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## **NEW LEGISLATIVE AMENDMENTS IN ENERGY SECTOR AIMING TO SUPPORT THE PROJECT FINANCING OF NEW GENERATION CAPACITIES BASED ON LONG TERM PPAS**

The Romanian Government has recently adopted the Government Emergency Ordinance no. 74/2020 (the "**Ordinance**") for the amendment and supplementing of the Electricity and Natural Gas Law no. 123/2012, which entered into force on 19 May 2020.

The Ordinance provides the possibility for electricity producers to trade the electricity from the new production capacities, put into operation after 1 June 2020, outside the centralised markets, based on long term bilateral negotiated power purchase agreements ("**PPAs**").

According to the statement of reasons behind the enactment of the Ordinance, the change in law is expected to stimulate investments in new electricity generation capacities, with a direct positive impact on the economy and operation of the national electricity system.

### **BRIEF OVERVIEW OF THE ROMANIAN ELECTRICITY MARKET**

Starting with the entering into force of Electricity and Natural Gas Law no. 123/2012 (the "**Energy Law**"), the structure of wholesale energy market was significantly changed through the introduction of the obligation to conduct all trades on the competitive market in a transparent, public, centralized and non-discriminatory manner.

Therefore, after the entry into force of the Energy Law, all trades on the wholesale energy market must be concluded on the centralized markets, operated by the authorized market operator ("**OPCOM**").

As such, the conclusion of bilateral power purchase agreements outside the centralized market was banned, except for small renewable electricity producers (maximum 3 MW installed capacity), which can conclude directly negotiated PPAs under certain conditions.

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Even if OPCOM has launched several successful trading platforms, usually, agreements with a maximum 1 (one) year term are concluded on such platforms since they are unfit for long-term agreements mainly due to firm prices, quantities requirements and competitive auction mechanisms.

## **THE POSSIBILITY OF CONCLUDING THE PPAS UNDER THE ORDINANCE**

Pursuant to the Ordinance, by way of exception from the obligation to conduct all trades on the centralized markets, the electricity producers are allowed to conclude PPAs outside the centralized markets, at negotiated prices and with the observance of the competition rules, in order to trade the electricity from the new production capacities put into operation after 1 June 2020. The possibility to conclude long term PPAs outside the centralized market would benefit to all types of energy producers, irrespective of technology.

Also, this flexibility would apply to those production capacity in various stages of development for which the put in operation minutes (*proces verbal de punere in functiune*) is signed after 1 June 2020.

As a consequence of the above measure, the producers of electricity from new production capacities are also exempted from the obligation to offer publicly and non-discriminatory on the centralized markets the remaining quantities of energy after delivering to the suppliers of last resort the electricity necessary in order to cover the consumption of the household customers which have not yet exercised their eligibility right to switch their electricity supplier.

## **WIDER CONTEXT - EU PROVISIONS ENCOURAGING FURTHER DEVELOPMENTS**

The above changes are coming in a context where lawmakers and authorities are focused on adopting more flexible rules for the trading of energy on the wholesale market by encouraging long term negotiable PPAs.

Thus, as of 1 January 2020, the new Regulation (EU) 2019/943 on internal electricity market has entered into force. According to its provisions, Member States shall ensure that markets are operated in accordance with several principles amongst which "*long-term electricity supply contracts shall be negotiable over the counter*".

Following from the EU Regulation 2019/943, the National Authority for Energy Regulation (ANRE) has already adopted at the end of March 2020 new rules meant to bring more flexibility on the conclusion of bilateral energy supply agreements on the centralised markets.

In addition, Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (the "**Directive**") oblige the Member States to remove unjustified barriers and to facilitate the uptake of long-term renewables power purchase agreements. The renewables power purchase agreements are defined as contracts under which a buyer agrees to purchase renewable electricity directly from an electricity producer. The Member States must transpose the provisions of the Directive in the national law system until 30 June 2021.

It remains to be seen what legal measures will be further implemented by the Romanian authorities for the implementation of the above EU provisions and what the future of the PPAs will be in Romania.

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