

4. ROMANIAN ENERGY LAWS

4.1 ROMANIAN ELECTRICITY TRADING LAWS

Updated October 2016

The relevant **Romanian electricity trading laws and regulations** are:

- ✓ Commercial Code of Wholesale Electricity Market of 2004
- ✓ Regulation on the Issuance of the Licenses and Authorisations in the Electricity Sector approved by Order no. 12 of 2015 issued by the Romanian Energy Regulatory Authority ("**License Regulation**")
- ✓ Romanian Energy Regulatory Authority Order no. 64 of 2014 approving the Regulation for the Supply of Electricity to Consumers
- ✓ Law no. 231 of 2006 for ratification of the Energy Community Treaty, signed at Athens, on October 25, 2005
- ✓ Order no. 35 of 2006 of the Romanian Energy Regulatory Authority Approving the Methodology Regarding the Monitoring of the Wholesale Electricity Market for the Purpose of Assessment of the Competition on the Market and Preventing the Abuse of Dominant Position
- ✓ Electricity and Natural Gas Law no. 123 of 2012 ("**Electricity and Natural Gas Law**")
- ✓ Procedure regarding the Settlement of the Transactions of Day-Ahead Market ("**DAM**"), issued according to the Order no. 82 of 2014 issued by the Romanian Energy Regulatory Authority
- ✓ Procedure regarding the Registration of the DAM Participants issued according to the Order no. 82 of 2014 issued by the Romanian Energy Regulatory Authority
- ✓ Order of the Romanian Energy Regulatory Authority no. 32 of 2016 regarding the Approval of the Methodology of Preparing the Annual Report by the Electricity License Holders
- ✓ Order no. 60 of 2013 of the Romanian Energy Regulatory Authority Regarding Rules on the Balancing Market
- ✓ Order no. 91 of June 25, 2015 of the Romanian Energy Regulatory Authority regarding the Approval of the Procedure regarding the Acknowledgement of the Participation Right to Romanian Electricity Markets of Foreign Legal Entities Having the Registered Address in a EU Member State

This is a summary of the requirements for access to the Romanian electricity trading market.

I. The electricity trading market

*Disclaimer

This publication is for information only. It is not intended to offer legal advice, and to create a lawyer-client relationship.

The Romanian electricity trading market is structured as follows:

1. The Wholesale Electricity Market includes the following specific markets:
 - a. the Centralized Market for Bilateral Contracts (“**CMBC**”), with the following subdivisions:
 - (i) the Centralized Market for Bilateral Contracts - Continuous Negotiation Mechanism (“**CMBC-CN**”);
 - (ii) the Centralized Market for Bilateral Contracts - Fuel Processing Mechanism (“**CMBC-FP**”);
 - (iii) the Centralized Market for Bilateral Contracts - Extended Auctions Mechanism (“**CMBC-EA**”).
 - b. the Day-Ahead Market (“**DAM**”);
 - c. the Balancing Market (“**BM**”);
 - d. the Ancillary Services Market, on which the transmission system operator (“**TSO**”) and the distribution operators purchase primary and secondary reserves, voltage and reactive power control, other ancillary services regulated by the Grid Code, and electricity for covering the network losses;
 - e. the Intra-Day Market (“**IDM**”);
 - f. Centralized Market of Double Continuous Negotiated electricity Bilateral Contracts (it operates as an “over-the-counter” market);
 - g. Electricity Market for Large Consumers.
 - h. Centralized Market for Universal Service.

Pursuant to Art. 23 of the Electricity and Natural Gas Law, electricity transactions must be carried out on the competitive market, in a transparent, public, centralized and non-discriminatory manner. Consequently, as of the effective date of the Electricity and Natural Gas Law, the participants to the wholesale electricity market can no longer conclude negotiated contracts for the sale and purchase of electricity, other than those concluded through the participation to one of the centralized markets organized by OPCOM.

ANRE confirmed that the provisions of the Electricity and Natural Gas Law regarding the conclusion of bilateral contracts only on centralized markets do not apply to electricity transit through Romania.

Given that all electricity trading must be carried out through the platforms operated by OPCOM, ANRE requested OPCOM to create an Over the Counter (“**OTC**”) trading platform. Such OTC platform, i.e. Centralized Market of Double Continuous Negotiated Electricity Bilateral Contracts, became operational starting with April 2014.

2. There are also centralized markets for transfer capacities and green certificates, as follows:

***Disclaimer**

This publication is for information only. It is not intended to offer legal advice, and to create a lawyer-client relationship.

- a. the Market for Allocation of the Available Transfer Capacities, for the allocation of available transfer capacities for interconnection with the national grids of the neighbouring countries.
- b. the Green Certificates Market (“**GCM**”).

The wholesale electricity market is regulated by the Commercial Code of Wholesale Electricity Market of 2004 and by a series of other rules, regulations and procedures issued by the national regulatory authority, i.e. Romanian Energy Regulatory Authority (“**RERA**”), the TSO, i.e. C.N. Transelectrica S.A. (“**Transelectrica**”), and the market operator. The majority shareholder of Transelectrica is the State.

The market operator is OPERATORUL PIETEI DE ENERGIE ELECTRICA OPCOM S.A. (“**OPCOM**”), a company owned by Transelectrica.

3. The Retail Electricity Market (delivery to end-users/consumers).

II. Requirements to carry out physical power transactions on the Romanian electricity market

In order to carry out physical power transactions on the Romanian electricity market, the New License Regulation provides the following possibilities:

1. *To obtain a license in Romania*

According to the License Regulation, RERA may grant two types of electricity licenses covering electricity trading, i.e.:

- (i) an electricity supply license, which covers both electricity trading and electricity supply to end consumers, and
- (ii) a license for the activity of the electricity trader (“electricity trader license”), which covers only electricity trading.

In this case, the foreign company established in an EU member state may file directly with RERA an application for the granting of an electricity supply license or an electricity trader license. Foreign companies not established in an EU member state must establish a physical presence in Romania in the form of a subsidiary, or a branch in order to obtain an electricity license from RERA. The registration of a representative office of the foreign entity is also an alternative, but it can be less efficient in case of certain trading models, due to certain regulatory requirements re power trading on the Romanian market.

The funds of the EU foreign entity, branch or subsidiary which applies for an electricity supply license together with funds available from credit facilities must be of at least EUR 1,000,000. In case of the electricity trader license, the applicant must provide proof of availability of funds of EUR 500,000 at the exchange rate of the National Romanian Bank on the date of the application for the license. Such funds must be maintained for the entire duration of the license.

There is no statutory requirement for having employees with local language capability.

***Disclaimer**

This publication is for information only. It is not intended to offer legal advice, and to create a lawyer-client relationship.

However, given the day-to-day activity, and the fact that not all the operational procedures to be followed for trading on the market are available in English, the officials of the market operator, and of the transmission system operator usually recommend the licensee to have a contact person involved in the trading activity (balancing, interconnection capacities, transit, import, export, trading on the wholesale electricity market platform) with Romanian language capability.

2. *To act directly based on the electricity license obtained in an EU member state*

Pursuant to RERA Order no. 91 of June 25, 2015 regarding the Approval of the Procedure regarding the Acknowledgement of the Participation Right to Romanian Electricity Markets of Foreign Legal Entities Having the Registered Address in a EU Member State and to the New License Regulation, the electricity supply activity and the electricity trader activity can be carried out in Romania by a legal entity registered in EU without holding a license issued by RERA, if:

- a. the legal entity holds a valid license or a similar document for the relevant activity issued by the competent authority of the member state, and
- b. the legal entity declares on its own responsibility that it will comply with the technical and commercial regulations applicable in Romania for such activities.

As per the above, foreign entities licensed in EU member states are able to enter into electricity transactions without having to establish or act through a local presence in Romania or without obtaining an electricity license in Romania. However, such entities will have to obtain a Decision from RERA confirming the right to participate to the Romanian electricity markets.

III. Access to the Romanian power grid

1. Agreements to be signed with Transelectrica, i.e. the operator of the national electricity transmission system:

- (i) Metering and Aggregation Agreement – to be signed with the branch of Transelectrica which is in charge with the metering of the electricity and aggregation of the metered values.
- (ii) Balancing Agreement – to be signed with the branch of Transelectrica which is the operator of the balancing market (if the license owner wants to register as a balancing responsible party).
- (iii) Agreement for Allocation of Available Transfer Capacities and Transit – to be concluded with Transelectrica; it allows participation in the auctions for cross border capacity on the interconnection lines.
- (iv) Transmission Agreement – to be concluded with Transelectrica; it concerns the services to be rendered by Transelectrica which will allow the licensee to buy electricity directly from the producers and sell this electricity directly to the end users in Romania.

***Disclaimer**

This publication is for information only. It is not intended to offer legal advice, and to create a lawyer-client relationship.

- (v) Transit Agreement – to be concluded with Transelectrica; it concerns the services to be rendered by Transelectrica which will allow the licensee to transit electricity through Romania.

2. Agreements to be signed with OPCOM:

- (i) Participation Agreement to DAM – is the agreement for the participation on the DAM.
- (ii) Mandate Agreement for Direct Debit - is an agreement to be signed between the participant to the DAM and its bank (from a list of the Romanian banks agreed by OPCOM) regarding the direct debit scheme concerning the payments to be ordered from the account of the participant to DAM which submits electricity purchase offers on the DAM.
- (iii) Participation Agreements to the various segments of CMBC – the agreements to be concluded between the participant and OPCOM re participation to the segments of the wholesale market.
- (iv) Gratuitous Use Agreements re connecting devices for the relevant platforms of OPCOM.
- (v) Participation Agreement to the Intra-Day Market - is the agreement to be concluded between the participant and OPCOM re participation re this segment of the wholesale market.
- (vi) Participation Agreement to the Centralized Market of Double Continuous Negotiated electricity Bilateral Contracts (OTC mechanism).

IV. Reporting requirements in Romania

1. *Transaction reporting to RERA*

There are transaction reporting requirements to the Romanian regulator, i.e. RERA. Some of the transaction reporting requirements are also included in the License Conditions attached to the electricity licenses. Other transaction reporting requirements are provided by different rules and regulations.

The transaction reporting requirements are regulated by the Methodology Regarding the Monitoring of the Wholesale Electricity Market for the Purpose of Assessment of the Competition on the Market and Preventing the Abuse of the Dominant Position which was approved by Order no. 35 of 2006 issued by RERA.

Such transaction reports must be sent to RERA, in a template format, until the 25th day of the month following the month which is subject to reporting.

2. *Other obligations of reporting to RERA*

The License Conditions further provide for other reporting requirements such like:

***Disclaimer**

This publication is for information only. It is not intended to offer legal advice, and to create a lawyer-client relationship.

- (i) the annual report, which must provide technical data and information with respect to the activity performed in the electricity sector as well as financial and accounting information regarding the carried out transactions;
- (ii) the financial statements at June 30;
- (iii) transfer of shares and/or assets of the license owner;
- (iv) changes regarding the share capital of the license owner.

Also, there are special procedures issued by RERA regarding the execution and submission of the annual report.

RERA issued over 500 electricity trading licenses according to the information provided on RERA's website. That shows that the Romanian electricity trading market is indeed the key regional market in the Balkans area.

V. Guarantee requested to the participants in view of the registration with the Romanian balancing market

The steps to be carried out in view of the registration as Balancing Responsible Party ("**BRP**") with the balancing market operator ("**OPE**"), i.e. a branch of Transelectrica, are the following:

1. Obtaining the electricity trading license.
2. Allocation of the ENTSO ("**European Networks of Transmission System Operators**") Identification Code ("**EIC Code**").

If the applicant already has an EIC code, or uses an EIC Code of another entity from the same group of companies, such code can be also used in order to register as BRP in Romania. This EIC Code will have to be mentioned in all documents when requested during the procedures re the registration with OPE, and with the Metering Operator ("**OMEPA**").

3. Filling in the application for the registration.
4. Submitting the above mentioned application with OPE, together with the following documentation attached:
 - (i) Copies of the licenses for all the parties for which the BRP will undertake the balancing responsibility.
 - (ii) The delegation of balancing responsibility for all the market participants for which the BRP undertakes the balancing responsibility, if the case.
 - (iii) Signature samples of the representatives of the BRP. It is not necessary that all the representatives submit signature samples, but only those effectively involved in the electricity trading activity, e.g. in relation with the electricity market authorities, for signing the balancing agreements, for signing the invoices, etc.

***Disclaimer**

This publication is for information only. It is not intended to offer legal advice, and to create a lawyer-client relationship.

- (iv) Declaration regarding the initiation of the procedures for the conclusion of the Metering/Aggregation Agreement with the metering operator, i.e. OMEPA, a branch of Transelectrica.
- (v) Contact and availability details of the representatives of the BRP.

For the license holders which carry out only electricity trading activities, some of the data mentioned in the standard application for registration as BRP will not be requested. OPE always requests that the contemplated date on which the applicant may be effectively registered as a BRP must be the first day of the month.

Usually, OPE also requests that the application for the registration as BRP, together with the supporting documentation, is filed with OPE with at least 1 week prior to the contemplated date mentioned above.

5. Filing of the Financial Guarantee for registration as BRP

The filing of such guarantee was initially provided in the draft of the Balancing Agreement, but was not requested in practice until 2009. Eventually, Transelectrica, in its capacity as TSO, finalized the Operational Procedure for the filing of such financial guarantees by the BRPs.

The procedure was approved by RERA, i.e. the regulatory authority.

The procedure was initially effective in respect of the new participants which wanted to register with the balancing market. OPE requested the new license owners which want to register as BRP to provide the above-mentioned financial guarantee.

The amount of the financial guarantee to be filed in view of registration as BRP is of Lei 50,000.

As per the request of OPE, the bank letter of guarantee must be granted by a Romanian bank. OPE does have, however, several preferred Romanian banks for the issuance of the said bank letter of guarantee.

The amount of the guarantee for the already registered BRPs will be calculated by OPE according to the provisions of the Operational Procedure, and will be communicated to the respective BRPs.

The guarantee must be renewed each year.

6. Signing and sending to Transelectrica two copies of the Balancing Agreement, together with the addendums and annexes thereof.

Notes:

1. *In view of the registration as BRP, the conclusion of the Metering/Aggregation Agreement with OMEPA is also requested.*

There is a standard metering and aggregation agreement, which must be signed and returned to OMEPA, together with its Annexes. For the electricity supply activity which

*Disclaimer

This publication is for information only. It is not intended to offer legal advice, and to create a lawyer-client relationship.

does not concern the supply to end users household consumers, the Annexes will mainly include contact details of the license owner.

The documentation regarding the registration with OMEPA must be filed with at least 15 working days in advance of the contemplated date for the entering into effect of the metering and aggregation agreement.

2. *In addition to the above, in order to obtain the full access to the grid and carry out electricity trading, the following contracts have to be signed with the operator of the national transmission system, i.e. Transelectrica, depending on the electricity trading activities which will be carried out by the respective participant to the market:*
 - (i) *agreement for the allocation of available transfer capacity (cross-border) and transit;*
 - (ii) *agreement regarding the transmission services.*
3. *An owner of an electricity trading license which intends to carry out power export operations must also conclude with Transelectrica the Framework Agreement between the Administrator of the Support Scheme and the Contribution Payer for the collection of the contribution for high efficiency cogeneration.*

***Disclaimer**

This publication is for information only. It is not intended to offer legal advice, and to create a lawyer-client relationship.