

## CMS Romania | Overview of the Romanian Energy Law, recently reformed by Government Emergency Ordinance no. 143 from 28 december 2021



**The project of updating the national legal framework in the electricity sector, to transpose the provisions of Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (the “Directive”) into Romanian Electricity and Gas Law No.123/2012 (the “Energy Law”) started in September 2020 and was finalised on the enactment of Government Emergency Ordinance No. 143/2021 (“GEO 143”).**

The Ministry of Energy has been working over the last year to align the electricity regulatory provisions with the provisions of the Fourth Energy Package, Directive (EU) 2019/944 and Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity, which was due to be transposed into the national law by January 2021.

The GEO 143, although already in force as of 31 December 2021, will still be subject to a Parliamentary approval procedure, which may result in either its approval without amendments, with amendments, or to its rejection resulting in the repeal of all provisions.

A CMS team of expert lawyers from Romania and UK has been involved as the leading consultant in advising the Ministry of Energy and EBRD, as the supporting institution, in the full process of identifying, amending, and drafting the necessary provisions in the electricity sections of the Energy Law to ensure the full transposition of the European acquis. This complex process also entailed involvement in working with the state stakeholders ANRE, OPCOM, and Transelectrica, which provided specialised advice as well as support in the public consultation process undertaken by the Ministry of Energy as part of the transparent legislative process.

### **Main amendments introduced by GEO 143**

#### **1. Fully liberalised electricity market. Freely negotiated PPAs allowed on the wholesale market**

1.1 Specifically, GEO 143 establishes the principle of a fully liberalised, deregulated wholesale market, where bilateral transactions are freely negotiable outside the organised markets, i.e. OPCOM. Directly negotiated Power Purchase Agreements (“PPAs”) are reintroduced after being banned for almost eight years in Romania,

between 2012 and 2020. Even though the Romanian Government decided in 2020 to reintroduce PPAs to boost investment in the renewables sector, the ban was lifted only for projects commissioned after 1 June 2020, not also for existing projects.

1.2 The Energy Law now describes the markets for electricity, including over-the-counter markets and electricity exchanges, markets for trading energy, capacity, balancing and ancillary services, including “forward, day-ahead and intraday markets”, while the market definitions have been aligned with REMIT Regulation (EU) No. 1227/2011. Electricity derivatives are also included and defined in accordance with Directive 944 and the MIFID II Directive.

## **2. Electricity transactions and the long-awaited ban lift on PPAs**

2.1 GEO 143 introduces one of the most significant changes by granting all market participants in the wholesale market the free choice to enter into directly negotiated contracts for trading electricity. Compared to the previous regulations, when all electricity output was due to be sold via the exchange platform OPCOM, now buyers and sellers can choose to trade bilaterally or voluntarily chose to trade via the available organised markets, i.e. exchange platforms.

2.2 Long-term bilaterally negotiated contracts can be with physical delivery or can be financial instruments deemed to address volatile market risks on a long-term basis. There is one limitation on electricity producers that are state-owned, which are obliged to trade a minimum 40% of their annual production via contracts concluded on exchange platforms other than the Day-Ahead Market, Intra-Day Market and the Balancing Market. However, these companies are free to conclude long-term directly negotiated PPAs for the newly built capacities, after June 2020, with no restrictions on volume.

## **3. Market participants**

3.1 Regarding the market operator, the new law introduces changes to the fact that OPCOM is the designated operator for administrating and operating the coupled markets with neighbouring countries, respectively the coupled Day-Ahead Market and Intra-Day Market.

3.2 The operator of the organised energy market must ensure an offering of low-capacity trading products (i.e. a minimum offer equal to or below 500 kW), both on the day-ahead market and on the intra-day market, in order to ensure the effective participation of dispatchable consumers, low-scale energy storage and renewable capacities, as well as the direct participation of clients.

3.3 The transport and system operator (TSO) will purchase electricity, capacity and system services from all market participants that meet the technical requirements, including from energy producers from renewable capacities, dispatchable customers, operators of energy storage installations and aggregators, based on a transparent, not discriminatory and market-based procedure, which will be subject to approval by the National Authority for Energy Regulation (ANRE).

3.4 The GEO 143 also includes provisions which boost consumers' rights, so that they are free to participate in the market directly or through aggregation, and to sell self-generated electricity, including through power purchase agreements. This comes with a more protectionist approach for consumers, who can now conclude contracts with multiple suppliers and are provided with clearer information about offers and more transparent energy bills.

## **4. New concepts – active consumers, citizen energy communities and aggregators**

4.1 New concepts of citizen energy communities and active consumers have been introduced, providing rights to engage in local energy generation, distribution, aggregation, storage and energy efficiency services, and have access to all organised markets.

4.2 Active consumers will benefit from the same rights and rules on consumer protection as those to which they would be entitled individually, without any disproportionate or discriminatory technical or administrative obligations, procedures and charges or network charges that do not reflect costs; and will have the right:

- (a) to operate either directly or by aggregation;
- (b) to sell self-produced electricity, including through agreements/contracts for the purchase of electricity;
- (c) to participate in flexibility mechanisms that allow the amendment of production and consumption models, and in energy efficiency schemes;
- (d) to delegate to a third party the management of the facilities necessary for the performance of their activities, including installation, operation, data processing and maintenance, without the third party being considered an active customer;
- (e) to benefit from the application of transparent, non-discriminatory and cost-reflective network tariffs, calculated separately for the electricity introduced in the network and for the electricity consumed from the network, according to ANRE regulations, ensuring that they contribute adequately and balanced to sharing the total costs of the system;
- (f) to have energy storage installations, etc.

4.3 Participation in a citizen energy community is open and voluntary, and its members or shareholders retain their rights and obligations as household consumers or active consumers.

4.4 The citizen energy communities are subject to non-discriminatory, fair, proportionate and transparent procedures and tariffs, including regarding the registration and granting of licences provided in the regulations issued by ANRE, and may participate in activities in the energy sector and engage in production, including from renewable sources, distribution, supply, consumption, aggregation, energy storage, energy efficiency services or charging services for electric vehicles. or may provide other energy services to their members or shareholders, including through such integrated activities.

4.5 The citizen energy communities will cooperate with the distribution operators to facilitate electricity transfers within the energy communities of citizens subject to a fair compensation established by the ANRE regulations.

4.6 Aggregators have been introduced with the freedom to participate in the retail market, and engage in demand response, self-production, self-consumption, storage and sale of electricity. New market players will have the right to choose a supplier or aggregator.

4.7 Market access for participants engaged in aggregation must be non-discriminatory. Market participants engaged in aggregation are responsible for the imbalances they cause and for providing financial compensation to other market participants for costs incurred through demand response activities.

## **5. Grid access**

5.1 Electricity producers may benefit from priority dispatching under the conditions of the Energy Law, and according to art. 12 of Regulation (EU) 2019/943 and the ANRE regulations in force.

5.2 Electricity production contracted on the electricity market, which comes from renewable capacities certified by ANRE as beneficiaries of the green certificates scheme, is granted offtake into the grid by the respective grid operator.

## **6. Additional tasks for DSOs**

6.1 According to the newly approved GEO 143, additional tasks for DSOs are set, in particular regarding the procurement of non-frequency ancillary services, flexibility, data management and the integration of electromobility by approving the connection of publicly accessible and private recharging points.

6.2 The procurement of ancillary services must be market-based, transparent and non-discriminatory.

6.3 The procurement of other relevant services with the effective participation of all market participants must be made possible, including for those participants engaged in storage, demand response and aggregation.

6.4 DSOs will be incentivised to procure flexibility services (i.e. services provided by a market participant and acquired by the distribution operator for sustaining the efficient and safe functioning of the distribution system and for maximizing the quality of service), including procurement from distributed generation, demand response or energy storage. DSOs will be incentivised to purchase flexibility services. These flexibility services will be purchased by distribution operators, following a procedure to be enacted by ANRE.

6.5 The preparation of a transparent network development plan is envisaged, which is to be published at least every two years, setting out the planned investments for the next five-to-ten years, as well as the medium- and long-term flexibility services needed.

6.6 DSOs will not own, develop, manage or operate energy storage facilities and will not own, develop, manage or operate recharging points for electric vehicles, unless the DSOs have recharging points exclusively for their own use.

## **7. Novelties regarding TSOs**

7.1 On the TSO side, GEO 143 allows the procurement of balancing services and the provision of non-frequency ancillary services on market-based procedures from all market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities, and market participants engaged in aggregation.

7.2 The tasks of TSOs have been slightly extended to include:

(g) the procurement of ancillary services, the digitalisation of transmission systems and data management;

(h) setting the framework of cooperation and coordination between the regional coordination centres;

(i) procuring balancing services/providing non-frequency ancillary services on market-based procedures from all market participants, including market participants offering energy from renewable sources, market participants engaged in demand response, operators of energy storage facilities and market participants engaged in aggregation.

7.3 TSOs are still subject to unbundling requirements established by the old Electricity Directive (2009/72/EC). They can only own, develop, manage and operate energy storage facilities under very limited conditions.

7.4 TSOs are to establish and publish transparent and efficient procedures for non-discriminatory connection of new generating installations and energy storage facilities to the transmission system.

7.5 TSOs are not to be entitled to refuse the connection of a new generating installation or energy storage facility on the grounds of possible future limitations to available network capacities.

7.6 TSOs are to prepare and publish ten-year network development plans.

7.7 TSOs and DSOs will be entitled to procure system services other than those required for electricity frequency balancing, following market-based transparent procedure. ANRE may grant a derogation in the event that the provision, under market conditions, of system services other than those required for electricity frequency balancing would not be economically viable.

## **8. Prosumers**

8.1 GEO 143 defines the prosumer as the final client who carries out activities in his/her own space situated in a certain area or in other spaces in his/her immediate vicinity, and who produces electricity from renewable sources for his/her own consumption, whose specific activity is not the production of electricity, which consumes and can store and sell electricity from renewable sources produced in his/her building, including an apartment building, a residential area, a shared service location, commercial or industrial or in the same closed distribution system, provided that, in the case of autonomous non-household consumers of energy from renewable sources, these activities should not be his/her primary commercial or professional activity;

8.2 The balancing responsibility will not apply to prosumers with an installed power generation of less than 400 kW. The balancing responsibility lies with their supplier, according to ANRE regulations.

8.3 According to GEO 143, prosumers operating electricity production capacities from renewable energy sources of up to 400 kW per consumption location can sell the additional produced electricity and delivered into the grid to the electricity suppliers with which they have concluded electricity supply agreements according to ANRE regulations. The novelty in this case is the electricity production capacity enhanced from 100kW to 400 kW, as before the entry into force of GEO 143.

8.4 GEO 143 brings more facilities to prosumers, including the following:

(a) The local public authorities that have capacities for electricity production from renewable sources put together, partially or totally, from structural funds, benefit from the suppliers with whom they have electricity supply contract in place, on request, from the financial regularisation service between the delivered energy and energy consumed from the grid.

(b) Prosumers operating electricity production capacities from renewable energy sources of up to 200 kW have now the possibility to request their energy supplier:

(c) to apply to their invoices a quantitative settlement between the amount consumed and the amount produced and delivered into the grid;

(d) to report in the prosumer's invoice, if the amount of electricity produced and delivered in the network is

higher than the amount of electricity consumed, the difference between the amount delivered and that consumed, and in this case the prosumers can use the amount of carried over electricity within a maximum of 24 months from the invoice date;

(e) moreover, in the case of prosumers operating electricity production capacities from renewable energy sources between 200 kW and 400 kW that have electricity supply contracts in place, on the request of such prosumers, the electricity suppliers are obliged to purchase the electricity produced and delivered into the grid at a price equal to the medium weighted price on the day-ahead market for the month when such electricity was produced.

(f) Further settlement between the delivered electricity and consumed electricity of such prosumers will be applied in the invoices;

(g) Certain categories of individual prosumers are also exempted from paying all tax obligations related to the amount of electricity produced for self-consumption, as well as for the surplus electricity sold to suppliers;

8.5 Prosumers, individuals, legal entities and local public administration authorities that own power plants which produce energy from renewable sources, as well as individual persons and legal entities that own units for the production of electricity from renewable sources are exempted from the obligation of annual and quarterly acquisition of green certificates provided in art. 8 par. (2) and (21) of Law No. 220/2008, republished, as further amended and supplemented, other than their own technological consumption from the power plant.

8.6 Quantitative compensation for consumers with installations with a power of up to 200 kW will be granted until 31 December 2030, in the context of measures and actions related to meeting the commitments on the share of renewable energy in 2030 specified in the National Energy and Climate Change Plan, according to an ANRE methodology. After this period, the respective prosumers will be able to sell the electricity produced under certain conditions to prosumers with an installed capacity between 200 kW and 400 kW.

## **9. Additional ANRE prerogatives**

9.1 GEO 143 has introduced more attributions to ANRE, including regarding the cooperation and exchange of information with ACER and other regulatory authorities in the EU. GEO 143 also introduces more obligations, including carrying out information campaigns to inform consumers of their rights, including the right to switch electricity suppliers at no additional cost, establishing and managing a web platform for comparing available energy supply offers, market monitoring, implementing a digital platform for switching suppliers, monitoring congestion management within national electricity systems and implementation of congestion management rules.

## **10. Other amendments**

10.1 Producers and suppliers of electricity can supply their own premises, subsidiaries and all customers through direct lines, without being subject to disproportionate administrative procedures or costs. Before the new amendments, supply through a direct line was conditional on the absence of an economically and technically reasonable offer for access to the public utility grid.

10.2 Electricity supply and trading can be performed by companies headquartered and licensed in other EU member states, subject to undertaking to observe the norms applicable in Romania.

10.3 Market participants are obliged to assume financial responsibility for the payment of the imbalances they generate on the electricity market, to comply with the provisions of the licences and regulations issued by ANRE.

10.4 Provisions regarding electricity activities which can be performed without holding a licence, including activity by individual persons and legal entities, which consist in the sale of electricity to final customers supplied directly from electrical installations related to the power generation unit to the users of the electricity networks that it operates, or which are located in the vicinity of these networks, is carried out without a supply licence. Certain distribution activities may also be performed without a distribution licence, including closed distribution systems, companies that have distribution networks that supply places of consumption with electricity with approved electric power totalling less than 3 MW, other than the electricity producers, etc.

## **11. Conclusion**

11.1 We are confident that the lifting of the ban on PPAs, the newly introduced rules for prosumers who own units for the production of electricity from renewable sources, along with all the other amendments introduced by GEO 143, are elements that create a much more favourable, robust and stable regulatory framework in the electricity sector, and contribute to making Romania once again a very attractive country for future investments in renewables.

11.2 According to GEO 143, within six months from its introduction, ANRE is obliged to amend, where necessary, the secondary legislation in line with the provisions of GEO 143. Until the required amendment of the secondary legislation, all regulatory acts issued pursuant to the Energy Law will remain applicable, except for provisions that are contrary to the amendments introduced under GEO 143.

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