## Business Guide



# **INVESTING IN ROMANIA**

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#### LEGAL BACKGROUND

The structure and operation method of the Romanian energy market has constantly undergone significant changes, due to the implementation of some innovative policies inspired by the European Union directives and commercial policies.



A new electricity law, Law no. 13/2007, entered into force on February 22, 2007. It aims at reflecting the changes brought to the entire energy system in the previous years and at setting up basic rules for the transactions operated on the liberalized market. Also, in this regard, the Commercial Code of the Wholesale Energy Market approved by Order no. 25/2004 of the Romanian Energy Regulatory Authority, sets up additional rules to be applied on the wholesale market.

Large-scale investments need to be made in the reconstruction and expansion of the existing capacities, most of them being erected during the '70s, as well as in the construction of green-field capacities, in order to upgrade the national energetic system. Law no. 220/2008 for the promotion of electricity produced from renewable energy sources establishes the support scheme to be applied by the State, as well as incentives to be granted to investors. Primary legislation in the energy field also includes:

• Government Decision no. 1069/2007 on approving the Romanian Energy Strategy for the years 2007-2020;

• Government Decision no. 540/2004 on the approval of the Regulation for granting authorizations and licenses in the energy sector, as further amended and supplemented;

 Government Decision no. 1661/2008 on approving the National Program for increasing energy efficiency and using renewable energy resources in the public sector for the years 2009-2010;

• Government Decision no. 90/2008 on approving the regulation for the connection of users to public electricity networks.

• Government Decision no. 1479/2009 on the Establishment of the Support System for the Generation of Electricity from Renewable Energy Sources;

#### EVOLUTION OF THE ROMANIAN ENERGY MARKET

Various measures have been taken for restructuring the Romanian energy sector, including the implementation of the

#### liberalization process based on free market and fair competition principles, and the attempt to privatize existing capacities. The energy system has evolved from vertical integration (in which RENEL had the exclusive responsibility of delivering electricity) to a decentralized system, having as consequence the division of the generation, transmission and distribution activities.

The opening to competition of the energy market grew from 10% in 2000 to 83.5% in 2005, with all industrial consumers able to choose their energy supplier as of 2005. The energy market was completely liberalized on July 1, 2007 (including household consumers).

As part of the concern for restructuring the energy sector, the Romanian Energy Regulatory Authority ("ANRE") was established in 1998, as autonomous public institution with the mission of regulating the energy market and ensuring transparency, efficiency and fair competition.

The key moment in the development of the Romanian electricity market was the end of RENEL's monopoly in 1998 and the setting up of the new companies SN Nuclearelectrica, Romanian Authority for Nuclear Activities and National Electricity Company - CONEL SA. The latter was subsequently restructured, in 2000, so that CONEL was split among functional lines and four separate joint stock companies entirely owned by the state, represented by the Ministry of Industry and Resources have been established, as follows:

• **Termoelectrica** – thermal power and heat co-generator. Owns and operates coal and hydrocarbon fired thermo-power plants (CHP).

• **Hidroelectrica** – hydropower generator. Is responsible for production of electric power in a number of hydro power plants (HHP).

• **Transelectrica** – power transmission and market operator. Is responsible for transmission grid operations, system operation and auxiliary services and load dispatch, as well as enabling and managing interconnection with other networks.

• **Electrica** - power distributor. Distributes electricity to all customers connected to its distribution network.

Since then the distribution function has been

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further divided into eight regional companies, with five of these being acquired by foreign buyers (Electrica Oltenia by CEZ, Electrica Moldova by E.ON, and Electrica Banat, Electrica Dobrogea and Electrica Muntenia Sud by Enel). In November 2007, the selection procedure for the reconstruction of reactors 3 and 4 of the nuclear-power plant CNE Cernavoda was finalized. Six investors, ArcelorMittal, CEZ, GDF SUEZ, ENEL, Iberdrola and RWE Power, were selected by S.C. Nuclearelectrica S.A. to set up a project company. The reconstruction of CNE Cernavoda Units 3 and 4 is envisaged to be finalized by the end of 2015.

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In accordance with the provisions of the Romania Energy Strategy for 2007-2020, Hidroelectrica is to continue the privatization process of the microhydroelectric power stations. However, the company is considered a strategic producer, and thus the Romanian state will maintain the majority stake.

The measures in the case of Termoelectrica include closing down some non-profitable units and partnerships concluded with private investors to build new capacities in case of some thermal power plants, e.g. Braila, Borzesti, Doicesti, Galati.All the legislative enactments up

#### CURRENT STRUCTURE OF THE ENERGY MARKET

to date have been aimed at achieving a fully liberalized and competitive energy market, on which electricity is to be traded on a wholesale and retail scale.

The size of the wholesale market depends on the sum of all transactions performed by the market players; the total transactions also include resale transactions made to match the contractual obligations and to obtain financial benefits.

The wholesale energy market includes regulated contracts and mutually negotiated contracts between producers and suppliers, regulated contracts for covering the network losses, bilateral negotiated contracts producer-producer and supplier-supplier, as well as contracts concluded on centralized markets – Centralized Market of Bilateral Contracts (CMBC), Centralized Market of Partially Standardized Bilateral Contracts, with continuous negotiation (CMBC-CN) and on the Power floor of RCE (Romanian



Commodities Exchange), transactions on Day-Ahead Market (DAM) and on Balancing Market (BM).

#### **Market of Bilateral Contracts**

Romania opted for the liberalized market model, also applied throughout Europe, in which producers and suppliers are free to enter into electricity sale-purchase transactions. On this type of market, contracts can be bilaterally negotiated or regulated.

A Centralized Market of Bilateral Contracts was organized for the agreements bilaterally negotiated and operated by SC OPCOM S.A. ("OPCOM") – subsidiary of Transelectrica, which plays the role of the energy market operator in Romania and the general market administrator.

OPCOM organizes auctions, and the market participants are producers, suppliers and eligible consumers.

#### **Day-Ahead Market**

The Day-Ahead Market, also operated by OPCOM is a voluntary market on which electricity is traded a day prior to the delivery day, based on quantityprice pairs (which are to become binding agreements), at the closing price. Producers, suppliers and system operators act on this market and the offers are made by economic agents participating on the market, not by generation units. Any participant on this market has to enter into a covenant with the transmission system operator (Transelectrica), whereby it assumes the responsibility for market balancing.

#### **Balancing Market**

As far as Balancing Market is concerned, this is a mandatory market on which the Balancing Market Operator (Transelectrica), as sole competitor, sells and purchases electricity to ensure the real-time balancing between electricity offer and request in the network.

At the end of 2005, the mandatory guota system combined with the green certificate trading system were introduced in Romania. According to this mechanism, suppliers have to purchase a certain quota of energy obtained from renewable energy sources, in order to sell it to their consumers. Therefore, all suppliers must purchase a certain number of Green Certificates, thus complying with the mandatory quota requirement (for the year 2009 the quota was established at 6.28 percent and for 2010-2012 at 8.3 percent). The price of the Green Certificates is established by competitive methods (bilateral agreements concluded between producers and suppliers) or by a centralized market of Green Certificates managed by OPCOM.

#### RENEWABLE ENERGY SOURCES

Romania conforms to the provisions of the EU Directive 2001/77/CE which provides the general rules to be considered when developing projects based upon renewable power sources (E-RES). Considerable efforts have been made in order to integrate the renewable energy in the national power system, to reduce potential obstacles and to promote private investments, along with the free access of the foreign companies on the newly established market. The electricity produced from renewable energy sources is strongly promoted for environmental protection reasons, for its role in increasing energy independence due to a wider range of energy sources, as well as for other economic and social rationales.

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The following steps need to be taken for starting-up a generation unit for producing E-RES energy:

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• Obtaining the authorizations and approvals necessary in order to build-up the generation unit;

- Building-up the generation unit;
- Obtaining the generation license;

• Obtaining the qualification certificate for the electricity priority production;

• Registration at OPCOM for selling E-RES on the Day-Ahead Market;

• Registration at Transelectrica for obtaining the green certificates;

• Registration at OPCOM for participating on the centralized green certificates market.

The E-RES producer may sell the E-RES on the energy market, similar to any other electricity producer, obtaining the market price. For covering the entire generation costs and for obtaining a reasonable profit, the producer receives green certificates for each MWh of electricity supplied in the electricity network. This green certificate may be traded within the legally set-up price limits.

Recognizing that energy generation from renewable sources triggers higher costs than energy generation from traditional sources (fossil fuels, natural gases, petroleum), and, concurrently, that the development of the ",green" energy sector must also be encouraged by incentives of a financial and/or economic nature, the Parliament has passed the Law no. 220/2008 regarding the promotion of energy generation from renewable sources. The law brings foremost clarifications on the conditions and terms underlying the enforcement of the remuneration schedule in connection with the energy generated from renewable sources, the opportunity of planning investments on medium and long terms being thus risen. Law 220/2008 aims to ensure a regulatory framework which should be unitary, coherent and steady on long-term (by 2030).

The support scheme shall be applied to the energy generated and delivered within the electric network of the following sectors: hydro (namely the energy used in plants of an installed power of not more than 10 MW), wind, solar, geothermal and that of associated fuel gases, biomass, biogas, waste fermentation gas and mud fermentation gas within the sewage treatment plants. It sets national targets regarding the ratio held by the "green" energy within the final electricity consumption level: 33% in 2010, 35% in 2015 and 38% in 2020, respectively, with the mention that upon reaching the said targets the energy generated within hydroelectric power plants of installed powers beyond 10MW should also be considered.

The Government Decision on the Establishment of the Support System for the Generation of Electricity from Renewable Energy Sources no. 1479/2009 sets up the scheme for promoting "green" energy, respectively the mandatory quota system combined with tradable green certificates, expressly repealing the Government Decision no. 1892/2004 establishing the promotion system of electricity obtained from renewable energy sources (which also promoted the mandatory quota system combined with

tradable green certificates and whose faith was uncertain under Law 220/2008). However, given that the support scheme implemented by the Government Decision shall be applied only after the clearance thereof by the European Commission, the system regulated by the Government Decision no. 1892/2004 shall continue to apply until such clearance.

The mandatory quota system, put into practice by a series of EU countries and adopted by Romania in 2005, binds electricity suppliers to purchase some minimum energy quantities generated from renewable sources, set on a prorata basis with their electricity sale volume to end-users. Therefore, in order to reach their mandatory quotas, suppliers must purchase from energy producers a number of green certificates which is equal to the product between the value of the mandatory quota set for the respective year and the energy quantity which they sell to end-users throughout that year. Should the supplier fail to reach the herein contemplated quota, the law shall bind the



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supplier to pay the counter value of the certificates as a penalty in amount of EUR 70 per non-purchased certificate.

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Suppliers may also purchase green certificates from the European market as well, but only after Romania has joined the Green Certificate European System. From that very moment, green energy producers shall be able to trade their certificates on the green certificates European market. It is expected that energy suppliers belonging to various EU countries will be interested

in buying the Romanian green certificates in an attempt to reach the mandatory quotas in their home countries. In both cases (producers and suppliers), until reaching national targets, green certificates can only be traded on the domestic market.

The value of a green certificate shall be set either through bilateral agreements made between the electricity producer and the electricity supplier, or on the regulated market. The need to protect renewable source energy producers lead to the settlement of a minimum price for a green certificate, whereas there is a maximum price set for the protection of consumers. For the period between 2008 and 2014, it was stipulated that variation shall only be allowed within the limits of no less than EUR 27 per certificate and no more than EUR 55 per certificate. For the period between 2015 and 2020, the minimum trading value shall not be lower than the minimum value set for 2014.

The system of awarding green certificates shall greatly depend upon the type of green energy to be generated. Thus, producers generating electric power from renewable sources shall be granted:

(a) one green certificate for every 1 MWh of energy generated and delivered to the electric network within newly established plants/water power stations or within plants/water power stations of maximum 10 MW, operating with new technology;

(b) one green certificate for every 2 MWh of energy delivered to the electric network within water power stations of an installed power between 1 and 10 MW, which do meet the specifications mentioned under point a) above; (c) two green certificates for every 1 MWh

of energy delivered to the electric network within water power stations of an installed power of up to 1 MW per unit;

(d) two green certificates, by 2015, and one green certificate, as of 2016, for every 1 MWh delivered to the electric network by producers generating electric power from wind sources;

(e) three green certificates for every 1 MWh of energy delivered to the electric network by producers generating electric power from biomass, biogas, bio fluids, waste fermentation gas, geo thermal energy and associated fuel gas;

(f) four green certificates for every 1 MWh of energy delivered to the electric network by producers generating electric power from solar sources.

The support schedule shall be applied for variable time periods, depending upon the technical condition of the power capacity or on the energy generation source. According to Law 220/2008, the support schedule for electrical power generation shall apply over a period of:

(a) 15 years for the electrical power generated in new electrical units;

(b) 5 years for the electrical power generated in imported electrical units/wind electrical power stations, which were used for generating electrical power on the territory of other states as well;

(c) 10 years for the electrical power generated in units/hydroelectric plants of maximum 10MW, which were subject to a modernization process;

(d) 3 years for the electrical power generated in units/hydroelectric plants of maximum 10MW, which were not subject to a modernization process;

(e) 10 years for the thermal power generated from geo-thermal sources in plants of at least 5MWth.

The access to the electrical power transportation/distribution network and the manner of incurring the investments in the network's extension have also represented subjects of long debates in the relevant circles, as it is a known fact that the national power system currently has a limited capacity of integration of the energy supplement generated from renewable sources. A series of projects are currently facing the perspective of being blocked or postponed, due to the fact that the overall announced investment intentions have already reached the maximum capacity of takeover of the energy in the current network. Although it is not clear whether, and in what manner, the new provisions shall solve the issue, the possibility of equally bearing, together with the network operator (Transelectrica), the costs for the technical adjustments, the connection to the network and the consolidation of the network, is a first positive step. Priority access to the transportation/distribution network is given, provided that the safety of the National Power System is not affected.

#### **INCENTIVES**

A series of fiscal facilities have been provided for strategic projects by the Law 220/2008 for the promotion of green energy, for which, at the time of this material, application norms are still expected by the investors in order to make such incentives possible to be used in practice:

Guaranteeing up to 50% of long and medium term loans;

• Ensuring transport infrastructure and utilities necessary for commencing and developing the investment;

• Ensuring ways of access and changes in the existing infrastructure;

 Granting tax exemptions or reductions for the reinvested profit:

 Granting financial compensations from the state budget for newly created jobs.

In line with the provisions of the Romanian Electricity Strategy for 2007-2020, E-RES projects are co-financed from the following funds:

UE Green Fund - may cover up to half of • the project value;

· Rural Development Fund, that cumulates a value of Euro 8.02 billion for the period 2007- 2013;

• UE special Program for agriculture and rural development (SAPARD);

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#### • Structural funds.

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The Government Emergency Ordinance no. 85/2008 on investment support stipulates that investments made for ensuring the increase of energy efficiency, production and sale of electricity or thermal energy, and equipments,

benefit of the following facilities:

 Non-refundable financial subventions for acquisition of tangible and intangible assets;
 Financial compensation from the state

budget for creating new jobs;
Interest disbursement when

Interest disbursement whe contracting loans.

In conclusion, it must be noted that, while the adoption of the E-RES law constitutes a significant step forward in promoting such type of investments in Romania, the extent of such investments is however affected by the incomplete secondary legislation.

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