

1 October 2021

EFET¹ comments

on

DRAFT GOVERNMENT EMERGENCY ORDINANCE (G.E.O) FOR AMENDING THE ELECTRICITY AND NATURAL GAS LAW NO.123/2012 AND LAW NO.220/2008 FOR THE PROMOTION OF ENERGY PRODUCTION FROM RENEWABLE ENERGY SOURCES

DRAFT G.E.O. FOR AMENDING THE ENERGY LAW NO.123/2012		EFET proposal for modification of the draft bill	JUSTIFICATION / COMMENTS
Point 27 of the draft G.E.O.	In Article 3, point 38 is amended to read as follows: <i>designated electricity market operator - a market operator designated by the ANRE as per Commission Regulation (EU) 1222/2015 on establishing a Guideline on Capacity Allocation and Congestion Management, to perform tasks related to the single coupling of day-ahead or intraday markets</i>	<i>38. designated electricity market operators - market operators designated by the ANRE as per Commission Regulation (EU) 1222/2015 on establishing a Guideline on Capacity Allocation and Congestion Management, to perform tasks related to the single coupling of day-ahead or intraday markets</i> <i>(PLURAL FORM USED for designated market operators)</i>	In its May 2018 report on NEMO competition, the European Commission notes: "Where monopolies are established, trading opportunities in terms of platforms, innovative products and close to real time trading to allow further integration of renewable sources appear to be more limited." The report does not identify any reason why 9 Member States apply the monopoly NEMO model. Hence, EFET understands that the monopoly model does not have any proper justification, nor is it beneficial for social welfare. As per the EFET response to the CACM revision consultation performed by ACER, having only one license for the NEMO goes against the principle of fair competition between private undertakings as laid out in the Treaty, and of NEMO competition in particular, as laid out in Regulation 2015/1222 (CACM). Therefore, the proposed Romanian legislation should also not allow for the continuation of this national legal monopoly or for the continued refusal to allow cross-border trading by a NEMO designated in another Member State.

¹ The European Federation of Energy Traders (EFET) promotes competition, transparency and open access in the European energy sector. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and a competitive economy. We currently represent more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org.

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		EFET recommends that the national definition of NEMO not be restricted to the singular form, but should allow the designation of several NEMOs, as per the provisions of Regulation 943/2019 and Regulation 2015/1222 (CACM) and its future revisions.	
Point 28 of the draft G.E.O.	<p>In Article 3, after point 38, a new point 38¹ is inserted with the following content:</p> <p><i>electricity market operator - the entity that provides a service through which the offers for the sale of electricity are correlated with the offers for the purchase of electricity ”;</i></p>	<p><i>38¹. electricity market operators - the entities that provide a service through which the offers for the sale of electricity are correlated with the offers for the purchase of electricity.</i></p>	The definition must allow the licensing of several electricity market operators. Also, it must be made clear that intraday and day-ahead markets on which purely internal transactions are performed may be operated by other operators than the NEMOs.
Point 29 of the draft G.E.O.	<p>In Article 3, point 42 is amended, having the following content:</p> <p><i>”42. economic operator in the energy field – any individual or legal entity performing at least one of the following activities: generation, transport, distribution, aggregation, dispatch, storing, supply or purchase of electricity and which has commercial, technical and/or maintenance prerogatives in relation to such activities, save for final clients.”</i></p>	<p><i>”42. economic operator in the energy field – any individual or legal entity performing at least one of the following activities: generation, transport, distribution, aggregation, dispatch, storing, market operation, supply or purchase of electricity and which has commercial, technical and/or maintenance prerogatives in relation to such activities, save for final clients.”</i></p>	The definition is incomplete.
Point 32 of the draft G.E.O.	<p>In Article 3, point 52 is amended to read as follows:</p> <p><i>intra-day electricity market- means the market organized and managed by the designated electricity market operator, which offers market participants the opportunity to improve their portfolio balance for a day of delivery through transactions carried out in</i></p>	<p><i>„52. intra-day electricity market- means the market organized which offers market participants the opportunity to improve their portfolio balance for a day of delivery through transactions carried out in sessions conducted after the completion of transactions on the day ahead market and before the actual start of deliveries, within a certain timeframe The intra-day interzonal coupled market shall be managed by the designated electricity market</i></p>	This definition accommodates the operation of multiple intra-day and day-ahead markets by several market operators.

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<p><i>sessions conducted after the completion of transactions on the day ahead market and before the actual start of deliveries, within a certain timeframe;"</i></p> <p>In article 3, point 53 is amended to read as follows:</p> <p><i>Day ahead market (DAM) - the market organized and managed by the designated electricity market operator for the sale and purchase of electricity on the day of delivery immediately following the trading day; "</i></p>	<p>operators;"</p> <p>53. Day ahead market (DAM) - the market organized for the sale and purchase of electricity on the day of delivery immediately following the trading day. <i>The day ahead interzonal coupled market shall be managed by the designated electricity market operators;</i></p>	
<p>Point 62 of the draft G.E.O.</p> <p>Article 10 (2) is amended to read as follows:</p> <p><i>ANRE issues licenses for:</i></p> <ul style="list-style-type: none"> <i>a) [...]</i> <i>b) [...]</i> <i>c) [...]</i> <i>d) [...]</i> <i>e) electricity market operator</i> <i>f) supply of electricity</i> <i>g) trading of electricity</i> <i>h) aggregation</i> 	<p>Article 10 (2) is amended to read as follows:</p> <p><i>ANRE issues licenses for:</i></p> <ul style="list-style-type: none"> <i>e) electricity market operators and designated electricity market operators.</i> 	<p>Please see observations above.</p>
<p>Point 77 of the draft G.E.O.</p> <p>Article 23 Functioning of the electricity market</p> <p><i>4) in order to allow market participants to</i></p>	<p><i>4) in order to allow market participants to be protected against price volatility risks on a market</i></p>	<p>The definition in Article 23(4) is reprinted exactly as found in Article 3(o) of Regulation 2019/943.</p>

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<p><i>be protected against price volatility risks on a market basis, and mitigate uncertainty on future returns on investment, long-term hedging products shall be tradable on exchanges in a transparent manner and long-term electricity supply contracts shall be negotiable over the counter, subject to compliance with Union competition law</i></p>	<p><i>basis, and mitigate uncertainty on future returns on investment, forward hedging products shall be tradable on exchanges in a transparent manner and forward electricity supply contracts shall be negotiable over the counter, subject to compliance with Union competition law</i></p>	<p>However, ANRE defines long-term contracts as having a duration period of one month or more (ANRE Order 26/2021). Long-term contracts, however, are not defined as such in EU legislation. The definition of ANRE excludes certain products from the “long-term timeframe”, therefore creating an arbitrary and artificial difference between the Romanian and the European wholesale markets. This is not desirable.</p> <p><u>EFET therefore suggests to replace the wording “LONG-TERM” products / contracts, with “FORWARD” products / contracts. This would not leave room for arbitrary changes of this definition by ANRE (long-term products used to be limited to those with a duration of more than one year).</u></p>