



## OVERVIEW OF THE RECENT AMENDMENT OF THE ENERGY LAW BY THE GOVERNMENT EMERGENCY ORDINANCE NO. 143/2021

The Electricity and Natural Gas Law no. 123/2012 ("**Energy Law**") was amended recently via the Government Emergency Ordinance no. 143/2021, with the main purpose of transposing the provisions of the Directive (EU) 2019/944 on common rules for the internal market for electricity and amending Directive 2012/27/EU ("**Directive 2019/944**") and of ensuring compliance with Regulation (EU) 2019/943 on the internal market for electricity ("**Regulation 2019/943**").

The enactment of the aforesaid government emergency ordinance ("**GEO no. 143/2021**") was long overdue, given that the deadline for transposing the Directive 2019/944 into the domestic legislation expired on December 31, 2020, Romania being formally notified by the European Commission to this end.

Among the most important amendments brought to the electrical energy section of the Energy Law, we note the following:

1. supplementing the main objectives of the Energy Law, to encompass the investments for production of variable and flexible energy, for energy storage, for implementing the electromobility or for creating new interconnectors between European Union ("**EU**") member states;
2. introducing new definitions and concepts, aligned with the provisions of the European regulatory framework, such as: active customer, citizen energy

community, dispatchable consumption, dynamic electricity price contract, priority dispatch, imbalance settlement period, electricity derivatives, prosumers, recharging point, regional coordination center, intelligent metering system, flexibility service, non-frequency ancillary service, small isolated system, small connected system, etc.;

3. repealing letter d<sup>1</sup>) of article 6, which was authorizing the Ministry of Energy to issue setting-up permits for capacities of production of electricity; in this context, it is also worthy to note that it was removed from the final form of GEO no. 143/2021 the envisaged amendments to article 10(1) of Energy Law, which were transferring the authority to issue setting-up permits for electricity production capacities from the National Regulatory Authority in the Energy Field (“ANRE”) to the Ministry of Energy; these amendments are particularly beneficial as they remedy the risk of infringement actions being initiated by the European Commission against Romania, for the reasons detailed in one of our previous articles, available [here](#); following these amendments, ANRE remains the sole authority entrusted with the issuance of setting-up permits, being obliged only to communicate to the Ministry of Energy weekly reports on the registered requests for issuance of setting-up permits;
4. amending and supplementing article 7<sup>1</sup> to regulate in more detail ANRE’s attributions, including in what concerns the cooperation and exchange of information with ACER and other regulatory authorities in the EU;
5. introducing new obligations for ANRE, such as: carrying out information campaigns, establishing and managing a web platform for comparing available energy supply offers, market monitoring, implementing a digital platform for switching suppliers;
6. including energy storage and aggregation activities among the activities requiring licensing by ANRE;
7. reorganizing and supplementing article 10(4<sup>2</sup>), to provide more accurately the cases whereby distribution activities may be performed without holding a distribution license;
8. supplementing article 10 with a new paragraph 6<sup>1</sup>), to provide expressly that the activities of supply and trading of electricity may be freely performed in Romania by entities headquartered and licensed in other EU member states, subject to undertaking to observe the norms applicable in Romania;
9. rendering mandatory the participation of undertakings in the energy sector to the alternative dispute resolution mechanisms regarding household customers;

10. the references to the regulated energy market are removed from the law, considering that the market was fully liberalized on July 1<sup>st</sup>, 2020;
11. supplementing article 23 to regulate in more detail the operation of the energy market, including by:
  - (i) repealing the obligation to perform wholesale energy transactions exclusively on the centralized power exchange;
  - (ii) authorizing expressly the conclusion of bilateral power purchase agreements negotiated directly by the parties; nevertheless, to ensure an adequate liquidity of the energy market, article 28 is amended to oblige all publicly-owned producers (except for capacities commissioned after June 1<sup>st</sup>, 2020) to trade at least 40% of their annual energy output on the centralized power exchange platforms, others than the day-ahead, the intra-day or the balancing markets;
  - (iii) obliging the designated operator of the energy market to make available for trading on the day-ahead and intra-day markets tailor-made products to enable effective participation of dispatchable consumption, energy storage and small-scale renewable sources, including direct participation of customers;
  - (iv) providing the possibility to negotiate bilaterally capacity reservation agreements, in compliance with the fair competition rules;
  - (v) obliging energy suppliers to store wholesale trades related data for 5 years and to provide such data to ANRE, the European Commission and other national competent authorities, upon request;
12. including the energy citizen communities operating distributions networks among the entities obliged to grant access to public utility networks;
13. granting guaranteed access to the electricity network for the electricity generated from renewable energy sources;
14. amending and supplementing article 28 to regulate in more detail producers obligations;
15. authorizing the transmission system operator to own, develop and manage energy storage installations, subject to certain determined conditions;
16. amending and supplementing article 35 to regulated in detail the transmission system operator's and ANRE's rights and obligations regarding the plan for investments and development of the transmission network, including:

- (i) the transmission system operator's obligation to prepare and submit to ANRE every two years a 10-year plan for investments and development of the transmission network;
  - (ii) the minimum mandatory information to be contained in the 10-year plan for investments and development of the transmission network;
  - (iii) ANRE's attributions regarding the evaluation and monitoring of the 10-year plan for investments and development of the transmission network, including from the perspective of its conformity with the EU non-binding 10-year network development plan;
17. amending and supplementing article 36 to regulate in more detail the rights and obligations of the transmission system operators concerning the provision of the transmission services and the granting of access to networks;
18. amending and supplementing article 45 to regulate in detail the distribution system operators' main rights and obligations;
19. authorizing distribution system operators to own, develop and manage energy storage installations, subject to certain conditions provided by law;
20. amending and supplementing article 51 to regulate in detail the distribution system operators' obligations to grant access to their networks, including the obligation to reimburse the connection costs incurred by household customers;
21. reorganizing and regulating in detail the energy suppliers' rights and obligations, including:
- (i) removing the suppliers' obligation to establish physical points of contact within maximum 50 km from the consumption places;
  - (ii) obliging suppliers to offer the possibility to end customers to receive / access electronic invoices;
  - (iii) detailing the mandatory information to be provided to end customers;
22. authorizing energy suppliers to charge a fee to end customers in case of early termination of energy supply agreements with fixed tariffs, subject to certain conditions;
23. supplementing article 62 to regulate in detail the rights of end customers, including, among others, the right to enter energy supply agreements for dynamic prices and energy aggregation agreements;
24. providing new dedicated regulations concerning the active customers, the

- prosumers, the citizen energy communities and the management of data;
25. amending and supplementing the provisions regarding vulnerable customers, intelligent metering systems and aggregation agreements;
  26. amending and supplementing the sanctions section regarding contraventions in the energy sector, including by providing that the individualization of fines computed based on the annual turnover will be performed by ANRE's Regulatory Committee, based on a procedure to be adopted by ANRE, taking in consideration, among others, the gravity and duration of the contravention and its impact regarding the market or, respectively, the end customer.

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This article contains general information and cannot be considered qualified legal advice.



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