



## Getting the Deal Through - Electricity Regulation Romania chapter

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### Policy

1 What is the governmental policy and legislative framework for the electricity sector?

During the implementation of the *acquis communautaire*, required in view of Romania's accession to the EU, the Romanian government approved the governing programme for 2005-2008, as well as the energy-sector road map, by taking into consideration the EU-specific regulations aimed at developing a competitive national energy market. The following strategic objectives were established therein:

- liberalisation of the electricity sector;
- promoting private investments and capital together with developing functional and sustainable competition in the energy field through the privatisation of generation and distribution companies to strategic investors;
- eliminating distortions that affect competition on the market by elaborate price and tariff calculation methodologies able to permit the assessment and reflection of the real impact of services over the costs;
- improving the institutional framework through the uniform coordination of the energy field, clarifying statute, structuring the relevant regulatory authorities, ensuring financial autonomy of the regulatory authorities; and
- participating in the creation of a regional energy market in south-eastern Europe and increasing the interconnection capacity with the EU.

In September 2007, the government approved Romania's energy strategy for 2007 to 2020, containing the major elements included in the relevant EU documentation and aiming at offering solutions for economic development. Romania's objectives in the energy sector are as follows:

- increasing energy safety, by diversification of energy sources and transmission;
- ensuring sustainable development (including through limitation of the energy sector's environmental impact);
- supporting energy competitiveness, through measures regarding the attainment of an actual competition in the energy sector;

- supporting social policies, with a view to ensuring access to energy of disfavoured social categories;
- improving functioning of energy market and adapting it to requirements of the EU internal market;
- promoting the energy generation on the basis of renewable resources;

In the last years, the Romanian authorities envisaged setting up a power national company within which three distribution operators, two atomic reactors of the Cernavoda nuclear unit, as well as one or possibly two power clusters would merge, with a view to strengthening Romania's economic growth and its expansion in the region. At present, the project has been reshaped, thus the Romanian government has recently initiated an Emergency Ordinance relating to the establishment of a national power company by the takeover by the electricity distribution and supply company - "Electrica SA" of some stock shares held by the state in the company for the hydropower generation - "Hidroelectrica" and from other energy related companies (*i.e.* the thermopower companies Turceni and Rovinari). . Currently, it is envisaged that national power company that is to be established by the Romanian Government shall further group over 50% from the capacities for the electricity generation on the Romanian market.

The principles of the electricity market are currently regulated by the Electricity Law and detailed in secondary legislation including government decisions, and decisions and orders issued by the relevant regulatory authority.

On 25 October 2005, Romania signed the Treaty establishing the Energy Community, whereby the parties thereto (*i.e.*, the European Community and Albania, Bulgaria, Bosnia and Herzegovina, Croatia, the FYR Macedonia, Romania, Serbia and Montenegro) intend to establish an integrated market in natural gas and electricity, based on common interest and solidarity.

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## Organisation of the market

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- 2 What is the organisational structure for the generation, transmission, distribution and sale of power?

The liberalisation of the electricity market, as shaped through the governmental strategies, has been gradually implemented since 2000 through corporate reorganisation and the progressive unbundling of the state-owned integrated monopoly.

The operators in the electricity sector are legally separated according to their main activities:

- operation of the transmission network and the related dispatch of electricity;
- generation, which also includes a supply function aimed at outputting electricity in the wholesale market (generators are mainly organised by power generating source, *i.e.*, thermoelectric, hydroelectric and nuclear);
- operation of the distribution network and the related dispatch of electricity (please note that pursuant to the unbundling obligations, currently all the electricity distribution and supply functions have been unbundled on an independent basis) and
- electricity trading and supply to end-consumers.

Exchanges between such operators take place in the electricity market, which is segmented into the wholesale market and the retail market.

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3 What governmental or administrative authorisations are required to construct and operate generation facilities?

In addition to the general authorisations required under Romanian law (*e.g.*, urban planning certificate, land planning documentation, building permits, environmental authorisations), the construction and operation of generation facilities requires the obtaining of:

- emplacement approval, issued by the electricity network operator(s) being authorised to perform the relevant network operation in the area where the facility is located (*i.e.*, the distribution operator or the transmission operator, as the case may be);
- technical acceptance for interconnection issued by the relevant electricity network operator (*i.e.*, the operator of the network to which the installation shall be connected);
- establishment authorisation, issued by the Romanian Energy Regulatory Authority (ANRE); and
- a generation licence for commercial exploitation issued by ANRE (valid for up to 25 years).

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4 What are the policies with respect to interconnection of generation to the transmission grid?

Generators have the same rights of access to the network as other market participants (suppliers, consumers). The general principle applicable for interconnection to the transmission grid is the non-discriminatory access of all electricity market participants to public transmission networks (*i.e.*, regulated third-party access being the right to connect to and use, under the conditions provided by law, the transmission or distribution networks). The Electricity Law establishes the obligation of the transmission operator to grant access to the relevant networks and the corresponding right of access. Access could, however, be denied with just cause if the connection affects the safety of the National Power System.

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5 Does the governmental policy or legislation foster power generation based on alternative energy sources such as renewable energies or combined heat and power?

Under sector regulations, electricity from renewable sources as well as cogeneration electricity could be qualified by ANRE as priority production. This production can be contracted or offered on the day ahead market pursuant to a preferential price scale.

To comply with both the obligations in the Kyoto Protocol and the obligations resulting from accession to the EU, Romania's target for electricity produced from renewable energy sources for 2010 was fixed at 33 per cent of its gross national electricity consumption. A specific support scheme for renewable energy sources, merging the system of mandatory quotas and the system of green certificates, has been implemented so as to reach this figure.

The green certificates are issued by the transmission system operator for each MWh of electricity generated using renewable energy sources (wind, solar, biomass or hydroelectric power, generated in plants with less than 10MW power units, new or rehabilitated after 2004).

Electricity suppliers have an obligation to buy such green certificates, corresponding to a percentage from the annual electricity quantity sold to consumers representing the value of the annual mandatory quota multiplied by the electricity supplied annually to the final consumers by the respective supplier. The percentage is determined in accordance with specific regulations approved by ANRE. The green certificates are traded separately from the volume of electricity associated with them, through competitive mechanisms ensured by bilateral contracts or by exchanges on a centralised market, with the observance of minimum and maximum prices established by ANRE.

After the accession to the European Union, Romania has gained access to the financial assistance from the European Union's funds through structural funds. On the basis of the operational program adopted by Romania "Increase of economic growth", the Romanian government has adopted a regional aid scheme for the valorification of renewable energy sources. The objective of the state aid

scheme is represented by the financing to be granted to the economic entities for the accomplishment of the initial investments in view of ensuring the valorification of renewable energy sources. The maximum number of beneficiaries under this state aid scheme is of 300 for a total budget of € 200,000,000 million to be granted until 2013 (the expiry date of the state scheme aid).

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#### Regulation of electricity utilities – transmission

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- 6 What governmental or administrative authorisations are required to construct and operate transmission networks?

Transmission activity has been qualified under the Electricity Law as a natural monopoly and a service of public interest and has been entrusted under a concession agreement exclusively to an entity where Romanian state is the majority shareholder and which is the transmission network operator. The transmission network has been expressly qualified as state public property.

Due to such express legal qualification, if a private investor expressed an interest in participating in the development, construction and operation of transmission network capacities, a separate analysis would be necessary in relation to the structuring and the means of expressing such an interest.

In order to construct transmission networks, the general authorisations applicable under Romanian law (*e.g.*, urban planning certificates, land planning documentation, building permits, environmental authorisations) are required. In consideration of the interest of a public utility of a transmission-related capacity, the transmission system operator may request the initiation of an expropriation procedure with respect to the required land.

Distinct from general authorisations, transmission services are provided on the basis of the following special authorisations:

- authorisation for the establishment or rehabilitation of electricity facilities (*i.e.*, transmission lines) granted by ANRE;
  - concession for performing the service of transmission of electricity within a specific area, granted by the Ministry of Economy and Finance and operating the transmission assets; and
  - electricity transmission licence granted by ANRE (valid for up to 25 years).
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- 7 Who is eligible to obtain transmission services and what requirements must be met to obtain access?

One of the fundamental principles applicable under the Electricity Law is the non-discriminatory access of all electricity market participants to public transmission networks (*i.e.*, the right to connect and use, in accordance with the conditions provided by the law, the transmission networks). Granting access to the transmission network, upon the request of any market participant (*i.e.*, electricity generator, supplier, distribution operator or eligible consumer) is a mandatory service to be provided by the transmission operator, which may justly deny access only in case the connection affects the safety of National Power System. Access to the transmission network is granted upon fulfilment of the documentary and technical conditions laid down in the Technical Transmission Code.

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- 8 Are there any governmental incentives to encourage expansion of the transmission grid?

There are no Romanian legal provisions referring to incentives encouraging expansion of the transmission grid. However, the state used to support by governmental guarantees the loans obtained by the transmission operator for the development of the transmission grid.

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- 9 Is there any tariff or other regulation regarding the rates and terms for the provision of transmission services?

The tariffs for electricity transmission services are established on a regulated basis by ANRE, by applying the principles laid down in the methodology underlying the calculation of such tariffs. The tariffs aim to comply with the principle of the good functioning of the transmission operator, prevention of unreasonable advantages resulting from the monopoly position and efficient use of the existing infrastructure.

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10 Which entities are responsible for assuring reliability of the transmission grid and what are their authorities and responsibilities?

The following entities are responsible for ensuring the reliability of the transmission grid: the transmission system operator, ANRE (as an authority having general competence in the energy field) and the Ministry of Economy and Finance (as the representative of the state regarding the ownership of the transmission network).

With regard to the reliability of the transmission grid, the transmission system operator has the competency to run, retrofit, rehabilitate and develop transmission lines, to examine and endorse the compliance of the electricity transmission network users with the network connection technical conditions, to ensure the transmission of the electricity metering results to the market operator, to carry on the National Power System operational scheduling and operative control, to authorise the operative control staff, to collect, register and store statistical data regarding the National Power System's operation.

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#### Regulation of electricity utilities – distribution

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11 What governmental or administrative authorisations are required to construct and operate distribution networks?

The distribution networks are developed in accordance with the urbanism plans, the property legal regime, including if necessary, expropriation procedure, environmental protection regulations, public health and energy efficiency according to the technical and security norms set forth under the technical regulations in force.

In order to construct distribution networks, the general authorisations applicable under Romanian law (*e.g.*, urban planning certificates, land-planning documentation, building permits, environmental authorisations) are required. With respect to a public utility distribution-related capacity, the distribution operator may request the initiation of an expropriation procedure in relation to the required land.

Distinct from the general authorisations, distribution services, which are deemed to be public interest services, are provided on the basis of the following special authorisations:

- authorisations for the establishment or rehabilitation of certain electricity facilities, granted by ANRE;
- concessions for performing the public service of electricity distribution in a specific area, granted by the Ministry of Economy and Finance; and
- distribution licences for performing the electricity distribution activity, granted by ANRE.

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12 Who is eligible to obtain access to the distribution grid and what requirements must be met to obtain access?

The fundamental principle laid down in the Electricity Law relating to the non-discriminatory access of all electricity market participants to public networks (*i.e.*, the right to connect and use, in accordance with the conditions provided by law, the transmission networks) is also applicable for the distribution networks. A distribution operator has the obligation of ensuring access to its electricity distribution networks by all users, on a non-discriminatory basis and with the observance of the legal

and technical requirements detailed in the Technical Distribution Code. The Electricity Law establishes in principle the possibility of the network operator refusing to grant access to the network in case the connection affects the safety of National Power System.

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13 Is there any tariff or other regulation regarding the rates or terms for the provision of distribution services?

The tariffs for electricity distribution services are established on a regulated basis by ANRE with the observance of the principles and rules contained in the methodology for establishing the tariffs for the distribution service. The methodology covers the operating and maintenance costs (controllable and non-controllable) related to the power-distribution activity, network losses, depreciation of assets and a reasonable return of the invested capital. The methodology contains provisions for the benefit of privatised companies, recognising an increased value of the initial regulatory asset base commensurate with the value priced upon privatisation (in case of state-owned companies such value being established against book value) and factoring the country risk and the private-investor risk in the calculation of the regulatory profit.

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#### Regulation of electricity utilities – sales of power

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14 What governmental or administrative authorisations are required for the sale of power to customers and which authorities grant such approvals?

Sale of power may only be performed with a licence granted by ANRE, upon fulfilment of the financial and technical criteria laid down in the regulation for the granting of licences and authorisations in the electricity sector. The electricity supply licence is valid for up to ten years and contains the rights and obligations the supplier needs to observe during the validity period of the licence.

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15 Is there any tariff or other regulation regarding power sales?

The Romanian electricity market was fully liberalised as of 1 July 2007. However, the market continues to include regulated segments, such as:

- the supply of power to household consumers and consumers the maximal power (as approved by the technical connection permit) of which does not exceed 100kVA, until such consumers use for the first time the right to eligibility;
  - the supply of power by the supplier of last resort, i.e., suppliers being under the obligation to ensure electricity supply to consumers the supplier of which is no longer able to fulfil its obligations set forth under the electricity supply licence and the electricity supply agreements, in case such consumers do not have any other supply source upon cessation of their supplier's activity; and
  - the green certificates market, the support scheme aiming at encouraging the renewable energy sources; the price of the green certificates traded on the relevant market ranges between € 24 and € 42 per certificate (a proposal for the increase of the maximum value to 50 per cent being currently under discussions).
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16 To what extent are electricity utilities that sell power subject to public service obligations?

The Electricity Law sets forth that any licence holder (including, therefore any distribution or supply licence holder) is bound to carry out its activities by observing obligations regarding the safety, quality and continuity in supply, the energy efficiency, according to the norms referring to the labour safety and health and the environmental protection, as well as pursuant to the provisions of the agreements concluded with consumers. Such public service obligations are set out by ANRE through

licences, authorizations and specific regulations.

Furthermore, following full liberalisation of the market, consumers not exercising their eligibility rights enjoy protection under the universal service, having the right to be supplied with electricity by the implicit supplier, appointed by ANRE. Suppliers of last resort, on the other hand, have to ensure electricity supply for consumers the supplier of which is no longer able to fulfil its obligations set forth under the electricity supply licence and electricity supply agreements, in case such consumers do not have any other supply source upon cessation of their supplier's activity.

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## Regulatory authorities

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17 Which governmental or administrative authorities determine regulatory policy with respect to the electricity sector?

Parliament approves the laws relating to any activity area, including energy. The government is the competent body that decides the strategy in the specific field.

The Ministry of Economy and Finance is also involved in the electricity sector, mainly in a capacity of promoter and entity involved in the implementation of the sector policy as well as in a capacity of representative of the state with respect to holding state participation in the sector companies.

ANRE is the regulatory body issuing the secondary legislation applicable in the energy field.

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18 What is the scope of each regulator's authority?

The government determines the national energy strategy which defines the objectives of the energy sector and the best ways of achieving such objectives within the medium and long term.

The Ministry of Economy and Finance, following the directions set out in the energy strategy and based on the government programme, determines the energy policy, consisting of a programme of measures for stimulating investment and R&D activities. The Ministry of Economy and Finance also determines legislative projects concerning the energy field, supervises the application and compliance with measures regarding environmental protection and creates programmes regarding the promotion of electricity exports.

ANRE, in its capacity as a regulatory authority, carries out functions in connection with regulations: authorisation, supervision and control, reporting, information, mediation and jurisdiction. ANRE determines, sets up and monitors mandatory regulations to be implemented at a national level with a view to ensuring the proper functioning of the electricity sector and market in terms of efficiency, competition, transparency and consumer protection. ANRE acts in close cooperation with the Competition Council, the National Authority for Consumers' Protection, ministries and other relevant public administration organisations, consumer and professional associations, employers' associations and syndicates.

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19 How is each regulator established and to what extent is it considered to be independent of the regulated business and of elected officials?

Legislation currently in force regarding the general legal framework in the electricity sector qualify ANRE as a national interest autonomous public institution, having legal personality, operating and functioning under its own regulation as approved by the government but under the coordination of the prime minister.

ANRE is entirely financed from funds outside the public budget (obtained from tariffs for granting licences, certifications and authorisations and for providing services, as well as contributions from the sector operators and from international organisations and companies) and is managed by a president and three vice presidents appointed by the prime minister pursuant to the nomination of the relevant ministry.

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20 To what extent can decisions of the regulator be challenged or appealed, and to whom? What are

the grounds and procedures for appeal?

Orders and decisions issued by the president of ANRE of an individual or regulatory nature, may be challenged within 60 days from their publication in the Official Gazette or notification to the interested parties. They may be challenged before the Bucharest Court of Appeal, following the procedure provided by specific regulation regarding administrative disputes.

In relation to decisions of an individual nature, the interested party must also comply with the prior proceedings of challenging the order or decision with the issuer itself, i.e. ANRE (*e.g.*, a decision regarding the granting or the refusal to grant an authorisation or a licence in the electricity field must be challenged with the issuer, i.e. ANRE, within 30 days from the date when the decision was communicated to the interested party). ANRE's answer issued within such prior proceeding can be further challenged before the Bucharest Court of Appeal.

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## Acquisition and merger control – competition

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21 Which governmental body or bodies have the authority to approve or disapprove mergers or other changes in control over businesses in the sector or acquisition of utility assets?

If the undertakings taking part in the concentration meet the threshold requirements or fulfil the conditions put forth in EC Merger Regulation 39/2004, the concentration is considered to have a Community dimension and, as such, comes under the sole and exclusive jurisdiction of the European Commission, subject to any exceptions provided for in the Regulation.

To the extent that the EC thresholds are not met and the concentration meets the internal thresholds for notification (the aggregate worldwide turnover of the involved undertakings exceeds the domestic currency equivalent of € 10 million and there are at least two undertakings involved in the operation that derive each of them in Romania a turnover exceeding the equivalent of € 4 million), the Competition Council has the authority to authorise or deny authorisation of a merger or other change in control over businesses in the energy sector or acquisition of utility assets. Operations that involve changes of the legal status of the license holders (*i.e.* merger, de-merger, sale of assets) have to be notified to ANRE within a period ranging from 10 up to 30 days prior to the respective operation.

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22 What criteria and procedures are applied with respect to the review of mergers, acquisitions and other transfers of control? How long does it typically take to obtain a decision approving or disapproving the transaction?

Economic concentrations that result in the creation or consolidation of dominant positions, lead or are likely to lead to a restriction, elimination or significant distortion of competition in the Romanian market or in parts thereof, are prohibited.

Economic concentrations likely to have the above effects on the national market or part thereof may be authorised provided that the interested parties prove, cumulatively, that the operation will contribute to: improved economic efficiency, production and distribution; technical progress; or increased competitiveness for export. Additionally, it must be shown that the concentration's beneficial effects will compensate the negative ones and that the advantages of the concentration profit, to a reasonable extent, the consumers.

The Competition Council must issue, no later than 30 days after the submission of an effective notification form (*i.e.*, the parties involved must submit the notification form no later than 30 days after the conclusion of the transaction; however, the Competition Council may ask for supplementary documentation and clarification until it declares the notification form effective), either (i) a non-objection decision; or (ii) a negative clearance decision; or may order the initiation of an investigation (in furtherance to which the Competition Council will issue either a non-objection decision or a negative decision or a decision of conditional authorisation).

In the absence of a decision issued by the Competition Council within the established time frame, the notified economic concentration operation can take place.

ANRE generally issues a decision with respect to the notification submitted by the license holders

relating to the envisaged changes in their legal status within 30 days after having received such notification.

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23 Which governmental or administrative authorities have the power to prevent or prosecute anti-competitive or manipulative practices in the electricity sector?

In view of its role of ensuring the proper functioning of the electric energy sector and market in order to ensure competition and customer protection within the energy market, ANRE notifies the relevant ministry and the Competition Council with respect to an abuse of dominant position or any other infringement of the competition rules.

The Competition Council is the administrative authority having the power to prevent and prosecute anti-competitive practices in the electricity sector.

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24 What substantive standards are applied to determine whether conduct is anti-competitive or manipulative?

Any express or tacit agreements between undertakings or associations of undertakings, any decisions by associations of undertakings and any concerted practices, which have as their object or may have as their effect restriction, prevention or distortion of competition in the Romanian market or in a part thereof, are prohibited. Competition Law provides for a non-exhaustive list of examples of such conduct (price fixing or limiting production or market sharing).

The abuse of dominant position held by one or several undertakings in the Romanian market or in a substantial part thereof, through anti-competitive practices that may affect economic activity or damage consumers is prohibited. A non-exhaustive list of such practices is provided under the Competition Law (imposing sale or purchase prices, applying unequal terms for equivalent services, charging excessive or predatory prices).

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25 What authority does the governmental body have to preclude or remedy anti-competitive or manipulative practices?

The Competition Council has two major dimensions: a corrective dimension – restoring and maintaining a normal competitive environment (remedy) and a preventive dimension – monitoring markets and observing the behaviour of the actors participating in such markets (preclusion).

The Competition Council may apply fines of up to 10 per cent of the turnover derived by the undertaking in the year prior to the sanctioning decision. If within 45 days after notification of the decisions issued by the Competition Council, the undertaking does not comply, the Competition Council may impose the maximum fine or, in the event of abuse of dominant position, may request from the Bucharest Court of Appeal measures aiming to remove the dominant position.

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## International

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26 Are there any special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies?

The regulations issued in the electricity sector do not provide for any limitations or special requirements for foreign investors in the electricity sector in Romania. The legislation is generally compliant with the principles of free circulation of capital and investments.

One of the main objectives of the regulatory policy in the energy field includes the non-discriminatory access of all market participants to public electricity networks and promotion of private investment.

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27 What rules apply to cross-border electricity supply, especially interconnection issues?

Cross-border trade may be performed by licence holders (generators, suppliers, eligible consumers holding supply licences), provided that such parties contract and secure the service of international interconnection capacity on the centralised market for the allocation of international interconnection capacity.

The transmission operator organises the auctions for the interconnection capacities pursuant to the Commercial Code for the Wholesale Electricity Market and cooperates with transmission operators from neighbouring countries.

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## Transactions between affiliates

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28 What restrictions exist on transactions between electricity utilities and their affiliates?

Any transaction between affiliates must answer the arm's-length principle laid down in the Romanian Fiscal Code. In addition, in accordance with EU rules, the Electricity Law imposes the obligation of unbundling between regulated activities and other electricity activities, with a view to avoid cross-subsidisation and distortion competition. Such separation of activities must entail the independence of the distribution operator from the activities not related to distribution, at least regarding its legal form, organisation and the decision-making process. This rule does not create the obligation to separate the ownership over the assets.

Moreover, the electricity regulations stipulate an obligation incumbent upon a licence holder, either a vertically or horizontally integrated undertaking, to keep separate accounts for each licensed activity, as if it were carried out by separate undertakings.

With respect to the transport license holder, in case the electricity transport company is part of a vertically integrated operator, the transport operator must be independent from the other activities not related to the electricity transport, at least with respect to its legal form, organization and the decision-making process.

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29 Who enforces the restrictions on utilities dealing with affiliates and what are the sanctions for non-compliance?

Failure to observe the obligation of keeping separate accounts or the unbundling obligation may constitute a minor offence, pursuant to the provisions of the Electricity Law. Such failure may be sanctioned by the National Energy Regulatory Authority with a fine up to €30,000. Breach of the same obligations represents failure to comply with the conditions associated to the license and may entail withdrawal thereof.

## BOXOUT: Update and trends

Are there any emerging trends or hot topics in electricity regulation in your jurisdiction?

Given Romania's wind energy potential, in the last few years a significant number of foreign investors have shown interest in engaging in the construction and operation of wind farm projects in Romania. However, what will prove to be a challenge for both the regulatory authority and the economic operators will reside in the manner in which the connection to the National Transport System of the wind farm projects shall be accomplished (given that the National Transport System's capacity is rather limited).

Another envisaged project on the power market is the initiation by one major power generation company (*i.e.* Hidroelectrica) of the required procedures in order for its shares to be traded on the Bucharest Stock Exchange through the performance of an IPO having as object at least 10% of its shares.

The Romanian government is currently undertaking a significant reorganization of part of the electricity companies where the state is the majority shareholder through the establishment of a

national power company; the reorganization process is considered to be needed in order to ensure a proper management of the stock shares held by the state in each of the companies involved in the creation of the national power company and for facilitating the access to financing opportunities. Following long discussions, the process has been initiated, a Government Emergency Ordinance in this respect has been approved by the government, further proceedings having still to be followed for the entering into force thereof.

From the perspective of further regulatory changes, it is to be noted that the currently applicable green certificate regime is in effect until 2012, a new framework to be implemented following such period being currently under approval procedure.