007 by Government Decision No. 219/2007.²²

In order to implement the provisions of Government Decision No. 219/2007, Government Decision No. 1215/2009 for establishing the criteria and conditions required for implementing the support scheme for high efficiency cogeneration was enacted.²³

After the high efficiency cogeneration support scheme was authorised by the European Commission, ANRE adopted, in 2010 and 2011, extensive secondary legislation for the implementation thereof, the scheme being applied as of 1 April 2011. At the end of 2012, Directive 2004/8/EC was repealed and the principles regarding the promotion of the production of high efficiency cogeneration power were taken over by Directive 2012/27/EU.²⁴ Consequently, in October 2015, the Government Decision No. 219/2007 was amended.

The high efficiency cogeneration bonus scheme applied only to producers which had their projects accredited by ANRE for such scheme until 31 December 2016. Exceptionally, the scheme shall apply to producers which replace, in the same location, existing cogeneration capacities which benefited from the bonus, after 31 December 2016, but within the limits of the capacity accredited by ANRE until such date.

It should be noted that producers of power and heat from cogeneration which use

²¹ Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC has been published in the Official Journal of the European Union No. L 52 of 21 February 2004.

²² Government Decision No. 219/2007 on the promotion of cogeneration based on the demand of useful heat, published in the Official Gazette of Romania, Part I, No. 200 of 23 March 2007.

²³ Government Decision No. 1215/2009 was published in the Official Gazette, Part I, No. 748 of 3 November 2009, as subsequently amended and supplemented.

²⁴ Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and Directive 2006/32/EC has been published in the Official Journal of the European Union No. L 315 of 14 November 2012.

renewable energy sources had the obligation to choose one of the support schemes, i.e. either the system of mandatory quotas combined with green certificates trading, or the bonus support scheme for high efficiency cogeneration.

Also, in the case of cogeneration capacities exceeding 300MW, the application of the system was conditional upon obtaining prior individual clearance from the European Commission.

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2. Which are the main features of the support scheme?

The support scheme for high efficiency cogeneration is administered by Transelectrica and entails the awarding of bonuses to qualified power producers, on a monthly basis, for each MWh of power produced from high efficiency cogeneration and delivered into the grid, irrespective of whether the power is sold on the competitive or on the regulated market.

ANRE establishes, on an annual basis, the list of producers who benefit from the support scheme, the amount of the bonus to which each is entitled, and the quantities of high efficiency power benefiting from the support scheme. The bonus to be awarded to each producer may not exceed the annual reference bonus which has been approved by the regulatory authority for the entire applicability period of the scheme depending on the type of fuel used in the cogeneration process (i.e. solid fuels, gas fuel taken over from the transmission system and gas fuel taken over from the distribution system). The bonuses are granted from the monthly contributions collected by Transelectrica (the value of which is established by ANRE) from all power consumers (through their suppliers). Suppliers which import power produced in high efficiency cogeneration, certified as such through guarantees of origin, and deliver it directly to consumers in Romania are entitled to the reimbursement of the contributions they paid.

ANRE analyses the costs and revenues connected to the high efficiency cogeneration activity estimated for the following year by the producers benefiting from the support scheme. Should the analysis reveal overcompensation, ANRE shall diminish the value of the bonus to be granted for the respective period and, should the analysis prove that the cogeneration unit has been fully depreciated, no bonus shall be granted. Additionally, ANRE will assess in respect of each beneficiary whether the bonus granted in the previous year gave rise to overcompensation and, if so, the concerned beneficiary shall have to pay the amounts indicated by ANRE. The first period for which ANRE assessed the overcompensation was of three years (2011-2013), the analysis being completed at the beginning of 2014; starting 2014, overcompensation is analysed on an annual basis.

3. What is the applicability period of the support scheme?

The support scheme is applicable for the period 2011-2023, provided that no producer can benefit from it for more than 11 consecutive years. Should the aggregate capacity of combined heat and power units benefiting from the scheme reach 4,000 MW, then only high efficiency cogeneration units replacing the existing ones shall be eligible for the support scheme.

4. Are there any specific rules for the trading of power by the producers benefiting from the support scheme?

In view of benefiting from the bonus, producers have the obligation to trade the high efficiency power on the competitive power market.

HEATING

Legal framework and regulatory authority

1. What is the legal framework governing the heating provision service?

The heating provision service is regulated mainly by Law No. 51/2006 on the municipal services of public utility and by Law No. 325/2006 on the heating provision public service.

2. Which are the main regulatory authorities in the provision of heating services?

Until recently, the main authority regulating the provision of heating services was the National Authority for Regulating the Community Services of Public Utilities (ANRSC), a public body of national interest, subordinated to the Ministry of Regional Development, Public Administration and European Funds, while the production of heat in cogeneration fell under the exclusive regulatory competence of ANRE.

However, as of June 2018, the regulatory and licensing competence in the heat sector has been allocated exclusively to ANRE.

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Organisation of the heating provision service

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1. Who is responsible for the management of the heating provision service?

The management for the provision of heating falls under the competence of the local public administration authorities or of the community development associations (i.e. associations established by two or several administrative territorial units for the purpose of jointly providing the community services of public utilities).

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2. What are the different systems for managing the heating provision service?

The local public administration authorities and the community development associations can decide to carry out the management either directly or by delegation to third parties.

The delegated management is awarded either through concession or through a public services procurement agreement.

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3. Can there be more operators involved in the performance of the heating provision service within the same territorial administrative unit?

All activities part of the heating provision service corresponding to a single territorial administrative unit (i.e. heat generation, distribution, transmission and supply) must be carried out by a single operator.

Exceptionally, based on the decision of the local public administration authorities or the community development associations, the heat generation activities may be carried out by several operators.

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4. Which licensing requirements apply to heating provision service activities?

As of June 2018, all activities in the heating sector (heat generation, transmission, distribution and supply) may be performed based on the license issued by ANRE.

NATURAL GAS

Legal framework and regulatory authority

1. What is the legislation governing the Romanian gas sector?

The gas sector is regulated mainly by Title II of the Energy Law. This section of the Energy Law implements Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (Gas Directive).²⁵

In 2020, the Energy Law underwent substantial amendments due to Romania's efforts to implement Regulation (EU) 2017/1938²⁶ for developing liquid and competitive wholesale and retail gas markets, both by fostering market competition and by eliminating barriers to cross-border trade. Hence, GEO No. 1/2020²⁷ lifted the regulated price constraint for gas suppliers in relation to the household end-customers and heat suppliers starting with 1 July 2020.

Furthermore, GEO No. 106/2020²⁸ sets forth mechanisms concerning cross-border trade and neighbouring countries networks interconnection, as well as rules for competitive trade and free access of gas suppliers to gas distribution and transmission networks.

Finally, Law No. 155/2020²⁹ provides among others for various rules regarding the access to gas supply market and tariffs calculation rules in respect of gas supply, distribution and transmission.

In addition, secondary enactments (orders issued by ANRE) set forth applicable rules, regulations, and methodologies for the gas sector related operations.

²⁵ The Gas Directive was published in the EU Official Journal L 211 of 14 August 2009.

²⁶ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010 was published in the EU Official Journal L 280 of 28 October 2017.

²⁷ Government Emergency Ordinance No. 1/2020 regarding certain tax and budget related measures and for the amending and supplementing of some legal enactments was published in the Official Gazette of Romania, Part I, No. 11 and entered into force on 9 January 2020.

²⁸ Government Emergency Ordinance No. 106/2020 was published in the Official Gazette of Romania, Part I No. 572 and entered into force on 1 July 2020. It was later on approved by Law No. 290/2020 (published in the Official Gazette of Romania No. 1239 of 16 December 2020 and entered into force on 19 December 2020).

²⁹ Law No. 155/2020 for the amendment and supplementation of the Energy Law No. 123/2012 and for the amendment and supplementation of some other legal enactments was published in the Official Gazette of Romania, Part I No. 665 of 27 July 2020. It entered into force on 30 July 2020.

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2. Which is the authority regulating the natural gas sector?

The Romanian natural gas sector is regulated mainly by ANRE. Limited competencies are also granted to the National Agency for Mineral Resources (ANRM) as regards the awarding and execution of oil concession agreements concerning exploration, development and exploitation activities and operation of the national transmission system and the underground storage facilities.

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Natural gas market

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1. Who can carry out activities in the natural gas sector and what are the licensing requirements?

The participants in the natural gas sector are the operators licensed to perform the activities specific to such sector, as listed below.

Gas production can be carried out by legal entities (i) having concluded with ANRM a concession oil agreement in respect of a defined petroleum block, (ii) holding a setting-up authorisation and an operation license for the upstream pipelines related to the production activity and (iii) holding a gas supply license. The main producers of gas on the Romanian market are Romgaz and Petrom, which usually ensure more than 90% of the internal gas production.

Storage entails all activities and operations performed for or in connection with the reservation of storage capacities in underground storage and for the injection, storage and extraction of gas from these capacities. The gas storage is a natural monopoly activity which may be carried out subject to concluding a concession agreement for the underground storage facilities with ANRM, and to obtaining the corresponding license from ANRE. Currently, there are two operators of the gas storage service, namely Depogaz (a subsidiary of Romgaz) and Depomureş.

Transmission (i.e. transportation of gas through high pressure grids, with the exception of upstream pipelines and high pressure distribution grids for delivery to customers) is a natural monopoly activity carried out by Transgaz. Based on the concession agreement concluded with ANRM, Transgaz operates the national transmission system and related assets belonging to the public domain of the State.

Distribution entails the transportation of gas through a system of distribution pipelines for delivery to customers. Gas distribution is, as a rule, a monopoly of entities holding (i) the exclusive concession over the distribution service in a certain area based on a

concession agreement awarded by and concluded with the local public authorities³⁰ and (ii) a distribution license issued by ANRE. The main licensed operators of the distribution service are Distrigaz Sud Rețele and Delgaz Grid (former E.ON. Gaz Distribuție). However, under Law No. 155/2020 the distribution service may be provided without an ANRE-issued license by entities operating a closed distribution system, administrators of industrial parks created according to Law 186/2013 on the setting-up and the functioning of the industrial parks and administrators of free zones created according to Law no. 84/1992 on the free zones regime, such operators benefiting from the same rights and having the same obligations to observe the ANRE regulations as a licensee for that activity.

Trading entails natural gas transactions performed exclusively on the wholesale market and may be carried out by entities which hold a specific trading license issued by ANRE.

Supply is carried out by ANRE licensed operators. As a matter of principle, the suppliers have the right to carry out transactions on the competitive market under negotiated terms and conditions, except for last resort suppliers. In view of protecting end customers in case the supply license of their suppliers is withdrawn or in any other cases identified by ANRE where end customers no longer have any source of gas supply, the special category of last resort suppliers is established. Such last resort suppliers are nominated by ANRE and perform the gas supply activity based on regulated agreements and at regulated prices.

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2. Are there any unbundling and independency requirements imposed to the activities in the power sector?

In line with the principles laid down by the Gas Directive, the Energy Law imposes the unbundling of gas distribution and supply activities, as well as independency criteria to be observed by Transgaz and underground storage operators. The unbundling requirements apply to the vertically integrated undertakings carrying out both distribution and supply activities, with the exception of gas distributors serving less than 100,000 connected end customers. Such undertakings are placed under the obligation to become independent from activities not connected to gas distribution, at least in terms of legal form (legal unbundling) and of the organisation and decision making process (functional unbundling). Following such legal requirements, each of the main distribution and supply companies (Distrigaz Nord and Distrigaz Sud) was divided into two separate companies, one of which carrying out gas distribution and the other carrying out gas supply (Distrigaz Sud Rețele and Engie (former GDF Suez Energy Romania), in the case of Distrigaz Sud, and Delgaz Grid (former E.ON. Gaz Distribuție)

³⁰ By way of exception, in case of privatised distribution operators, the competent authority was and remains the Ministry of Energy.

and E.ON. Energie România, in the case of Distrigaz Nord).³¹ As regards Transgaz, the Energy Law imposes the organisation and operation thereof as per the model of the independent system operator, certified by ANRE, and establishes independence criteria to be observed in order to ensure an effective separation from distribution and supply activities. In August 2014, Transgaz was certified by ANRE as “independent system operator”.

Storage operators, part of vertically integrated undertakings, are bound to observe independence criteria in terms of legal form, organisation and decision making process from activities not connected with gas transmission, distribution and storage. Such limitation applies only as regards the storage facilities that are technically and/or economically necessary in order to ensure an efficient access to the system for the purpose of supplying customers.

3. To what extent is the natural gas market liberalised?

In line with EU regulations, the natural gas supply market was progressively liberalised, for which purpose the Energy Law provided a gradual elimination of the regulated prices for end customers. As such, in respect of industrial customers, the market is fully liberalised as of 1 January 2015, while in respect of household customers, full liberalisation has occurred as of 1 July 2020.

Up until 30 June 2020, producers, including their subsidiaries and affiliates belonging to the same economic interest group carrying out both production activities and sale of natural gas extracted from Romania, had the obligation to maintain the price of the natural gas quantities resulting from the current domestic production activity sold to suppliers of household customers and of heat producers, only for quantities of natural gas used to generate heat in cogeneration/heat plants meant for the population, at a capped price of RON 68/MWh. In the context of natural gas market liberalisation implemented as of 1 July 2020, these provisions have been repealed as, in view of a fully liberalised market, the capping of purchase prices for the supply of natural gas for household customers and for household heating producers were incompatible with the very concept of market liberalisation.

The liberalisation process was consolidated by GEO No. 106/2020³² which introduced mechanisms specific to the concept of gas release program, meant to ensure a

31 Similar provisions were also reflected in the former Energy Law which relied on now repealed Directive 2003/55/EC and which imposed the unbundling of distribution and supply activities by 30 June 2007.

32 Government Emergency Ordinance No.106/2020 for amending and supplementing the Law on electricity and natural gas no. 123/2012, as well as for the modification of some normative acts published in the Official Gazette of Romania, Part I, No. 572 of 1 July 2020. The provisions were further amended by Law 290/2020 on the approval of the Government Emergency Ordinance no. 106/2020 for the amendment and completion of the Law on electricity and natural gas no. 123/2012, as well as for the amendment of some normative acts, published in the Official Gazette of Romania, Part I, No. 1239 of 16 December 2020.

transparent, competitive and non-discriminatory trading environment, corresponding to a free market. ANRE continues to regulate several segments of the gas market, as follows: (i) the natural monopoly activities (i.e. transmission, storage and distribution of gas) and ancillary activities, and (ii) the gas supply provided by the last resort suppliers.

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4. Which rules apply to trading natural gas?

On the competitive market, transactions are performed (i) under a wholesale system or (ii) under a retail system (for acquisitions of gas by end customers for their own consumption). On the wholesale market, transactions are performed as follows: (i) bilateral agreements between operators in the gas sector, (ii) transactions on the centralised markets (currently there are two such markets, i.e. the Centralised Market of Bilateral Agreements operated by OPCOM and the one operated by the Romanian Commodities Exchange), (iii) other types of transactions/agreements. On the retail market, gas supply is performed (i) either based on negotiated agreements or (ii) on standard offers.

Since 2014, the Energy Law has been successively amended in terms of rules applicable to the trade of natural gas on the wholesale market. The most recent amendment in this respect was implemented by GEO No. 106/2020 whereby a gas-release programme is launched between 1 July 2020 and 31 December 2022. This programme is intended to replace the previous obligation for all market participants to contract a set quota on centralised trading platforms, with new obligations. Accordingly, wholesale market participants making acquisitions of natural gas are bound to place offers to buy natural gas on centralised markets during the same year when the natural gas delivery occurs. Equally, wholesale market participants contracting sales of natural gas are bound to place offers to sell natural gas on centralised markets during the same year when the natural gas delivery occurs. In both cases, the obligation to place offer to sell or to buy natural gas on centralized market is determined by reference to a percentage set by ANRE³³ of the annual quantity of natural gas contracted. As far as the natural gas producers are concerned, GEO No. 106/2020 requires only those recording more than 3,000,000 MWh annual production (minus technological consumption and internal consumption for years 2021 and 2022) to place sale offers for at least 40% of their annual production acquired in the previous year, subject to the rules set by ANRE.³⁴

³³ According to Order No. 144/2020 regarding the obligation of the wholesale market participants to place offer on the centralised market, this percentage is 40% for the period between 1 July 2020 and 31 December 2022.

³⁴ Order No. 143/2020 on the obligation to supply natural gas on the centralised markets of natural gas producers whose annual production in the previous year exceeds 3,000,000 MWh, published in the Official Gazette of Romania, Part I, No. 631 of 17 July 2020.