

## Client Brief

ENERGY & NATURAL RESOURCES LAW

APRIL 2014

### Energy Efficiency:

#### Uncertainties Remaining until the Transposition of the New Directive

The 2012 Energy Efficiency Directive<sup>1</sup> (the “**New Directive**”) must be transposed in Romanian law by 5 June 2014.

This new European act aims to determine the EU Member States to step up their efforts for improving energy efficiency throughout the energy sector chain, from generation to transmission and distribution and to final consumption.

Indeed, the former European framework, mainly established by the 2006 Energy Efficiency Directive<sup>2</sup>, did not have sufficiently ambitious targets. A boost was needed if the European Union were to achieve its objective of saving 20% of its projected primary energy consumption by 2020.

The draft law for the transposition of the New Directive, published on the website of the National Energy Regulatory Authority (ANRE), is still under discussion. It appears to be still a long way from its final version; the current text is rather a copy of the New Directive than a workable legislative act.

However, certain strategic choices seem to have already been made by the Romanian authorities, which diminish the uncertainties faced by energy sector operators and by energy users until the transposition date. Some of these choices are notably exposed in a notification sent by Romania to the European Commission (the “**Notification**”)<sup>3</sup>.

We shall refer below to the main categories of measures set forth by the New Directive, and classified as follows:

- measures promoting efficiency in energy use; and
- measures promoting efficiency in energy supply.

<sup>1</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC.

<sup>2</sup> Directive 2006/32/EC of the European Parliament and of the Council of 5 April 2006 on energy end-use efficiency and energy services and repealing Council Directive 93/76/EEC, transposed in Romania by Government Ordinance no. 22/2008 concerning energy efficiency and the promotion of renewable energy sources use by final consumers

<sup>3</sup> [http://ec.europa.eu/energy/efficiency/eed/doc/article7/2013\\_ro\\_eed\\_article7\\_en.pdf](http://ec.europa.eu/energy/efficiency/eed/doc/article7/2013_ro_eed_article7_en.pdf).

## 1. Measures promoting efficiency in energy use

Some of the most important measures promoting efficiency in energy use are set forth by Article 7 of the New Directive.

Article 7 may be implemented by the Member States by establishing:

- (i) *energy efficiency obligation schemes*; these schemes place an obligation on energy distributors and/or retail sellers to achieve end-use savings. Member States may allow that this obligation be fulfilled by contributing to an Energy Efficiency National Fund: the contributed amount would be equal to the investments which obligated parties would otherwise have to make to achieve the required amount of energy savings;
- (ii) *alternative policy measures* (which can take different forms, such as fiscal or regulatory provisions, trainings etc.); or
- (iii) *a mix* of the measures described at (i) and (ii) above.

Pursuant to the Article 7 Notification submitted by Romania, an obligation scheme is not being considered in Romania<sup>4</sup>, at least not during the initial 2014-2016 period. Romania intends to adopt instead the following range of alternative policy measures:

- establishment of an energy efficiency investment fund;
- conducting energy audits;
- training of energy auditors;
- consumer awareness-raising and advice campaigns;
- regulations or voluntary agreements;
- supporting the development of energy service companies.

Romania's Notification remains very vague as regards the concrete manner in which the measures above would be put into practice. However, it should be mentioned that Romania has already implemented a legal framework imposing certain obligations to energy service providers and to energy users as regards energy management and audits. For instance, as per Government Ordinance no. 22/2008, undertakings using energy of more than 1,000 tons oil equivalent per year must carry out annual energy audits and enter into energy management agreements. Energy auditors, managers and service providers must be authorized by ANRE<sup>5</sup>.

Other measures for increasing efficiency in energy use, established by the New Directive, include: deep renovations of buildings, imposing energy efficiency performance criteria for products and services purchased by public authorities, deploying smart metering<sup>6</sup> and ensuring accurate billing of final customers.

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<sup>4</sup> The reasons provided to justify this choice were that (i) an obligation scheme would require an increase in energy prices for final consumers as a result of increasing the distribution tariff, which would exceed the population's level of affordability and that (ii) the moderate pace of economic growth taken into account in the estimate of primary energy consumption for 2020 places Romania within the target.

<sup>5</sup> As per ANRE Order no. 38/2013, energy service providers must be duly authorized in order to be able to enter into energy management agreements with final customers using energy of more than 1,000 tons oil equivalent per year.

<sup>6</sup> Since smart metering represents a complex topic on its own, we shall not go into further details in this presentation.

## 2. Measures promoting efficiency in energy supply

This category of measures includes:

- (i) the promotion of efficiency in heating and cooling and
- (ii) measures related to energy transformation, transmission and distribution; most of these measures are specific to the electricity sector, while a number of them (such as those regarding the deployment of smart grids) apply to both electricity and natural gas sectors

We focus below on the second type of measures mentioned at point (ii) above and which are detailed in Article 15 of the New Directive. Thus, as regards the electricity sector, Member States must ensure, *inter alia*:

- *the promotion of demand response;*

“Demand response” can be defined<sup>7</sup> as voluntary changes in electricity usage by end-use customers from their normal or current consumption patterns:

- in response to market signals, such as time-variable electricity prices or incentive payments, or
- in response to the acceptance of the consumer's bid, alone or through aggregation, to sell demand reduction at a price in organised electricity markets.

In this context, the New Directive introduces the concept of “aggregators”, a category of demand response providers that combine multiple short-duration consumer loads for sale or auction in organised energy markets.

- *the promotion of high-efficiency cogeneration;*

High-efficiency cogeneration is one of the key topics in the New Directive, which repeals, for that matter, the former Cogeneration Directive no. 8/2004<sup>8</sup>. It is provided, *inter alia*, that both transmission operators and distribution operators must guarantee the transmission and respectively the distribution of electricity from high-efficiency cogeneration, give it priority or guaranteed access to the grid and give it priority dispatch, when they are in charge of dispatching<sup>9</sup>. In addition, they must comply with certain requirements, detailed in Annex XII of the New Directive, among which the obligation to provide connection to a new producer of such type of electricity within a timeframe which is communicated (on an estimative basis) in advance and which cannot exceed 24 months.

- *introducing energy efficiency criteria in network tariffs and regulation.*

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<sup>7</sup> As per the Commission Staff Working Document SWD (2013) 450 final (Guidance Note on Article 15 of the New Directive), 6 November 2013, para. 38.

<sup>8</sup> Directive no. 8/2004 of the European Parliament and of the Council on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC. This Directive was transposed in Romania by Government Decision no. 219/2007 on the promotion of cogeneration based on a useful heat demand and by Government Decision No 1215/2009 establishing the criteria and conditions that are necessary for implementing the support scheme for the promotion of high-efficiency cogeneration based on useful heat demand.

<sup>9</sup> See footnote 7.

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