

LEGAL ALERT



NEW ELECTRICITY AND NATURAL GAS LAW

Law no. 155/2020 amending and supplementing Electricity and Natural Gas Law no. 123/2012 and amending and supplementing other normative acts ("Law 155") was published in the Official Gazette no. 665 of 27 July 2020. Law 155 is the last one of a number of recent normative acts whereby Law 123/2012 ("Law 123") was substantially amended. The amendments under Law 155 are exhaustive and considerably change the structure and, at times, the functioning of the electricity and gas markets. Therefore, we deem that it is useful to present a few of the most interesting amendments to Law 123 brought by the Romanian Parliament.

THE CONSUMER, AN ACTIVE PARTICIPANT IN THE ENERGY MARKET

Until now, Law 123 described the consumer of energy as a passive element of the market, protected by the obligations imposed by the law upon the other market participants, network and system producers and operators. Through the legal amendments brought in by Law 155, in compliance with the provisions of the European regulations, the consumer becomes an active participant, either as a diligent prosumer or consumer integrated into an efficient consumption system.

By amending art. 21 of Law 123, the participant to the electricity market is defined as follows: *"The participant to the electricity market is the natural or legal person that buys, sells or produces electricity, that is involved in aggregation or that is an operator of dispatchable consumption or energy storage services, including by placing trade orders on one or more electricity markets, including the electricity balancing markets."*

Since the electricity and gas markets follow the rapid rhythm of liberalization, the role and the activity of the consumer become decisive for the functioning of the energy system.

AGGREGATION, THE NEW MECHANISM FOR FUNCTIONING OF THE ELECTRICITY MARKET

Law 155 introduces the concept of *aggregation*, which means the function fulfilled by a natural or legal person that combines the charges of several customers or the electricity produced by several sources for sale, purchase or bidding on any electricity market.

Art. 10, par. (2), letter i) of Law 123 provides that ANRE issues licenses for the aggregation activity, being possible to independently carry out the aggregation activity (the independent aggregator is defined as the market participant involved in the aggregation which is not affiliated to the supplier of its customer).

The change does not stand for an innovation of the legislator, but a late measure to align the domestic legislation to EU normative acts (one of them being directly applicable in Romania, but remaining unapplied as expected). Certainly, we refer to Regulation (EU) 2019/943 and to the Directive (EU) 2019/944 regulating the status of the consumer as an active participant directly involved in the energy market.

ANRE refused to license the aggregators in the absence of domestic legal provisions to regulate such possibility, and the amendment under Law 155 solves this discrepancy between the Romanian law and the European law, although the European regulations are binding normative acts directly applicable in the domestic law of each Member State.

Aggregation is one side of a very ambitious change of perspective: in opposition to the classical concept of a low number of significant production capacities which cover the energy demand, a new vision proposes a meeting of the producers' offers (several of them renewable, with the related production variations) with a fluctuating consumption demand. The aggregator helps all market players meet in an efficient way: it can group the individual production of a large number of small producers in a consolidated offer (reaching, at least in terms of quantity, the level of a traditional power plant), easier to be placed on the market; likewise, it can take over the portfolios of several consumer, by dynamically making their consumption more efficient.

The details of the aggregators' activity will come along with the secondary regulations to be adopted by ANRE. We deem that the manner for regulating the aggregators' activity will also have a major importance on the effects of their activity in terms of competition. Certainly, the Competition Council will carefully monitor the way in which the aggregation activity will develop in Romania.

ENERGY STORAGE PLANTS

Law 155 introduces the notion of *energy storage*, defined as the process of electricity transformation into a form of energy which can be stored for the purpose of postponing its use at a further time after generation and subsequent reconversion of such energy into electricity or its use in another energy vector.

The *energy storage plant* is defined as any plant where energy is stored, implemented into the electricity system.

The execution of new storage plants follows the same permitting regime as for production capacities (simplified by Law 155): for those having a maximum power debited into the network above 1MW an establishment authorization must be obtained, whereas the others only require the notice given to the competent authority regarding the investment project and the periodical reporting of its implementation status.

Afterwards, ANRE issues licenses for the commercial operation of the storage plants. If the storage plants are installed within an existing production capacity, no separate license will be issued, but the existing license for commercial operation of the production capacities will be modified.

Should appropriate technical solutions be identified, the storage plants may become a versatile tool on the electricity market, of great use for integrating the small producers or the active consumers on the electricity market into the system.

POSSIBILITY TO CARRY OUT THE DISTRIBUTION ACTIVITIES WITHOUT A LICENSE

One of the most interesting amendments to Law 123 is the introduction of the possibility to carry out the electricity/gas distribution activity without holding a license.

Electricity distribution

As far as electricity is concerned, the provision of the distribution service is allowed without holding a license granted by ANRE to distribution system operators in closed distribution systems (based on a decision issued by ANRE), distribution system operators or administrators of industrial parks inside the industrial parks created according to Law no. 186/2013, distribution system operators or administrators of free zones inside the free zones, irrespective of the power, as well as to other economic operators holding distribution networks that supply places of consumption, outside the industrial parks, respectively the free zones described above, with approved electric powers less than 3MW in aggregate. The rules also apply to the electrical networks located outside the limit of the industrial park, respectively the free zone, up to the place of delimitation from the electrical network for distribution of the concessionaire or the electrical network for transmission, with the observance of the following conditions:

- a) the electric powers approved for places outside the limit of the industrial park, respectively the free zone supplied from the electrical networks should be below 3MW on a cumulative basis;
- b) there is the written notice given to the concessionaire distribution system operator in the region where such industrial park or free zone is located, with respect to the provision of the distribution service through such electrical networks.

The *closed distribution system* is defined as such system which distributes electricity within a geographically confined industrial, commercial or shared services site and does not, without prejudice to paragraph 4, supply household customers, if:

- a) for specific technical or safety reasons, the operations or the production process of the users of that system are integrated; or
- b) that system distributes electricity primarily to the owner or operator of the system or their related undertakings.

Gas distribution

The gas distribution service is provided without a license granted by ANRE to economic operators which operate a closed distribution system, administrators of industrial parks created according to Law 186/2013 and administrators of free zones created according to Law no. 84/1992, the operators benefiting from the same rights and having the same obligations to observe the ANRE regulations corresponding to a holder of license for that activity.

The *closed distribution system* is such system which distributes gas within a geographically confined industrial, commercial or shared services site and does not supply household customers, if, for technological organization reasons, the operations performed by the users of that system are integrated or that system distributes gas primarily to the owner or operator of the system or their related undertakings, if the case.

MEASURES TO SUPPORT INVESTORS IN THE PRODUCTION CAPACITIES

Law 155 derogates from the rules applicable to the operation of production capacities, in order to support the investors in production capacities (by increasing the guarantees which can be offered in the funding process).

Thus, art. 10, par. (5/2) of Law 123 provides that a natural or legal person has the right to contract, as a producer, the electricity which will be produced by the new energy capacity, according to the regulations issued by ANRE, without holding the license under par. (2) letter a) at the time of energy trading.

The provision supplements the derogation under par. (1) of art. 23 of Law 123 introduced by GEO no. 74/2020, according to which, on the competitive wholesale or retail market the producers may conclude bilateral agreements outside the centralized market, for negotiated prices, with the observance of the competition rules, for the electricity deriving from new production capacities commissioned after 1 June 2020.

We hope that the derogation introduced by GEO no. 74/2020 will be repealed after the parliamentary debate on its approval. The draft law approving GEO 74 passed the Senate in a form in which the derogation introduced by GEO 74 was removed. The draft law is subject to debate in the Chamber of Deputies, which will decide if the derogation remains or not in the law.

MEASURES TO SUPPORT NON-HOUSEHOLD CONSUMERS FOR CONNECTION

Law 155 obliges the electricity distribution network operators to “ensure the funding and performance of the design and execution works for the connection installation of the end non-household customer, with a length up to 2,500 meters, located within the territory of the administrative-territorial unit for which the public distribution service has the concession. The corresponding amount of such funding will be recognized by ANRE in the tariff. The deadline for connection is maximum 90 days after obtaining the building permit.”

Similarly, the gas distribution and transmission network operators cannot refuse to connect to the network and, additionally, they are obliged “to fund the works for execution of the objectives/conduits required for connecting the consumers located in the perimeter of the administrative-territorial unit for which the public distribution service was conceded. The deadline for extension and/or connection of the consumers cannot exceed the 90-day period after obtaining the building permit”.

NEW PROVISIONS ON THE SETTLEMENT OF COMPLAINTS

The European Directive compels the Member States to provide the participants to the electricity market with easy and rapid tools for mediating the potential conflicts. Such tools do not exclude the fundamental right of access to the courts of law, but allow the analysis of the factual situation which will be conducted by industry experts.

Since ANRE has the legal competence to issue solutions in administrative-jurisdictional procedures, Law 155 confirms once again the role of this institution as an energy arbitrator.

Law 155 introduces a definition of the concept of *complaint* - notice, claim, petition, divergence, disagreement, dispute referred to ANRE, in the field of electricity and/or thermal energy produced in cogeneration, submitted by a natural or legal person, respectively to the Ministry of Economy, Energy and Business Environment for the energy efficiency field (a similar definition is also included in the title regarding the gas industry).

Law 155 introduces new articles which regulate in general terms the settlement of complaints submitted with ANRE relating to the electricity and gas industry.

It sets forth that the complaints relating to the activity of a provider of services/activities should first be sent to that provider, before being submitted with ANRE. The deadline for the provider to issue a reply is not indicated, and the provisions of ANRE regulations are still applicable.

It provides that the complaints whose subject matter exceeds 36 months from the occurrence of the deed cannot be settled, and bringing the subject matter of the complaint before the courts of law excludes the possibility to submit a new complaint with ANRE.

The Law is supplemented by the secondary regulations issued by ANRE with respect to the procedures for settlement of complaints referred to ANRE for settlement. At present, ANRE has jurisdictional competences in the following fields:

In the electricity field, ANRE “*establishes, according to the law, the procedure for administrative and jurisdictional settlement of pre-contractual disagreements and solves the disagreements relating to the conclusion of the agreements between economic operators in the electricity and thermal energy industry, the electricity and thermal energy supply agreements, the network connection agreements and the sale-purchase agreements for thermal energy produced in cogeneration, as well as the disagreements occurring upon the conclusion of addenda which take up provisions as a result of the occurrence of legal amendments*”

- and “*administratively and jurisdictionally solves, according to the law, the complaints against the transmission system operator and the distribution system operators with respect to their obligations under the law, as well as the disagreements between the transmission system operator and the owner of the transmission network, based on its own procedure;*”
- In the gas field, ANRE “*administratively and jurisdictionally solves, according to the law, the complaints against the transmission system operator and the distribution system operators with respect to their obligations under this emergency ordinance, as well as the disagreements between the transmission system operator and the owner of the transmission network, based on its own procedure*” and “*solves the pre-contractual disagreements in the gas industry, according to its own procedures;*”

**„LEGISLATIVE BLOCKAGES
MUST BE LIFTED. SMALL AND
MEDIUM-SIZED CONSUMERS
NEED TO GAIN POWER
THROUGH LEGISLATION”**

Dana Dunel-Stancu,
Head of Energy and Natural
Resources Biriş Goran,
ZF Power Summit 2020

In the new context of the European regulations binding to implement jurisdictional systems accessible to any natural or legal person that is in a conflict as a participant in the electricity or gas market, we expect the ANRE administrative and jurisdictional duties to be extended and new procedures for settlement of the complaints to be published soon.

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