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Legal Bulletin



Energy and Natural Resources

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Intro

Law 127/2014 (“Law 127/2014”) amending and supplementing the Electricity and Gas Law No. 123/2012 (“Electricity and Gas Law”) and the Petroleum Law No. 238/2004 (“Petroleum Law”) was published in the Official Gazette, Part I, No. 720 dated 1 October 2014. The main purpose of Law 127/2014 was to transpose in the Romanian legislation the principle set out by the 3rd Energy Package regarding the separation (in the power and gas sector) of ownership between the generation and supply, on one hand and the transmission on the other hand.

However, different other amendments are also introduced, the most important of which are summarised herein below.

New amendments to the Electricity and Gas Law

The most important amendments affecting the **Electricity Sector** are the followings ones:

1. The *trader* is regulated separately from the *supplier*

Law 127/2014 introduces the notion of power trader, which is the individual or legal entity performing activities of power sale or acquisition exclusively on the wholesale power market or on the import/export market. These activities may be carried out based on a special trading license issued by ANRE.

However, the law does not address the situation of the entities which were licensed as power suppliers before its entering into force. In the absence of specific legal provisions in

this respect, we believe that they should be allowed to continue performing trading activities based on the supply license as a different interpretation would result in the retroactive application of the Law 127/2014.

2. New procedures for solving complaints against the transmission and system operator (TSO) and the distribution operators (DOs)

The law extends ANRE's competency to solving all claims against the DOs and TSOs related to the obligations thereof, as well as those between the OTS and the owner of a power transmission grid. Such claims must be settled within a 60 days term as of the claim's registration (which term may be extended with 60 days if additional information is needed and with an additional 60 days term with the claimant's acceptance).

Although the wording of Law 127/2014 may be subject to interpretation, we appreciate that this procedure with ANRE is not a preliminary and mandatory one and, hence, it does not affect the claimant's right to address the courts of law directly, without previously following this procedure.

3. Possibility of private ownership over the power transmission grid for entities certified as TSOs

By exception from the general rule that the power transmission grid is in the public ownership over the state, the law provides that the power transmission grids developed by entities which fulfil the requirements for being certified as TSOs belongs to the private ownership thereof. In order to benefit from this exception, the decision to develop the power transmission grid must be taken after the entry into force of Law 127/2014.

4. New obligations imposed to the suppliers and DOs

Law 127/2014 imposes the suppliers and DOs new obligations meant to facilitate a better information of the customers, such as:

- the obligation of the DOs to publish all costs regarding the operation, maintenance and development of the grid;
- the obligation of the suppliers and DOs to organize regional/local information points (subordinated to the sole point of contact), which should be easily accessible and should be located at a maximum distance of 50 km from the consumption place of the final customers. This service should be free of charge;
- the obligation of the suppliers and DOs to inform the final customers on their legal rights, applicable law and the disputes resolution mechanisms, by means of the invoice (or the documents attached thereto) and through promotional materials.

Additional obligations imposed to the suppliers are as follows:

- to notify the consumer on its intention to amend the supply agreement and on the latter's right to unilaterally terminate the agreement if the amendments are not accepted;

- to notify the consumers on any increase of the tariffs, directly and in due time, no later than the end of the following billing period;
- to reimburse the household customers (who have chosen a prepayment system) of the overpaid amount if, after the adjustment, such amount exceeds 100 Ron (approximately EUR 23¹);
- to solve any disputes within a 90 days term based on a transparent, accessible and cheap alternative dispute resolution procedure, which should guarantee a reimbursement and/or a compensation system. This procedure should be elaborated based on a frame procedure which will be elaborated by ANRE.

5. New mandatory clauses of the supply agreements

Law 127/2014 introduces new mandatory clauses which should be included in the supply agreements, which regard, among others, the following:

- type of maintenance services offered, if the case;
- means for obtaining updated information on the prices/tariffs, including the maintenance tariffs;
- whether the consumer has right to terminate without costs;
- possible compensation and applicable reimbursement methods in case the quality level of the services is not fulfilled (including in case of inaccurate and delayed billing).

The above information should be clearly set out in the invoices or on the internet pages of the suppliers.

The most important amendments affecting the **Gas Sector** are the followings ones:

1. Extension of the term for gas supply at regulates prices for household consumption

Law 127/2014 extends the term for the gas supply at regulated prices and based on frame contracts for household clients from 31 December 2018 to 1 July 2021. Up to the same date, it is extended also ANRE's right to establish a mixed structure of imported/domestic for the quantity of gas intended for household consumption.

2. New licensing provisions regarding the compressed gas

Law 127/2014 introduces the notion of compressed gas ("CNG") and sets out the authorizations and licenses necessary for the design/execution/operation of the installations for CGN generation/storage, for the setting-up of CNG installations and for CNG supply activities.

¹ As per the official exchange rate announced by the National Bank of Romania on the date of this Legal Bulletin (EUR 1 = RON 4.4136).

3. Derogation from the obligation of providing access to the grid in case of take or pay agreements

Law 127/2014 provides the right of operators in the gas sector to refuse granting access to and connecting third parties to the grid if facing serious financial and economic difficulties as result of payment commitments undertaken through take or pay agreements².

In order to benefit from this derogation, the operator should file a request with ANRE (either before or after refusing the access to the grid) and obtain therefrom a decision in this respect. No such derogation may be obtained if (i) the sales of gas do not fall below the guaranteed level of minimum request, (ii) the contract may be adjusted or (iii) the operator may find alternative sale markets.

ANRE must submit the decision to the European Commission and should withdraw or amend the decision if so requested by the latter, within 28 days as of such request.

4. Elimination of the obligation to obtain a noncompliance certification from a separate operator for ceasing the gas distribution

Law 127/2014 sets out the possibility for the gas DOs to cease the distribution of gas to the usage installations which endanger the operation safety or in case of an explosion danger, without obtaining the noncompliance certification from another operator authorized by ANRE. The possibility to cease the gas distribution/transmission is also recognized in case of usage installations on which interventions threatening the safety were performed.

5. New obligations imposed to the gas suppliers

Law 127/2014 introduced in the charge of the gas suppliers similar obligations to those imposed to power suppliers and detailed in Section 4 above. Furthermore, the mandatory clauses of the power supply agreements set out in Section 5 above are also applicable to the supply agreements of gas.

New amendments to the Petroleum Law

1. Express limitation of public property regime over petroleum transportation pipelines built by the title holders

The most important amendment brought by Law 127/2014 to the Petroleum Law regards the legal regime of the investments made by the title holder out of its own financial resources.

As of the entry into force of the Law 127/2014, Article 15 (1) of the Petroleum Law reads as follows:

² The take or pay agreement is the sale purchase agreements imposing the buyer to pay the price of a certain negotiated quantity, even in the absence of its takeover.

“As an exception from the provisions of item 1, point 17 of the annex to Law No. 213/1998 on public property assets, as further amended and supplemented, the investments made from the title holder’s own funds and materialised in new assets which are similar to those specified in Article 14, but which are not part of the national petroleum transportation system are treated as private property and can be connected to the aforementioned system.” (Emphasis added)

Prior to the amendment, Article 15 (1) did not specify that its provisions are an exception from the provisions of item 1, point 17 of the annex to Law No. 213/1998 on public property assets (“**Public Property Law**”). This led to multiple practical issues given that while the Petroleum Law provided the private ownership right of the title holders over the assets described at Article 15 (1), the Public Property Law provided that the “*pipelines for transportation of crude oil, petroleum products and gas*” are part of the public domain, without making any distinction as to the whether the pipelines in issue have been built out of public or private funds.

Given the above, as of the entry into force of the amendment brought by Law 127/2014 (*i.e.*, 4 October 2014), it is expressly provided that the petroleum transportation pipelines built by the title holders from their own funds are not public property of the state.

In line with the above limitation, Article 49 (2) of the Petroleum Law as amended by Law 127/2014 now expressly provides in the newly introduced paragraph b¹) that title holders owe a certain percentage rate out of the gross income obtained from the petroleum transportation through petroleum transportation systems, other than the national petroleum transport system, and terminals, others than the ones subject the public property of the state. The actual rate remains to be further determined through norms approved by the Government.

2. Others

Other amendments brought by Law 127/2014 to the Petroleum Law only regard certain clarifications of terminology.

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The firm's lawyers specialising in **Natural Resources** are acting for various clients active in the oil and gas industry, covering upstream and downstream matters, including exploration, infrastructure and pipeline development and services contracts, as well as related M&A issues, licensing and environmental law matters. They are particularly versatile in drafting and negotiating industry specific contracts (sale and transport of petroleum products agreements, farm in/farm out agreements, joint operations agreements, etc.)



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