

NEW ENERGY LAW

July 19, 2012



On July 16, 2012 the new Energy and Gas Law no. 123/2012 (“**EL 123/2012**”¹) was published in the Official Gazette of Romania, the final step towards its enactment. Starting with July 19, 2012, EL 123/2012 will almost entirely repeal the Energy Law no. 13/2007 which was later amended and modified.

EL 123/2012 is set to prepare the Romanian electricity market for total liberalization and specifies concrete terms to gradually reach such liberalization. Moreover, EL 123/2012 introduces new principles that should apply to producers' electricity sales. Such principles are provided so that the electricity market will be transparent to all participants and the prices of the electricity traded may be established by competitive mechanisms, based on supply and demand.

Given the consolidated version of the EL 123/2012, we will point out some of the provisions regarding the trade of electricity, promotion of RES-E and intelligent measurement systems.

1. Trading of electricity under EL 123/2012²

Trading of electricity will have to be done on the (i) competitive market, (ii) transparently, (iii) publicly, (iv) *centralized* and (v) without discrimination.

On the competitive market trading is performed according to ANRE³ regulations and the prices will be computed based on supply and demand mechanisms. The electricity suppliers will have to keep evidence of the contracts they concluded on the wholesale electricity market for five (5) years and much such evidence available on request, to ANRE, European Commission or other relevant public authorities.

Participants in the electricity market (including producers) must submit information regarding the electricity traded according to the sale-purchase agreements concluded for electricity to the operator of the electricity market⁴ and to the balancing market. Moreover, the producers are obliged to offer all the electricity they produce, on the competitive market, in a manner that is both public and without discrimination. The electricity prices according to EL 123/2012 will result from the application of the competitive mechanisms of the electricity market.

¹ For the purpose of this newsletter we refer only to the electric enegy section regulated by Law 123/2012

² For the purpose of this newsletter we refer only to the wholesale electricity market, which is not regulated.

³ ANRE – The Romanian Regulatory Body in Energy.

⁴ Operator of the electricity market – Legal entity which ensures the organisation and the administration of the centralized markets, except the balancing market, in the view of wholesale trading of electricity for short, medium and long term.

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2. Promotion of RES-E

2.1 Guaranteed access to the grid

ANRE will establish the guaranteed access to the grid using technical and commercial rules and priority dispatching of electricity produced from renewable sources and high efficiency cogeneration.

2.2 Priority access

ANRE, using same rules specified above at paragraph 2.1, will establish priority access to the grid and priority dispatching of electricity produced from renewable sources in high efficiency cogeneration units with installed power under or equal to one (1) MW, if the security level of SEN⁵ is not affected.

3. Intelligent measurement systems

Until September 3, 2012, ANRE will evaluate the implementation of intelligent measurement systems in accordance with costs and long term advantages for the market, rent-ability and feasible implementation terms.

If ANRE concludes that such systems are beneficial to the electricity market, it will approve an implementation schedule so that by the year 2020, 80% of the clients will have such systems. The implementation of the systems will be approved during the annual investment plans of distribution operators.

4. Conclusions

The EL 123/2012 seems to be a step in the right direction for Romania, since the provisions of the law respect the guidelines of the European electricity market. Moreover, the competent ministry of Romania will have to notify the European Commission regarding the enactment of EL 123/2012 and other administrative bills in order to ensure the ratification of Directive 2009/72/CE.

With regard to the trading of electricity under EL 123/2012, we observe that the provisions set forth in Law 13/2007 referring, among others, to the possibility of selling electricity using bilateral agreements negotiated by electricity suppliers and electricity producers (*i.e.* PPA) are replaced with principles of trading electricity. Under such principles, the trading must be performed in the (i) competitive market, (ii) transparently, (iii) publicly, (iv) *centralized* and (v) without discrimination.

In addition to this, we observe imperative provisions regarding the obligation of the producer to offer the entire produced electricity in the competitive market in a manner that is both public and without discrimination. Also, the prices for the electricity traded must be the result of competitive mechanisms.

⁵ SEN – Electroenergetical National System



One key issue is the interpretation of the (iv) condition which is the centralized principle. The term is not defined by EL 123/2012, but it is mentioned in the definition regarding the centralized electricity market (in Romanian "*piata centralizata de energie electrica*⁶"). Therefore, if the *centralized* condition is viewed as a reference to the centralized electricity market, then one may argue that the only way to conclude PPA and meet the new conditions is in the centralized market for trading bilateral electricity agreements organized and administrated by OPCOM.

This opinion is also backed by Order 6/2011 regarding the organized framework for the trading of bilateral electricity agreements. Order 6/2011 approves the regulation for trading in a centralized and competitive regime through the bilateral electricity agreements. Nevertheless, it is worth mentioning that the Law 13/2007 is a reference document to Order 6/2011, which is canceled by EL 123/2012 enactment. To this end, we consider that PPAs, as possible means of selling electricity, are not canceled under the EL 123/2012, but rather in accordance with the manner in which such PPAs are concluded.

The Romanian Photovoltaic Industry Association – ("**RPIA**"), will take a public stand regarding, specifically, the clarification of the provisions regarding the selling of electricity by producers. Giving the novelty of the principles to be observed by producers when selling electricity, it appears that some confusion has spread into the market. In order to avoid further delays caused by insecurity, RPIA specialists will try to get together with responsible individuals from the competent authorities in order to clarify such sensitive topics.

RPIA fully understands the need for a clear and steady legal framework and will actively collaborate to reach this goal. Romania has a great potential for renewable energy and, therefore, RPIA will take action in order for the Romanian RES-E market to reach its potential.

Sincerely yours,

Ciprian GLODEANU - President

Robert CRUCERU - Executive Director

⁶ *Piata centralizata de energie electrica* – Organized framework for conducting electricity trading between different economic agents, which is mediated by the *Operator of the electricity market* or by the TSO, according to specific rules, approved by the competent authority.