

## **GUIDANCE NOTES**

### **EFET INDIVIDUAL POWER PURCHASE AGREEMENT FOR CORPORATES AND UTILITIES**

#### **ROMANIAN LAW**

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**THE FOLLOWING GUIDANCE NOTES ARE A WORKING DOCUMENT OF EFET. PARTIES MAY USE THE GUIDANCE NOTES WHEN USING THE PPA TEMPLATE. THESE GUIDANCE NOTES MAY BE CHANGED FROM TIME TO TIME IN VIEW OF CHANGING MARKET PRACTICE, CHANGE OF LAW, OR CHANGE OF APPLICABLE REGULATION. USERS OF THE GUIDANCE NOTES ARE URGED TO CONSULT THEIR OWN COUNSEL WHEN BRINGING CONTRACTUAL ARRANGEMENTS IN PLACE.**

**STATUS: 15 JUNE 2022**

These Guidance Notes have been prepared in relation to the Individual Power Purchase Agreement for Corporates and Utilities (hereafter referred to as "CPPA"), issued by EFET on 26 June 2019 and with latest update as of 4 November 2021. The Guidance Notes are intended to inform users of the CPPA where:

- the CPPA is governed by Romanian law; and/or
- the Facility (electricity generation plant of the Seller) and/or the electricity consumption unit of the Buyer are located in Romania and connected to the Romanian power system; and/or
- specific Romanian market practices affect the use of the CPPA.

Comments are provided in the table below. They may be addressed in an *ad hoc* appendix or in the Election Sheet (in the Section specified as per the table). The Guidance Notes do not address compliance with EU regulatory requirements, e.g., under Regulation (EU) No. 1227/2011 (REMIT) or Directive 2014/65/EU (MIFID). Capitalised terms not defined herein have a meaning ascribed to them in the CPPA.

<b>GENERAL REMARKS</b>	
<b>REFERENCE</b>	<b>COMMENTS</b>
<b>Assumptions</b>	The Guidance Notes have been prepared on the basis of the understanding that the Parties to a CPPA are both acting in their capacity as energy wholesale market participants, respectively industrial or commercial end consumers of electricity, and that the power supply under the CPPA does not qualify as the supply of household customers.
<b>References to companies in charge of distributing electricity or electricity transmission</b>	<p>In Romania, the electricity distribution system operators are:</p> <ul style="list-style-type: none"> <li>• Distribuție Energie Electrică România (DEER),</li> <li>• E-Distribuție (Banat, Dobrogea and Muntenia),</li> <li>• Delgaz Grid,</li> <li>• Distribuție Energie Oltenia.</li> </ul> <p>If the end customer is connected to the public electricity transmission network, the company CNTEE Transelectrica (owner and operator of the transmission network) will be the contractual point of contact.</p>
<b>“Commissioning” definition</b>	As per the Electricity and Gas Law 123/2012 (the “Energy Law”), sales of electricity by a power

	<p>producer may start only after such a producer has obtained a licence for the production of electricity from ANRE (<i>“licență pentru exploatarea comercială a capacităților de producere a energiei electrice”</i>).</p> <p>By virtue of exemption, under the Energy Law, a PPA may be concluded by a producer before obtaining a generation license but with obligation to obtain such a license at least 60 days before the delivery of the electricity produced by the new energy capacity.</p> <p>The production license is granted by ANRE only after the final acceptance and commissioning of the generation unit. The main documents required are:</p> <ul style="list-style-type: none"><li>• the commissioning (PIF) tests at completion of works and take over certificates;</li><li>• description of the electrical infrastructure and proof it complies with Romanian technical regulations;</li><li>• description of the staff of the company;</li><li>• environmental authorisation;</li><li>• proof of title over the generation facility;</li><li>• estimate of the first-year income.</li></ul> <p>Consequently, we recommend that in relation to a Facility which is in Romania the following changes are made to the definition of “Commissioning”:</p> <ul style="list-style-type: none"><li>• denomination of point (d) is corrected to point (c);</li><li>• new point (d) is added which shall be read as follows:</li></ul> <p><i>“(d) the Seller has obtained from the Energy Regulatory Authority (ANRE) in relation to the Facility an enforceable license to produce electricity or shall procure such license before the first delivery of electricity”.</i></p>
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<p><b>Direct electricity sale in a closed electricity distribution system</b></p>	<p>The activity of a natural or legal person, consisting in the sale of electricity to end consumers supplied directly from the electrical installations (through direct power lines) related to the generation unit, is carried out without a supply license under the conditions of observing the specific regulations approved by ANRE. In this regard, the electricity producer will only need to hold an electricity production license.</p> <p>At request, ANRE, under the conditions of the Energy Law and the Regulation approved by the Order 12/2015 for granting licenses and authorisations in the electricity field, grants a producer complementary right to the activity of producing electricity, for:</p> <ul style="list-style-type: none"> <li>• the activity of electricity distribution, including by providing transformation and / or connection services for the network operators or for supplying the existing electricity final customers, directly connected to the electrical installations related to the generation unit mentioned in the specific terms and conditions associated with the production license;</li> <li>• the activity of supplying to the final customers the electricity supplied directly from the electrical installations afferent to the generation unit or from the electrical networks they operate, mentioned in the specific terms and conditions associated with the production license.</li> </ul>
<p><b>Guarantees of Origin</b></p>	<p>According to the Government Decision 1232/2011 for the approval of the Regulation on the issuance and pursuit of guarantees of origin for electricity produced from renewable energy sources, the guarantees of origin (the “GoOs”), may not be transferred from a producer to an end client.</p> <p>GoOs may only be transferred:</p> <ul style="list-style-type: none"> <li>• from a producer to another producer;</li> </ul>

	<ul style="list-style-type: none"> <li>• from a producer to a supplier;</li> <li>• from a supplier to another supplier.</li> </ul>
<p><b>Green Certificates</b></p>	<p>For the RES projects commissioned until December 2016, in addition to the revenues obtained from selling the electricity output of a renewable energy project, a Green Certificates (“GCs”) scheme is in place, under the promotion mechanism for renewable energy in Romania set out by the Law 220/2008 (the “Renewable Law”).</p> <p>The transmission and system operator, Transelectrica, issues GCs to producers on a monthly basis, for the 'green' electricity produced and delivered to the suppliers or final consumers.</p> <p>Under the Renewable Law, as subsequently amended, the renewable electricity generators receive a number of GCs for each MWh delivered into the grid, depending on the technology. Electricity suppliers (and generators in certain circumstances) have the obligation to acquire GCs according to an annual mandatory quota established by ANRE.</p> <ul style="list-style-type: none"> <li>• <b>Setting the mandatory quota</b></li> </ul> <p>The estimated yearly mandatory quota for the GCs acquisition is established by ANRE in December for the following year. The quota is calculated taking into consideration the estimated final energy consumption for the upcoming year and the medium impact on consumers that should not exceed €12.5 per MWh in 2019, €13 per MWh in 2020 and 2021 and €14.5 per MWh from 2022.</p> <p>Additionally (as of 2018), ANRE calculates by 1 March the mandatory acquisition quota for the previous year, the amount of electricity produced from renewable sources and the average impact on consumers that should not exceed €11.7 per MWh in 2018, €12.5 per MWh in 2019, €13 per MWh in 2020 and 2021 and €14,5EUR per MWh from 2022.</p>

	<ul style="list-style-type: none"><li>• <b>Number of GCs</b></li></ul> <p>The number of GCs issued depends on the technology type of the renewable generation. The trading issuance of a share of the initial number of GCs has been suspended for some technologies for the period between 1 July 2013 and 31 March 2017, and further to 31 December 2020 for solar generation specifically. Thus, the number of GCs issued during this time period has been reduced by one GC for hydropower and wind energy and respectively by two GCs for solar power plants. The suspended GCs have been resumed for trading from 1 January 2021. This deferral of a certain quota of GCs applies only to renewable power plants which have received approval for production from ANRE until 31 December 2013.</p> <ul style="list-style-type: none"><li>• <b>Obligation to acquire green certificates</b></li></ul> <p>Energy suppliers and generators (if applicable) are under an obligation to acquire every year a number of GCs equal to the value of the mandatory quota for acquisition of GCs established by ANRE for the respective year, multiplied by the total number of MWh:</p> <ul style="list-style-type: none"><li>- acquired by suppliers for their own consumption as well as invoiced to end consumers;</li><li>- used by generators for their own consumption (excluding technological consumption);</li><li>- delivered by generators to end-consumers connected to their generation capacities by direct lines; and</li><li>- generated in Romania and sold by the suppliers of certain consumers and suppliers outside Romania by electricity bilateral transactions in the states with which Romania has signed bilateral agreements.</li></ul>
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	<p>The mandatory quota for the GCs acquisition for 2021 was established at the value of 0.449792 GCs / MWh and the mandatory estimated annual quota for GCs acquisition for 2022 was established at the value of 0.5014313 GCs/MW.</p> <ul style="list-style-type: none"><li>• <b>Term of the support mechanism</b></li></ul> <p>The support mechanism applies to the renewable power plants accredited by ANRE by the end of 2016. The term for application of the support mechanism is:</p> <ul style="list-style-type: none"><li>- fifteen (15) years for power plants using new equipment;</li><li>- ten (10) years for the refurbished hydropower plants with installed power up to 10MW;</li><li>- seven (7) years for wind farms using second-hand equipment if installed in isolated areas or if commissioned before entering into force of the Renewable Law; and</li><li>- three (3) years for the hydropower plants that have not been refurbished, with installed power up to 10MW.</li></ul> <ul style="list-style-type: none"><li>• <b>Trading green certificates</b></li></ul> <p>GCs can be traded only on the centralised markets operated by the Romanian gas and electricity market operator (OPCOM) in a transparent and non-discriminatory manner between the operators that have, by law, an obligation to buy GCs and the renewable energy producers. The centralised markets operated by OPCOM are:</p> <ul style="list-style-type: none"><li>- the centralised anonymous spot market of green certificates;</li><li>- the green certificates anonymous centralised term market; and</li><li>- the centralised market for electricity from renewable energy sources supported by green certificates where electricity</li></ul>
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	<p>produced from renewable sources and the corresponding GCs are traded together, as a package, in a competitive, transparent, public, centralised and non-discriminatory manner.</p> <p>The selling of the GCs is only allowed to producers of renewable energy. A GC may be the subject of a single transaction between the producer as seller and the supplier as buyer.</p> <p>According to the Renewable Law, until 2032, the minimum price per GC is €29.4 and the maximum price is €35, calculated in lei, at the average exchange rate established by the National Bank of Romania for the last month of the previous year.</p>
<p><b>Grid Connection Agreement</b></p>	<p>Under the Energy Law, a PPA may be concluded by a producer before obtaining a generation license but with obligation to obtain such license in term of at least 60 days <b><u>before the delivery of the electricity produced by the new energy capacity.</u></b> Given this condition, it may be reasonable assumed that an applicant for a production license has previously secured a grid connection and has been issued with a grid connection permit and subsequently has concluded with the TSO or the local distributor (for capacities less than 50MW) a relevant grid connection agreement.</p>
<p><b>Balance Responsible Party (BRP)</b></p>	<p>In accordance with the Energy Law, all the market participants (including producers and consumers) are obliged to assume financial responsibility for differences between the production and the quantity injected into the grid, and to comply with the provisions of the licenses and regulations issued by ANRE.</p> <p>Each producer may choose to enter into a standard BRP contract with the transmission system operator (TSO) or enter into a contract for this purpose with a third-party Balancing Responsible Entity, which covers these</p>

	<p>imbalances on their behalf.</p> <p>In most of the cases in Romania, the producers and suppliers enter into agreements with a third-party Balancing Responsible Entity in order to ensure the management of imbalances.</p> <p>Under these conditions, it is recommended that the agreement clearly specifies who is the BRP: the Seller or a designated third party BRP to which the balancing responsibility is or will be delegated.</p>
<b>Negative Price Periods</b>	<p>On the Romanian market, the occurrence of negative market prices of electricity may affect the interests of the parties in the CPPA. Therefore, the parties could wish to adapt the CPPA to protect themselves from the effects of negative prices of electricity.</p>
<b>COMMENTS IN RELATION TO SPECIFIC PROVISIONS OF THE CPPA</b>	
<b>REFERENCE</b>	<b>COMMENTS</b>
<b>PART I SECTION B</b>	
<b>§ 15.1 Definition of Force Majeure</b>	<p>The definition of Force Majeure in § 15.1 appears to be limited to delivery and acceptance obligations affected by a Force Majeure event, however not applicable to the wider obligations under the CPPA.</p> <p>Parties may therefore wish, when selecting Romanian law as a governing law, to widen (or replace) the definition of Force Majeure in Part I Section B § 15.1 with a more comprehensive definition of Force Majeure events.</p> <p>The Romanian Civil Code defines the force majeure as an unforeseeable, unavoidable, insurmountable and external event to the contractual circumstances, which prevents total or partial, temporary or final performance of one or more of the party's obligations.</p> <p>The force majeure events are typically deemed</p>

	<p>those circumstances including, without limitation: war or war-like situation, revolution, earthquake, serious floods, embargo, pandemic situation etc, and excluding any default circumstances or any hardship events.</p>
<p><b>§ 31.2(c) Courts and Arbitration</b></p>	<p>In Romanian law, arbitration procedures are authorised if expressly stipulated by the contract, in accordance with the provisions of article 550 of the Romanian Code of Civil Procedure.</p> <p>The validity of an arbitration clause would depend on the parties' exclusive choice to arbitrate any disputes (if the parties' choice expresses arbitration as an alternative to the common court jurisdictions, the validity of the exclusive jurisdiction of arbitration may be challenged).</p> <p>Furthermore, the clause should expressly provide for the manner of appointing the arbitrators. In the case of institutionalized arbitration, it is sufficient to refer to the institution or rules of procedure of the institution organizing the arbitration.</p> <p>It should be noted that arbitration is very often more expensive than court proceedings before the Romanian courts, however more efficient in terms of the duration of the proceedings.</p> <p>Where there is a choice between courts, it is common to choose the competent courts from the Buyer's headquarters or the competent court in Bucharest.</p>
<p><b>PART II</b></p>	
<p><b>§ 6 Definition of Metering Entity</b></p>	<p>In Romania, the measuring operator is either the TSO (&gt;110kV), the distribution operator (DSO) (less than and 110kV) or the generator owning, by any title, managing and operating an electricity metering system. The TSO is the sole metering operator on the wholesale electricity market in Romania, whilst the DSOs are measurement operators for the retail electricity market.</p> <p>TSO is responsible for the measuring at the</p>

	delimitation points between the electrical networks belonging to different distribution operators at the 110 kV voltage level.
<b>§ 15.3 Right to Refuse Electricity and § 15.4 Right to Refuse Certificates</b>	In Romania, GoOs and any subsidies which were granted to generators (i.e. green certificates to renewable producers or cogeneration bonus granted for high efficiencies cogeneration plants) have been traditionally linked with the quantity of electricity delivered into the grid. From this perspective, there may be a case that these provisions would not be applicable.
<b>§ 15.5 Notification and Mitigation of Force Majeure</b>	In Romania, a force majeure event may be ascertained through a certificate of force majeure issued by the Romanian Chamber of Commerce. This may prove to be efficient as a measure to limit disputes on whether a certain event falls under Force Majeure definition.
<b>§ 15.7 Long Term Force Majeure</b>	Whilst the parties' freedom of choice may be exercised in respect to extension of the Force Majeure duration (provided the effects are continuous), the market practice is that following a long-term event, the parties be entitled to terminate the agreement with no liabilities related to Force Majeure events.
<b>§ 16 Change in Law</b>	Hardship clause (" <i>impreviziunea</i> ") in § 16 of the CPPA stipulates that if a change in circumstances that was unforeseeable upon signature of the contract makes performance excessively expensive for a party (which had not agreed to take on the hardship risk), the latter may claim a renegotiation of the contract. Unlike Force Majeure, the performance is still possible, however has become overly excessive and it cannot be reasonably assumed that the affected party has contractually agreed to such risk. Depending on the degree of impairment of the activity, the parties may negotiate the suspension of performance of the contractual obligations during the application of the extraordinary measures or the corresponding reduction of liabilities.

	<p>In Romanian law, article 1271(2) of the Romanian Civil Code regarding hardship provides that <i>“if the performance of the contract has become excessively onerous due to an exceptional change in circumstances which would make it manifestly unfair to oblige the debtor to perform the obligation, the court may order:</i></p> <ul style="list-style-type: none"> <li>• <i>the amendment of the contract, in order to distribute equitably between the parties the losses and the benefits resulting from the change of circumstances;</i></li> <li>• <i>termination of the contract, at the time and under the conditions it establishes”.</i></li> </ul> <p>However, parties may provide for derogation from the provisions of article 1271 of the Romanian Civil Code.</p>
<p><b>§ 18 Term and Termination Rights</b></p>	<p>In Romanian law, termination of an agreement shall not affect the rights and obligations which become due prior to the respective termination date. Accordingly, the extension of the CPPA validity until all rights and obligations due prior to the Ordinary Termination date, appears to be superfluous.</p> <p>The unilateral termination due to default is regulated under article 1552 of the Romanian Civil Code and is applicable to three limited cases: (i) when the parties have so agreed, the termination may occur through the default notice, (ii) when the debtor is in arrears by operation of the law (<i>“de drept pus în întârziere”</i>), or (iii) when the defaulting party has not fulfilled the obligation within the time limit set by the delay notice (<i>“notificare de punere în întârziere”</i>).</p> <p>For the Early Termination under the CPPA to be effective under article 1552 of the Romanian Civil Code, the parties should declare to have understood and accepted that the defaulting party shall be in delay (in Romanian, <i>“partea in culpa este de drept pusa in intarziere”</i>) upon expiration</p>

	<p>of the term prescribed for the performance of the respective obligation (including performance under the remediation period provided for each exclusive reasons of Material Reason under §18) or by the mere act or omission to comply with a respective obligation, without any other formality being required.</p> <p>In Romanian practice, it is preferable that notices are given in writing (as opposed to being given by phone followed by written confirmation).</p>
<b>§ 18.5(d) Long-Term Force Majeure</b>	<p>The CPPA sets at twelve (12) months the period as from which an event is considered as a Long-Term Force Majeure event, authorising the enforced termination of the contract.</p> <p>This period exceeds practice on the Romanian market, and it may be appropriate to reduce it to six-nine months depending on the project in question.</p>
<b>§ 20.1 Maintenance of Insurance</b>	<p>In Romania, it may be common to ask for insurance cover for the power plant already from its construction stage, and not only from the date of the electricity supply. In this case, § 20.1 should be amended.</p>
<b>§ 21 Limitation of Liability</b>	<p>In light of the general liability principle stipulated in article 1531 of the Romanian Civil Code, any party causing a prejudice to another party is required to repair it in full, without any limit to the liability being stipulated.</p> <p>Thus, it may be appropriate to stipulate a limitation of liability adapted to the project and calculated in accordance with the insurance cover. Any limitation of liability clauses, with the caveat referenced above, should be expressly accepted and acknowledged by the parties ("<i>clauze neuzuale</i>" as provided in article 1203 of the Romanian Civil Code).</p>
<b>§ 21.2 Exclusion of Liability</b>	<p>As a general principle, in Romanian law, the defaulting party is liable for the damages which</p>

	<p>could be foreseen upon entering into the contract, unless the lack of performance is due to “gross negligence or willful misconduct”. Any exclusion of liability for damages caused due to “gross negligence or willful misconduct” is prohibited (article 1355 of the Romanian Civil Code). Any exclusion of liability clauses, with the caveat referenced above, should be expressly accepted and acknowledged by the parties (“<i>clauze neuzuale</i>” as provided in article 1203 of the Romanian Civil Code).</p>
<p><b>§ 22.4 Default Interest Rate</b></p>	<p>In Romania, the legal late interest rate is currently approximately 2% per annum, however the parties are free to agree on any interest rate. If no interest rate is expressly mentioned, the legal late interest rate shall be applicable.</p>
<p><b>§ 30 Representations and Warranties</b></p>	<p>The Romanian law provides for two specific warranties applicable to sale purchase agreements: (i) a general warranty against hidden defects (“<i>garanția contra viciilor ascunse</i>”) and (ii) a general warranty of the seller against any evictions by third parties (“<i>garanția contra evicțiunii</i>”). Nevertheless, the parties are free to agree on any additional guarantees, however the general concept of “warranties” from the common law is not expressly reflected in the Romanian legislation. From this perspective, it may be difficult to enforce any related damages.</p> <p>Similarly, in terms of the representations, this concept is not clearly reflected in Romanian legislation and the potential applicability of similar notions from Romanian law may lead to the contract rescission (“<i>anularea contractului</i>”).</p>
<p><b>§ 32.1 Recording Telephone Conversations</b></p>	<p>One recording private telephone conversations may be held criminally responsible for the offence provided by article 302 paragraph (2) of the Romanian Criminal Code, violation of correspondence, punishable with imprisonment between 6 months to 3 years or a fine. In case of this offence, the recording must be unlawful, without right.</p>

	<p>Paragraph (4) of the same article lists two situations when the recording shall not constitute an offence, i.e.:</p> <ul style="list-style-type: none"><li>• if the perpetrator catches a crime in the act or contributes to providing evidence as to the commission of a crime;</li><li>• if the perpetrator catches acts of public interest, with significance for the life of the community, and whose revelation has public advantages much higher than the damage caused to the injured person.</li></ul> <p>If the person recording a conversation reveals, broadcasts, presents or transmits its content to another person or to the general public (even when he/she became aware of it by mistake or by chance), it shall be punishable with imprisonment between 3 months to 2 years or a fine.</p> <p>In case of certain offences (e.g., money laundering, tax evasion or offences that are punishable with no less than 5 years of imprisonment), recordings made by persons with respect to their own conversations carried out with third parties will represent evidence in the criminal file. The prosecutor may request the judge to issue a warrant for surveillance of the telephone conversations under the conditions set by article 139 paragraph (1) of the Romanian Criminal Procedure Code.</p> <p>Another case is the situation provided by article 89 paragraph (2) of the Romanian Criminal Procedure Code, of a detained or arrested person who has the right to confidentiality of the communication carried out with his/her counsel. The conversations between them cannot be recorded or wiretapped. Evidence obtained in breach of this paragraph shall be inadmissible.</p>
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Please refer to the statements made in relation to the insolvency related termination rights, the application of Automatic Termination and the insolvency related challenge and avoidance rights (§ 18.4 Automatic Termination and § 18.5(b) Winding-Up / Insolvency / Attachment) and to the statements made in relation to the calculation, enforcement and the challenging of the Termination Amount (§ 19 Calculation of the Termination Amount) in the **Romanian Legal Opinion on the EFET General Agreement Concerning Delivery and Acceptance of Electricity**. This Legal Opinion can be procured via [secretariat@efet.org](mailto:secretariat@efet.org).

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