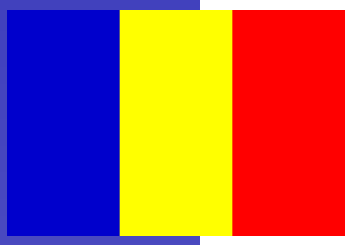


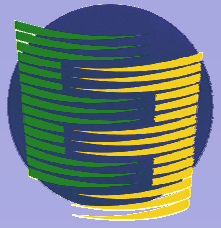
ROMANIA

INVESTMENT CLIMATE

AND

MARKET STRUCTURE

IN THE ENERGY SECTOR



ENERGY CHARTER SECRETARIAT

COUNTRY REPORT

ON INVESTMENT CLIMATE AND MARKET STRUCTURE IN THE ENERGY SECTOR

ROMANIA

REVISED VERSION OF 28 SEPTEMBER 2004

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I. EXECUTIVE SUMMARY

The economic and legal environment of Romania, like those of other transition economies, is constantly adapting and changing to the dynamics of a free market. After a temporary slowdown of the transition process, Romania has made impressive progress towards a full-functioning market economy. The privatisation process has considerably advanced, the banking sector has been reformed, and the energy market is being restructured. Romania has become an attractive location for foreign investors. However, the reforms have not yet considerably reduced the unemployment rate, which remains at 8,1% (as of the end of 2002).

The main challenges that Romania is facing in the reform of the energy sector include de-monopolization and the successful completion of the privatisation process. Measures addressing these issues have already been taken or are currently in the process of implementation. They include, for instance, legislation adopted recently (or in preparation), and the establishment of Regulatory Authorities.

The restructuring and privatisation of the energy sector has advanced substantially. The privatisation of the biggest oil producer "Petrom" is currently under way. According to the National Strategy for Energy Development, it is envisaged to complete the privatisation of the *electricity distribution* sector by 2004, and to privatise 25-40% of *electricity production*. The *transport network* will remain state owned. By restructuring the natural gas sector, the conditions for the initiation of the privatisation process have been established.

In compliance with Government Decision No. 334/2000, S.N.G.N. ROMGAZ. S.A. was divided into five independent state owned companies. By Decision No. 1283/2003, the Government approved the strategy for privatisation of the two state owned natural gas distribution companies (SC Distrigaz Sud SA Bucuresti and SC Distrigaz Nord SA Tg-Mures).

Since 1991, the Romanian legislation has been aiming to attract foreign capital. Accordingly, the legal framework for foreign investors was changed several times with a view to identifying the most suitable and efficient incentives for investors to encourage economic development. The changes resulted in a dynamic and flexible legal framework, which is easily adaptable to the market demands and the current needs of the business environment.

Taking into account that the energy sector represents a strategic infrastructure of the national economy on which the overall development of the country relies, and that the Government of Romania is committed to further support this sector, this Report identifies specific issues concerning the development of market mechanisms and structural reform in the energy sector. The Government of Romania is also closely observing the implementation of the energy policy of the country, aiming at developing a competitive domestic energy market capable of being integrated into the European energy market.

The Report emphasizes issues like:

- Romania's macroeconomic situation as well as the latest economic developments (2002);
- Legislative Framework for: foreign investment, protection of competition, taxation, bankruptcy, environmental protection, establishment of enterprises, electricity, natural gas, oil;
- The organisation and regulation of the energy sector in Romania (concessions, prices and tariffs, production in the electricity, natural gas, oil, mining sectors);
- The market structure, including monopolies and the privatisation process in the energy sector.

II. CONCLUSIONS ADOPTED BY THE CHARTER CONFERENCE

The Energy Charter Investment Group reviewed the present country report (together with the ICMS-Report of Armenia) at its meeting on 13-14 May 2004. It agreed upon a number of policy conclusions with regard to these reports that were subsequently approved by the Charter Conference on 15 June 2004. These conclusions read as follows:

The Charter Conference,

Having heard the report from the Investment Group with respect to the Reports on Investment Climate and Market Structure from Armenia (ICMS-16 – in-depth review) and Romania (ICMS-17)

WELCOMED

The new procedure of in-depth ICMS-Reports prepared by the Secretariat, which can significantly contribute to further increase the quality of reviews, and which should therefore be conducted more frequently in the future;

NOTED

a) That the reviews have shown progress in the legislative framework, in particular by adopting a number of energy-related laws and regulations, enhanced transparency and further steps towards restructuring and privatisation of the energy sector in the reviewed countries.

b) That the reviews have helped to clarify the existence and content of a number of non-conforming measures in accordance with Article 10 (5) of the Treaty, resulting in the modification of one non-conforming measure in the "Blue Book"

c) In particular, with respect to:

Romania

- Acknowledged the considerable progress of Romania towards a full-functioning market economy as reflected in its recent macroeconomic performance, and its increasing attractiveness for foreign investors;

- Welcomed the efforts of the Romanian authorities to establish an open and non-discriminatory legal framework for foreign investment, and the recent legislative changes facilitating the acquisition by foreigners of real estate, resulting in a narrowing of the only existing exception that Romania maintains in the "Blue Book";

- Noted that further steps need to be taken to improve the investment climate, in particular with regard to reducing the high level of bureaucracy and other administrative barriers for foreign investors, the fight against corruption, and private sector development;

- Welcomed the "National Strategy for the Energy Development" and the "Energy Road Map" of the Romanian authorities aiming at the establishment of a more commercial, transparent and cost-reflective environment in the energy sector that is integrated into the European market, and where prices be formed in free competition between a diversity of suppliers and customers;

- Acknowledged that the "Energy Road Map" has set up a timetable for the liberalisation of the electricity and natural gas markets in conformity with the acquis communautaire of the European Union, and that the Romanian authorities intend to complete the privatisation of the electricity distribution sector by 2004, while encouraging the Romanian authorities to privatise the electricity production sector to a larger extent than currently intended (25-40%);

- Encouraged the Romanian authorities to accelerate the further opening of the internal natural gas market, and to move ahead with the privatisation of the existing state companies in the gas distribution and supply sector;

- Encouraged the Romanian authorities to complete the privatisation of the state-owned oil company "Petrom S.A." without delay.

III. INTRODUCTION

1. General

Romania is located in the Southeast part of Central Europe, inside and outside the Carpathians range, on the lower course of the Danube (1.075 km), with exit to the Black Sea (coast line 194 km.). The total length of the boundaries is 3149,9 km. Its area is 238,391 sq. km, ranking 12th in Europe and 81st in the world. Romania's neighbours are: Hungary in the West (4480 km); the Republic of Moldova in the Northeast and East (681.3 km); Ukraine in the North and East (649.4 km); Bulgaria in the South (631.3 km); and Serbia and Montenegro in the Southwest (546.4 km). Total population is 21,794,793 (as of 1 July 2002), with a density of 91.4 inh./sq.km.

Figure: Map of Romania

Romania's population structure by nationality consists of Romanians – 89.5%; Hungarians – 6.6%; Germans – 0.3%; Ukrainians – 0.3%; Jews – 0.04%; and others – 3.26%. About 8.2 million Romanians live outside the country. The urban population represents 53.2% of the total.

The climate is temperate – continental, which is typical for Central Europe. There are local differences caused by altitude and by slight oceanic (in the West), Mediterranean (in the Southwest) and continental (in the East) influences. The extreme temperatures are: in winter -24^0 C, in summer 39^0 C. The mean annual temperature is 11^0 C in the South, and 8^0 C in the North. Main annual rainfalls total 637 mm, with higher values in the mountains (over 1000 mm/year), and lower values in the Baragan Plain (500 mm/year), Dobrogea and Danube Delta (400 mm/year).

According to the Constitution approved in 2003, Romania is a Republic. The capital is Bucharest, which is situated in the South of the country in the Romanian plain. From an administrative point of view, Romania is divided in 41 counties and the capital, 268 towns and 2,698 communes. The main cities – besides Bucharest - are: Constanta (310,012 people); Timisoara (308,765 people); Iasi (303,714 people); Galati (302,810 people) and Craiova (300,487 people).

The domestic currency is the leu (1 leu = 100 bani). One Euro equals 40,809 lei (as of 16 April 2004).

2. Macroeconomic situation

Table 1 Macroeconomic indicators

Indicators	M.U.	1997	1998	1999	2000	2001	2002
1. GDP	ROL bill	252,925.7	371,193.8	539,356.9	796,533.7	1,167,242.8	1,512,256.6
1.1 Annual rate	%	-6.1	-4.8	-2.3	1.6	5.7	4.9
1.2 GDP deflator	annual %	247.3	154.2	148.7	145.4	137.4	123.5
1.3 GDP/capita	ROL thou./pers	11,218.2	16,495.4	24,018.9	35,511.3	52,089.5	69,695.7
2. Final consumption	ROL bill.	218,619.8	334,672.4	470,164	687,938.2	994,206.5	1,250,333.8
2.1 Annual rate	%	-4.3	1.1	-4.4	1.7	6.1	3.0
2.1 Share in GDP	%	86.4	90.2	87.2	86.4	85.2	82.7
3. Gross fixed capital formation	ROL bill	53,540.1	68,111.6	97,169.8	147,209.6	238,977.5	319,645.1
3.1 Annual rate	%	1.7	-5.7	-4.2	5.5	9.2	8.3
3.2 Share in GDP Annual rate	%	21.2	18.3	18.0	18.5	20.5	21.1
4. Industrial output[1)]	%	-7.2	-13.8	-2.2	8.2	8.4	6.0
4.1 Industrial producer prices[1)]	%	152.7	33.2	42.2	53.4	41.0	*) 24.7
5. Agricultural output[1)]	%	3.1	-7.6	5.5	-14.1	22.7	**…**
6. Domestic trade[)]							
6.1 Retail sales[*1)] share of	%	-12.1	20.6	-6.4	-3.8	1.9	0.8
private sector	%	81.9	90.6	93.2	94.6	97.5	….
6.2 Commercial services	%	-20.5	-11.7	1.0	-7.6	-5.6	-10.6
delivered to population[1)]	%	62.9	54.2	67.6	77.6	87.7	
share of private sector							
7. Foreign trade							
7.1 Exports fob, total	USD (mil)	8,431.1	8,302.0	8,487.0	10,366.0	11,385.0	13,868.8
7.2 Imports fob, total	USD (mil)	10,411.4	10,926.6	9,744.0	12,050.0	14,354.4	16,482.1
7.3 Balance	USD (mil)	-1,980.3	-2,624.6	-1,257.0	-1,684.0	-2,969.4	-2,613.3
7.4 Coverage of imports through imports	%	81.0	76.0	87.1	86.0	79.3	84.1
8. Balance of the current account	USD (mil)	-2,137.0	-2,968.0	-1,469.0	-1,363.0	-2,223.0	-1,573.0
9. Foreign debt	USD (mil)	8,584.3	9,322.6	8,770.7	10,200.8	11,924.5	15,084.0
10. Gross international reserves	USD (mil)	4,670.9	3,791.7	3,653.6	4,842.2	6,380.6	8,392.3
10.1 NBR of which:	USD (mil)	3,061.0	2,299.1	2,492.9	3,387.9	4,861.2	7,305.9
gold	USD (mil)	867.5	924.3	966.6	920.0	938.7	1,180.2
hard currency	USD (mil)	2,193.5	1,374.8	1,526.3	2,469.7	3,922.5	6,125.7
10.2 Banks	USD mil	1,609.9	1,492.6	1,160.7	1,452.5	1,519.4	1,086.4
11. Net average nominal wage and salary earnings[1)]	%	51.9	64.9	46.1	2) 52.3	41.2	28.5
11.1 Net average real wage and salary earnings[1)]	%	9.5	3.6	0.2	4.5	4.9	4.9
12. Inflation rate							
12.1 Average[2)]	%	154.8	59.1	45.8	45.7	34.5	22.5
12.2 End of period	%	151.4	40.6	54.8	40.7	30.3	17.8

13. State budget							
Revenues	ROL (bn)	43,864.5	67,215.5	93,230.3	120,343.2	148,203.1	179,205.5
expenditures	ROL (bn)	52,896.6	77,616.6	106,886.7	149,169.3	184,012.2	226,823.6
deficit(-), surplus (+)	ROL (bn)	-9,062.1	-10,401.0	-13,656.3	-28,827.1	-35,809.1	-47,618.1
13.1 % of state budget balance in GDP	%	-3.6	-2.8	-2.5	-3.6	-3.1	-3.1
14. Foreign assets in convertible currencies including gold							
gross	ROL bill	40,143.4	42,499.7	68,333.7	127,977.7	204,530.8	284,628.2
net	ROL bill	15,935.3	16.162.1	41,380.8	92,911.7	168,511.7	238,923.5
15. Exchange rate on forex market							
15.1 ROL/USD[3)]	ROL/USD						
annual average		7,167.94	8,875.55	15,332.93	21,692.74	29,060.9	33,055.5
end of period		8,023.00	10,951.00	18,255	25,926	31,597.0	33,500.0
15.2 ROL/EUR [4)]	ROL/EUR						
annual average		8,090.92	9,989.25	16,295.57	19,955.75	26,026.9	31,255.2
end of period		8,897.00	12,788	18,330.76	24,117.66	27,881.2	34,918.7

Source: National Institute of Statistics, National Office of Trade Register, Ministry of public Finance and National Bank of Romania

1) Annual change; 2) average level of current year compared to average level of previous year; 3) Reference exchange rate until March 11, 1997; 4) ECU until December 1998.
*) except for motorcars and motorcycles starting 1998, included under sale, maintenance and repair of cars and motorcycles, retail trade of car fuels.

3. Overview of the macroeconomic situation

In 2002, Romania achieved the best macroeconomic performance of the transition period. The objectives of the 2002 Economic Programme were accomplished, and many of them even outperformed:

- GDP growth, originally forecast at 5 % and subsequently revised to 4.7 %, reached 4.9 %, one of the highest rates among the EU applicant countries;
- The inflation rate, as measured by the consumer price index, stood at 17.8 %, well beyond the inflation target of 22 %;
- The deficit of the consolidated general government budget amounted to 2.6 % of GDP, bellow the originally planned level of 3 %, subsequently revised to 2.9 %;
- The current account deficit in the balance of payments decreased to 3.4 % of GDP, compared to the projected level of 4.9 %;
- Official reserves amounted to more than USD 7.3 billion, well above the original target of USD 6.1 billion, and already reaching the level projected for the end of 2004 under Romania's Medium Term Economic Strategy. Moreover, foreign exchange reserves were, for the first time ever, optimal in terms of covering the required months for the import of goods and services;
- The unemployment rate dropped from 8.8 % in December 2001 to 8.1 % in December 2002, notwithstanding an incidental increase in early 2002.

In 2002, the developments in the macroeconomic indicators mirrored the progress in most economic fields. GDP growth remained robust in spite of bad weather affecting agriculture and forestry. The external sector improved, and net imports dropped to a 5.8 % share of GDP - from 7.8 % in the previous year. Disinflation continued for a third consecutive year, and resulted in curbing the annual inflation rate by 12.5 % as compared to 2001.

4. FDI Development

Foreign direct investment evolved unequally in Romania in the past 12 years (1991 - 2002) - a development, which was influenced by internal factors (legal and institutional framework, content of the privatisation programme) and external factors (evolution of the financial markets in the area, different conflicts in the region, development of the economic cycle in the main developed countries).

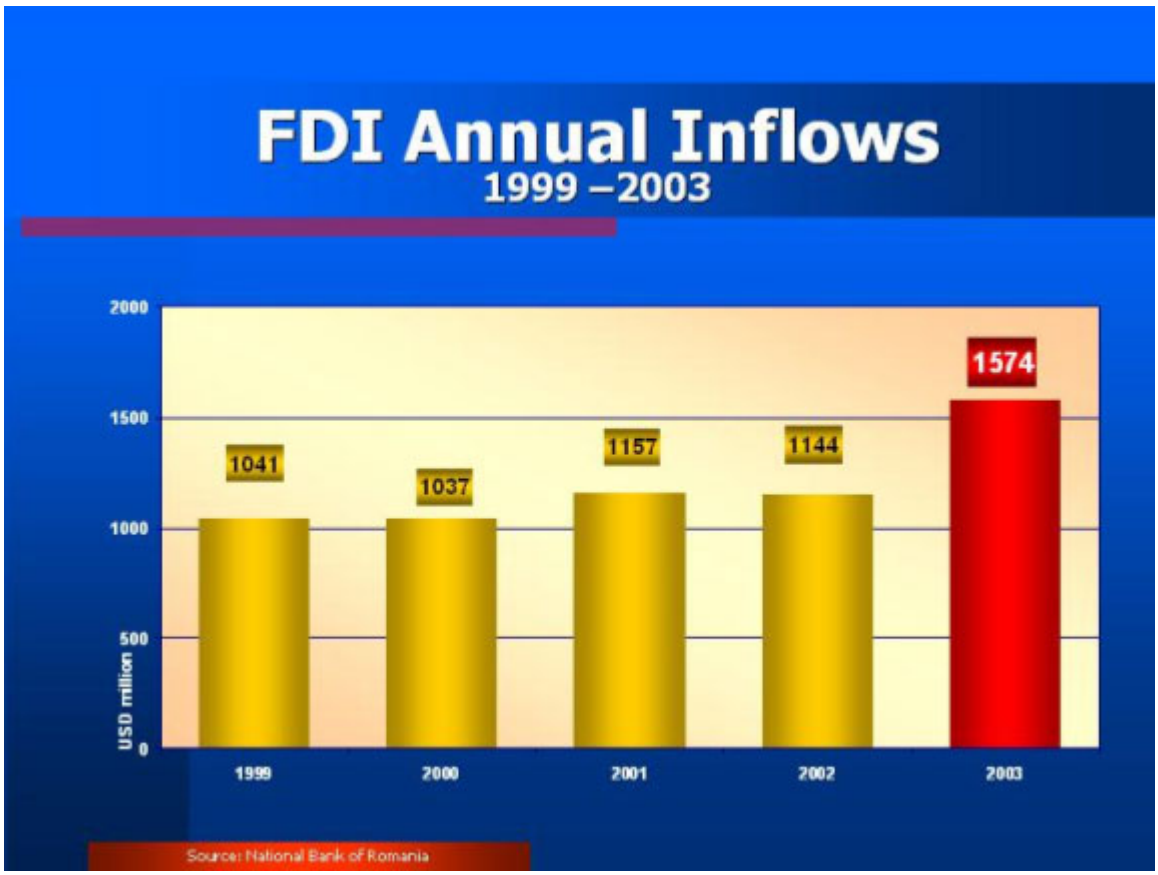
Foreign direct investment reached a total of almost 1.1 billion USD in Romania in 2002, and several foreign investment projects of large value have been negotiated and finalised. Most investments were realised in: trade – 16.77%, services – 13.54%, chemical and petrochemical industry – 8.34%, food industry – 8.38%, construction and construction materials – 7.74%, and wood and paper industry – 7.09%. As concerns the value of the investments, the most important sectors were: telecommunications – 19.97%; energy – 15.24%; metallurgy – 11.54%; and trade – 9.87%.

Table 2 FDI in individual sectors

No.	Sector	No. of investments	Value of investments USD
1	Agriculture	2	5,031,632
2.	Wood and paper	11	108,055,068
3.	Construction and construction materials	12	39,682,298
4.	Food industry	13	26,508,216
5.	Light industry	5	40,457,461
6.	Chemical and petrochemical industry	13	106,244,719
7.	Energy	9	192,738,173
8.	Pharmaceutical industry	8	35,077,631
9.	Metallurgy	6	145,915,095
10.	Automobiles manufacture	10	71,710,716
11.	Electronics and electrotechnics	4	19,002,000
12.	Telecommunications	8	252,623,660
13.	Tourism	4	6,351,644
14.	Trade	26	124,817,417
15.	Services	21	82,374,193
16.	Others	2	7,950,582
	Total	**155**	**1,264,840,505**

According to the statistical data provided by the National Bank of Romania, inward FDI amounted to USD 1.574 bn in 2003, compared to USD 1.141 bn in 2002. This means an increase of 37.6 %. 2003 was actually the first year since 1999, in which FDI inflows showed a significant increase.

Table 3 FDI Annual Inflows



Starting in 1991, the Romanian legislation aimed to attract foreign capital. Accordingly, the legal framework for foreign investors was changed several times with a view to identifying the most suitable and efficient incentives for investors to encourage economic development. The changes resulted in a dynamic and flexible legal framework, which is easily adaptable to the market demands and the current needs of the business environment. The maximum amount of the incentives granted by the Romanian legislation for each investment project should not exceed the maximum levels stipulated by the EU competition rules.

The positive trend in the evolution of FDI reflects an improvement of the business climate in Romania, which makes the country more attractive to foreign investors. In addition, the finalisation of the process of land restitution supports greenfield investments, the development of industrial parks, and clarifies the legal situation of network utilities. Other significant elements to attract new investment include the granting of incentives to foreign investors, the elaboration of policies for local authorities aiming at attracting and encouraging foreign investment, the raising of domestic capital and the general development of economic relations.

The annual average of FDI inflows during the last 13 years (1991-2003) amounted to USD 803 million. The total amount of inward FDI stock exceeded USD 10 billion, reaching USD 10.433 billion by the end of 2003. Thereby, one of the objectives of the Romanian government for 2001-2004 was accomplished. As compared to 2000 (USD 6.558 billion), the total amount of FDI stock increased by 59 %. Romania is the only country in the region that succeeded to attract more than USD 10 billion.

5. The energy sector

The energy sector represents a strategic infrastructure of the national economy on which the overall development of the country depends. The safe, reliable and efficient functioning of the energy sector is crucial for the Romanian economy. In addition, energy is a public utility with an important social impact. This is why a coherent and economically viable strategy for the energy sector is a fundamental prerequisite for the fulfilment of the national objectives of sustainable growth and eradication of poverty.

Against this background, the Romanian energy policy aims to introduce more commercial mechanisms and a more competitive environment, where the prices be formed in free competition between a diversity of suppliers and customers. The latter should gradually be free to purchase energy from suppliers of their choice. Furthermore, a transparent and stable market mechanisms surveyed by independent regulating authorities and market operators is needed**.**

In developing a competitive domestic energy market, Romania is closely observing the energy policy of the European Union with a view to establishing an integrated European market.

The oil and gas sub-sector of Romania contribute approximately 11 % to GDP, while the domestic demand for coal decreased amid the turnaround in output of hydroelectric power plants. The supply by electricity, heating, natural gas and water was 1.7 % lower in 2002 than in the previous year. Nevertheless, the total output of the energy sector increased by 1.8 % in the same period.

IV. LEGISLATIVE FRAMEWORK FOR FOREIGN INVESTMENT IN THE ENERGY SECTOR

1. Investment-related Legislation

1.1. Overview

According to the Romanian Constitution, international treaties ratified by Romania are part of its internal law. In case of any inconsistencies between the national legislation and the above-mentioned international treaties, the international treaties shall prevail.

Rights and Guarantees for Non-Residents

Foreign investors benefit from:

- The right to transfer abroad without any restriction, after paying the due legal rates and taxes, the following incomes in hard currency:
    - the dividend or profit obtained by a company a Romanian legal person - in case they are shareholders or partners;
    - the incomes obtained by a partnership type of association, as well as the incomes resulting from selling the shares or social parts;
    - the amounts obtained from company liquidation, according to the Company Law No. 31/1990 and its amendments, or from company

liquidation according to the Bankruptcy Law No. 64/1995 and its amendments;
- the amounts obtained as compensations against expropriation or any other equivalent measure;
- other incomes, according to the investment type.

- The right to enjoy the most favourable treatment, provided either by the Romanian legislation or agreement for mutual guarantee of investments, or another law.

***The most important investment-related laws in Romania are**:*

- Law No. 35/1991 on the Regime of Foreign Investments;
- Government Emergency Ordinance No. 92/1997 on the Encouragement of Direct Investment, amended and approved by Law No. 241/1998;
- Law No. 332/2001 on the Promotion of Direct Investment with Significant Impact on the Economy;
- Law No. 133/1999 on the Establishment and Development of Small and Medium-Sized Enterprises;
- Fiscal Code - Taxation of Small Enterprises;
- Government Emergency Ordinance No. 24/1998 on Disadvantaged Zones;
- Law No. 84/1992 on the Legal Regime of Free Economic Zones;
- Law No. 490/2002 on the Approval of Government Ordinance No. 65/2001 on the Establishment and Operation of Industrial Parks;
- Government Ordinance No. 14/2002 on the Establishment and Operation of Scientific and Technological Parks;
- The Law on the Oil Sector No. 134/1995 - as revised;
- Government Ordinance No. 116/1998 on the Activity of Maritime International Transport - as revised;
- Concession Law No. 219/1998.

1.2. Selected Policy Areas

1.2.1. Establishment of enterprises

<u>Types of business entities</u>

Business activities in Romania may be carried out either by individuals, performing acts of commerce as their profession, or by legal entities, which according to their incorporation documents have the capacity to engage in such activities. The main categories of business entities stipulated by the regulations in force are:

- Commercial companies;
- Regii autonome;
- Economic interest groups and the European economic interest groups;
- Individuals and family associations.

Commercial companies

Types of commercial companies

Commercial companies may be categorized according to several criteria, the most important being nationality and legal form.

Nationality of commercial companies

Romanian law determines the nationality of a company depending on the territory where that company has its registered offices. Therefore, commercial companies incorporated and having their registered offices in Romania will have Romanian nationality, irrespective of the nationality of its shareholders. Similarly, companies seated abroad will be regarded as having foreign nationality.

Legal form of commercial companies

When incorporating a company in Romania, its founders may theoretically choose between five types of companies:

- The unlimited guarantee collective company ("societate în nume colectiv");
- Limited partnership ("societate în comandita simpla");
- Limited stock partnership ("societate în comadita pe actiuni");
- Joint stock company ("societate pe actiuni");
- Limited liability company ("societate cu raspundere limitata").

Practically, however, the choice is most likely to be between joint stock companies and limited liability companies, these two forms being the most popular for Romanian and foreign investors.

Registration

Requirements prior to registration

Shareholders

The shareholders of a commercial company may be both individuals and legal entities, regardless of their nationality. The capacity to establish a company is conditional on the fulfilment of certain legal requirements. Individuals should not have been declared legally unfit, incapable or liable of any criminal offence such as: breach of trust, forgery, use of forgery etc, while legal entities should have been legally registered and be operating in the country where they have their main registered office. Joint stock companies should have at least 5 shareholders, with no restriction as to the maximum number of shareholders. Limited liability companies may be established by one to 50 shareholders.

An individual or legal entity may be a sole shareholder of only one limited liability company, and a limited liability company may not have as sole shareholder another limited liability company with sole shareholder.

Registered capital

The registered capital of joint stock companies must not be less than ROL 25,000,000. Upon incorporation, each shareholder must pay at least 30% of the subscribed share capital, while the remaining 70 % may be paid within 12 months from the company registration date. The registered capital is represented by shares issued by the company, which may be either registered or bearer shares. Registered shares may be issued in both material and dematerialized form, in the latter case being registered in the account of the shareholder and in the shareholders registry. The face value of one share may not be less than ROL 1,000.

The registered capital of limited liability companies may not be less than ROL 2,000,000. It is divided into shares of equal value, whose value may not be less than ROL 100,000 each.

Registered office

A company must establish its headquarters on premises that are appropriate for its activity. Registration of a commercial company under fictional location such as a post office box or the establishment of fictional headquarters is not acceptable under Romanian law.

Current legislation allows companies to establish branches or secondary units, agencies, subsidiaries, working points etc. on Romanian territory or abroad. Article 8, paragraph 1, of Government Ordinance no. 75/2001 regarding the organization and operation of the fiscal record, as amended by Law no. 410/2002, provides that upon establishment of a company the presentation by its shareholders and legal representatives of a fiscal record certificate is mandatory.

Registration procedures

The procedure for registering a company involves registration and authorization formalities with the trade registry. These formalities are carried out with the Sole Bureau, which is currently organized and subordinated to the Ministry of Justice.

In view of incorporation, the following approvals should be obtained, as the case may be:

- Fire prevention and extinction authorization;
- Sanitary authorization;
- Sanitary-veterinary authorization;
- Environment authorization;
- Labour protection authorization.

Depending on the complexity of the company activity, the above-mentioned authorizations will be released based on a statement on the legal representative’s own responsibility, or based on special documentation, including both written documents and drawings presenting the main characteristics of the company activity.

The duration for a commercial company registering and authorizing procedures is legally set to last 20 days.

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Foreign companies carrying out activities in Romania

Foreign companies may carry out activities in Romania by means of contracts concluded with Romanian business partners, by setting up subsidiaries on the Romanian territory or by opening secondary offices such as branches, agencies or representative offices.

Subsidiaries

Foreign companies may establish Romanian subsidiaries in one of the forms provided by the law. The Romanian subsidiaries of foreign companies are deemed to be Romanian legal persons and in principle will enjoy the same rights as companies set up by Romanian nationals, including the right to own land.

Branches

Branches are corporate entities with no legal status, established by Romanian or foreign companies subject to registration with the competent trade registry. The legal status of the branch applies to any other secondary office (agency, working points, etc.) established as branch by the foreign parent company.

Representative offices

Representative offices are established and operate in accordance with the provisions of the Decree-Law no. 122/1990. Foreign companies and economic organizations may open representative offices in Romania, subject to approval by the Ministry of Economy and Trade ("MET").

Upon registration, the operation authorization of the agency is issued, stipulating, inter alia, the following:

- The activity object;
- The terms and conditions for carrying out the activity;
- The duration and headquarters of the representative office.

Regii autonome

Regii autonome, which means in English "public utility companies", are industrial and commercial establishments belonging to the State or local public authorities, which are set up according to Law no. 15/1990. Regii autonome are organized and designed to operate in strategic sectors of the national economy, such as defence industry, energy, mining, natural gas exploitation, post and railway transportation, as well as in certain areas belonging to other sectors established by the Government. According to law, the *regii autonome* may operate and manage public property assets within the scope of their statutory activities.

Most *regii autonome* have already been or are about to be reorganized as commercial companies, according to Government Emergency Ordinance no. 30/1997. Reorganization is carried out based on restructuring plans drafted by the relevant ministries or by central or local public administration authorities under whose subordination the regii autonome are organized and operate. *Regii autonome* are reorganized as joint stock companies, according to the legal provisions in force on their reorganization date. The joint stock companies

resulting from reorganization, acting in sectors of national interest are called national companies, and are subject to the privatisation process.

Economic Interest Groups

The economic interest group has been introduced in Romanian legislation by Law no. 161/2003. The rules of registration and functioning are therefore to a certain extent similar to those applicable to commercial companies. The economic interest group is an association with legal status and business purpose, between two or several entities or individuals, incorporated for a fixed duration, aiming to promote and develop the economic activity of its members.

The group's activity must relate and be ancillary to the economic activity of its members. The economic interest groups acquire legal status as of their registration with the trade registry.

The management body of the economic interest group is the general meeting of its members and the control body, made-up of one or several directors. The economic interest group may not aim to obtain profit. If, according to the annual financial statements, profit is generated by the group's activity, such profit must be fully apportioned between the members of the group, as dividends, in the quotas provided by the constitutive act or, in the absence of such clause, the profit shall be equally distributed. Should the expenses exceed the income of the group, the balance will be covered by its members in the quotas provided by the constitutive act or, in the absence of such clause, in equal quotas.

European Economic Interest Groups

European economic interest groups are recognized in Romania provided that they comply with the conditions provided under Romanian law, namely Law no.161/2003, the provisions of which are mostly inspired by the European Council Regulation (EEC) no.2137/85 of 25 July 1985 on the European Economic Interest Groups.

The European economic interest group is an association between two or more entities or individuals, constituted for a definite or indefinite period of time, aiming to promote or develop the economic activity of its members.

Any of the following may be members of a European economic interest group:

- Companies or entities, in the meaning of Article 165, paragraph 2, of the consolidated version of the European Community Treaty as well as other entities governed by public or private law, established under the law of a European Union member state, and having their registered office on the territory of a European Union member state. If a company, firm or other entity is not obliged to have a registered or statutory office under the law of a member state, it is sufficient for such a company, firm or other entity to have its central management in the European Union.
- Individuals carrying out an industrial, commercial, craft or agricultural activity or providing professional or other services on the territory of a European Union member state.

The European economic interest group must comprise at least:

- Two companies, firms or other entities, having the central management of their statutory activity located in different member states;
- Two individuals, which carry out their activity in different European Union member states; or
- A company, firm or other entity, whose central management of its statutory activity is located in a European Union member state, and an individual who carries out its principal activity in another European Union member state.

The European economic interest group is constituted pursuant to an association contract called constitutive act, and it is recorded in a special register designated to such purpose by the member state on whose territory the group establishes its central office.

The European economic interest groups may establish branches in Romania, as well as subsidiaries, representative offices and other units with no legal status. The annual income of a European economic interest group is subject to taxation under the income tax provisions provided for representative offices opened in Romania by foreign companies and economic organizations.

Individuals and family partnerships

Romanian citizens or nationals of one of the European Union member states or of the other states pertaining to the European economic area may perform business activities on the Romanian territory, in an independent manner, or may set up family partnerships under the terms and conditions of the Romanian law.

Individuals and the family partnerships may be authorized to perform economic activities in any sector, profession or occupation, except for those activities, which are subject to special legislation or legally prohibited. The authorization will be issued by the mayor of the village, town, city or of the relevant district of Bucharest, where the applicant domiciles or where he/she resides, in case of applicants domiciled abroad. Pursuant to the authorization, the individuals and family partnerships are bound to register with the trade registry and with the local fiscal authorities. In carrying out their statutory economic activity, individuals and family partnerships are not allowed to employ third persons under a labour contract, which in fact seriously limits the scale of their business operations. Performance of un-authorized economic activities constitutes a criminal offence.

1.2.2. Real Estate

The Romanian Constitution guarantees the right of property to all natural or legal persons. Pursuant to the newly adopted Constitution of 2003, foreign natural and legal persons may purchase and own land on conditions resulting from the integration of Romania in the European Union, in accordance with other applicable international treaties, on a mutual basis, or in other cases stipulated by law or through legal legacy. Following this legislative change, the Romanian authorities have suggested to narrow the existing Romanian exception in the “Blue Book” accordingly (see attachment).

1.2.3. Protection of competition

Since Romania's main political goal is to become a member of the European Union, the Romanian authorities acknowledge that harmonization of the national legal framework with the European legislation is an imperative part of the integration process. Accordingly, the Romanian legislation on competition was drafted in accordance with the most modern European legal systems. Starting in 1996, the Competition Law and various subsequent regulations were passed inspired by the corresponding European legislation. Recently, the Competition Council issued several new regulations and instructions.

The main regulations in the field of competition are:

- Competition Law No. 21/1996 ("Law No. 21/1996");
- Law No. 11/1991 on Unfair Competition, as amended and completed by Law No. 298/2001 ("Law No. 11/1991");
- Regulation of the Competition Council, enforcing the provisions of Art. 5 and 6 of the Competition Law No. 21/1996 regarding anti-competitive practices ("Regulations on anti-competitive practices")
- Regulation of the Competition Council, enforcing the provisions of Art. 5 par. (2) of the Competition Law No. 1/1996 in case of vertical agreements ("Regulation on exemptions granted for certain vertical agreements");
- Regulation of the Competition Council on the authorization of economic concentrations ("Regulation of economic concentrations");
- Instructions of the Competition Council, enforcing Art. 5 of the Competition Law No. 21/1996 in case of horizontal cooperation agreements.

Art. 5 (1) of the Law No. 21/1996 prohibits any explicit or tacit agreements between companies or associations of companies, any decisions of association or any concerted practices between them, which unduly restrict or threaten to restrict competition.

However, there is the possibility for the agreements, decisions of association or concerted practices to be legally exempted from the prohibition of Art. 5 (1) of the Law No. 21/1996, if the following conditions are cumulatively met:

- Positive effects prevail over the negative ones or compensate the restriction of competition;
- An advantage consistent with the one achieved by the parties of the agreement, decision of association or concerted practices, is ensured to beneficiaries and consumers;
- Possible restrictions of competition are essential for obtaining the intended advantages, while no unwarranted restrictions are imposed on the parties;
- The agreement, decision of association or concerted practice does not bestow the possibility of the parties to eliminate competition from a substantial share of the targeted product or services market;
- The agreement, decision of association or concerted practice contributes significantly to:
    - An improvement of production;

- An encouragement of technical progress;
- An improvement of product quality;
- A durable practice of substantially reduced prices for the consumers;
- An increase of the competitiveness of Romanian products on the international market.

Exceptions, such as those listed above, are granted by means of negative clearance by the Competition Council (for individual cases of agreements, decision of association or concerted practice), or by block exemptions for the categories of agreements, decisions of association or concerted practices, as stipulated by the regulations and subsequent instructions issued by the Competition Council concerning the application of Law No. 21/1996.

1.2.4. Taxation

The Fiscal Code (Law 571/2003) regulates the following levies and taxes: Profit tax, income tax, tax on small enterprises, tax on revenues obtained in Romania by non-residents, tax on representative offices, value added tax, excise tax, and local taxes and duties.

Profit Tax

The current profit tax rate is 25%.

Taxable subjects

Taxable subjects include:

- Romanian legal persons;
- Foreign legal persons carrying out activity through a permanent establishment in Romania;
- Foreign legal persons and non-resident natural persons carrying out activity in Romania in an association without legal personality;
- Foreign legal persons realizing incomes from/or in connection with immovable property located in Romania or from the sale-assignment of participation titles in a Romanian legal person;
- Resident natural persons associated with Romanian legal persons, for incomes realized both in Romania and abroad, from associations without legal personality. In this case, the tax payable by the natural person is to be computed, withheld and remitted by the Romanian legal person

The profit tax applies as follows:

- In the case of Romanian legal persons, to the taxable profit obtained from any source, both from Romania and from abroad;
- In the case of foreign legal persons carrying out activity through a permanent establishment in Romania, to the taxable profit attributable to the permanent establishment;
- In the case of foreign legal persons and non-resident natural persons carrying out activity in Romania in an association without legal personality, to the portion of the taxable profit of the association attributable to each person;

- In the case of foreign legal persons realizing incomes from/or in connection with immovable property located in Romania or from the sale-assignment of a participation title in a Romanian legal person, to the taxable profit related to such incomes;
- In the case of resident natural persons associated with Romanian legal persons realizing incomes both from Romania and from abroad, from associations without legal personality, to the portion of the taxable profit of the association that is attributable to the resident natural person.

Taxation of foreign legal entities

Foreign legal entities carrying out activities through permanent headquarters in Romania owe tax on the income attributable to the respective permanent headquarters, within the amounts established by law.

Income Tax of Individuals

The following persons are subject to income tax according to the present title and are hereafter referred to as *taxpayers*:

- Resident natural persons;
- Non-resident natural persons carrying out independent activity through a permanent establishment in Romania;
- Non-resident natural persons carrying out dependent activity in Romania;
- Non-resident natural persons obtaining incomes provided in Article 95.

The tax in the present title, which is hereafter referred to as *income tax*, applies to the following incomes:

- In the case of Romanian resident natural persons, with domicile in Romania, incomes obtained from any source, both from Romania and from outside Romania;
- In the case of resident natural persons, other than those provided in the above paragraph, only incomes obtained from Romania, which are taxed at the level of each source from the categories of incomes provided in Article 41;
- In the case of non-resident natural persons carrying out independent activity through a permanent establishment in Romania, the net income attributable to the permanent establishment;
- In the case of non-resident natural persons carrying out dependent activity in Romania, the net salary income from such dependent activity;
- In the case of non-resident natural persons obtaining incomes described in Article 39, paragraph d), the income determined in accordance with the rules of the present title that correspond to the respective category of income.

The categories of incomes that are subject to the income tax as provided by the provisions of the present title are the following:

- Incomes from independent activities;
- Incomes from salaries;
- Incomes from the grant of the use of goods;

- Incomes from investments;
- Incomes from pensions;
- Incomes from agricultural activities;
- Incomes from prizes and from gambling;
- Incomes from other sources. In this category are included, but are not limited, the following incomes:

    - Insurance premiums borne by an independent natural person or any other entity, within an activity for a natural person in connection to whom the bearer does not have a relationship generating incomes from salaries according to chapter III of the present title;
    - Gains received from insurance companies as a result of the insurance contract concluded between the parties on the occasion of "trageri de amortizare";
    - Incomes received by natural persons pensioners in the form of differences of price for certain goods, services and other rights, former employees, according to clauses of labour contracts or on the basis of special laws;
    - Incomes received by natural persons that are fees from activities of commercial arbitration.

The annual tax schedule for the fiscal year 2004 for the computation of anticipatory payments is provided in the following table:

Annual Taxable Income (ROL)	**Annual Tax (ROL)**
Up to 28,000,000	18%
28,000,001 – 69,600,000	5,184,000 + 23% of the amount over 28,800,000 ROL
69,600,001 – 111,600,000	14,568,000 + 28% of the amount over 69,600,000 ROL
111,600,001 – 156,000,000	26,328,000 + 34% of the amount over 111,600,000 ROL
Over 156,000,000	41,424,000 + 40% of the amount over 156,000,000 ROL

The monthly schedule for the determination of the monthly tax on incomes from salaries and pensions is to be established by an Order of the Minister of Public Finance and has the annual schedule above as the base of computation.

Indirect Taxes

The main categories of indirect taxes in the Romanian fiscal system are the value added tax, the excises and customs duties:

Value Added Tax (VAT)

The standard rate of value-added tax is 19%. It applies to the base of taxation for any taxable operation that is not exempt from the value-added tax or that is not subject to the reduced rate of value-added tax.

Excises

Mineral oils for which excises are due are:

- Leaded petrol within C.N. Codes 2710 11 31, 2710 11 51 and 2710 11 59;

- Unleaded petrol within C.N. Codes 2710 11 41, 2710 11 45 and 2710 11 49;
- Gas oil within C.N. Code 2710 19 41, 2710 19 45 and 2710 19 49;
- Heavy fuel oil within C.N. Codes 2710 19 61, 2710 19 63, 2710 19 65 and 2710 19 69;
- Liquid petroleum gas within C.N. Codes 2711 12 11 up to 2711 19 00;
- Methane gas within C.N. Code 2711 29 00;
- Kerosene within C.N. Codes 2710 19 21 and 2710 19 25;
- Benzene, toluene, xylenes and other mixtures of aromatic hydrocarbons within C.N. Codes 2707 10, 2707 20, 2707 30 and 2707 50.

Customs Duties

Romania is a member of the World Trade Organisation (WTO), the Central European Free Trade Agreement (CEFTA) and the General System of Customs Preferences (GSCP). Romania also signed association agreements with the EU, and is a signatory of the European Free Trade Agreement (EFTA). The agreements of association to the EU, as well as the CEFTA and EFTA agreements provide for a gradual reduction of the customs duties until their full elimination.

The custom duties are applied to imported goods, and the applicable rates are specified under the Import Customs Tariff of Romania. The customs duties are expressed in percentages and are applied to the customs value of the goods, denominated in ROL, and valid on the date the import customs declaration is registered.

Treaties on the avoidance of double taxation

The above-mentioned taxation quotas are not applicable when the taxpayer is resident in a country with which Romania has concluded a treaty on the avoidance of double taxation, the provisions of which shall prevail. To this purpose, the income beneficiary shall submit to the Romanian fiscal authorities a fiscal residence certificate, issued by the fiscal authority from the country of residence, which should attest that the respective taxpayer is resident of the respective state and that the provisions under the treaty on the avoidance of double taxation are applicable.

Up to now, Romania has concluded 74 treaties on the avoidance of double taxation with the following countries:

Albania (Law no. 86/1994); Algeria (Law no. 25/1995); Armenia (Law no. 121/1997); Austria (Law no. 254/1978); Australia (Law no. 85/2001); Bangladesh (Law no. 221/1987); Belarus (Law no. 102/1998); Belgium (Law no. 82/1977 and Law no. 126/1996); Bosnia and Herzegovina (Law no. 331/1986); Bulgaria (Law no. 5/1995); Canada (Law no. 418/1979); Czech Republic (Law no. 37/1994); China (Law no. 5/1992); Cyprus (Law no. 261/1982); Croatia (Law no. 127/1996); Denmark (Law no. 389/1977); Ecuador (Law no. 111/1992); Egypt (Law no. 316/1980); Finland (Law no. 61/1978 and Law no. 201/1999); France (Law no. 240/1974); Georgia (Law no. 45/1999); Germany (Law no. 29/2002 and Law no. 625/1973); Greece (Law no. 23/1992); Hungary (Law no. 91/1994); India (Law no. 221/1987); Indonesia (Law no. 50/1998); Ireland (Law no. 208/2000); Israel (Law no. 39/1998); Italy (Law no. 82/1977); Jordan (Law no. 215/1984); Japan (Law no. 213/1976); Kazakhstan (Law no. 11/2000); Kuwait (Law no. 5/1993); Latvia (Law no. 606/2002); Lebanon (Law no. 10/1996); Lithuania (Law no. 278/2002); Luxembourg (Law no. 85/1994); Malaysia (Law no. 482/1983); Malta (Law no. 61/1996); Macedonia (Law no.

306/2002); Morocco (Law no. 404/1982); Mexico (Law no. 331/2001); Moldova (Law no. 60/1995); Namibia (Law no. 61/1999); Netherlands (Law no. 316/1980 and Law no. 85/1999);Nigeria (Law no. 10/1993); Norway (Law no. 67/1981); North Korea (Law no. 104/2000); Pakistan (Law no. 418/1979 and Law no. 212/2000); Philippines (Law no. 23/1995); Poland (Law no. 6/1995); Portugal (Law no. 63/1999); Russia (Law no. 38/1994); South Africa (Law no. 59/1994); South Korea (Law no. 18/1994); Singapore (Law no. 475/2002); Syria (Law no. 40/1988); Slovakia (Law no. 96/1994); Slovenia (Law no. 55/2003); Spain (Law no. 418/1979); Sri Lanka (Law no. 149/1985); Sweden (Law no. 432/1978); Switzerland (Law no. 60/1994); Thailand (Law no. 3/1997); Tunisia (Law no. 326/1987); Turkey (Law no. 331/1986); Ukraine (Law no. 128/1996); United Arab Emirates (Law no. 74/1993); United Kingdom (Law no. 26/1976); U.S.A (Law no. 238/1974); Uzbekistan (Law no. 26/1997); Vietnam (Law no. 6/1996); Yugoslavia (Law no. 122/1997); Zambia (Law no. 215/1984).

1.2.5. Accounting

The Romanian accounting system has undergone major changes in the last decade. The beginning of the accounting reform was marked by the passing of the Accountancy Law No. 82/1991, and taken one step further, starting on 1 January 1994, when the former accounting system was replaced by the Generally Accepted Accounting Principles (GAAP), more related to the French accounting system.

The Ministry of Public Finances is currently involved in harmonizing the Romanian accounting system with the European Union Directives and the International Accounting Standards (IAS). To this end, new accounting regulations have been approved recently. In 2001, the Order No. 94/2001 of the Ministry of Public Finances on Accounting Regulations achieved harmonization with the 4th Directive of the European Communities and the International Accounting Standards. Furthermore, the following regulations have been passed:

- Law No. 82/1991 on the Accounting System, republished, as further amended by Government Ordinance No. 65/1994 on the Organization of Expert Accountants and Chartered Accountants, as further amended and completed
- Government Emergency Ordinance No. 75/1999 on Financial Audit Activity, and Order No. 94/2001 of the Ministry of Public Finances on Accounting Regulations, harmonized with the 4th Directive of the European Communities and with the International Accounting Standards.

Activities regulated by the accounting legislation

Accountancy, as activity specialized in measuring, assessing, learning, managing and controlling a company's own assets, debts and capitals, as well as the results obtained from the activity performed by the above mentioned individuals and legal entities, should provide for chronological and systematic recording, processing, publication and preserving of the information regarding the financial status, performances and financial flows, both for their internal needs, as well as for their business relations with current and future investors, financial and commercial creditors, clients, public institutions and other users.

Using the International Accounting Standards will allow Romanian companies to communicate in an international language, generally recognized and understood by all

investors. At the same time, an appropriate degree of implementation of the International Accounting Standards and of a strict financial audit, is expected to substantially strengthen investor confidence and, consequently, to sustain capital investments.

International Accounting Standards

The accounting regulations harmonized with the 4th Directive of the EU and the International Accounting Standards are to be applied as of 2002 by legal entities meeting any of the two following criteria:

- Turnover exceeding 9 million Euro;
- Cumulated assets exceeding 4.5 million Euro;
- Average number of employees: at least 250.

The following legal entities are exempted from applying the said regulations:

- Legal entities undergoing a process of merging with legal entities not complying with the criteria above;
- Legal entities undergoing a liquidation process.

1.2.6. Bankruptcy

Currently, judicial reorganization and bankruptcy procedures are regulated in Romania in line with modern standards. They are based on the following two significant commercial principles for any free market economy:

- The attempt to save the company through reorganization, and commencement of liquidation procedures only in case reorganisation fails;
- The organization of the bankruptcy proceedings in a manner enabling all creditors to recover their receivables.

Main regulations

- Law No. 64/1995 on Judicial Reorganization and Bankruptcy Procedure, republished, as further amended and completed ("Law No. 64/1995");
- Law No. 83/1998 on Banking Bankruptcy Procedure, as further amended and completed ("Law No. 83/1998");
- Law No. 637/2002 on the Settlement of International Private-Law Relations concerning Insolvency ("Law No. 637/2002").

Entities and individuals subject to judicial reorganization and bankruptcy procedures

- Individuals who perform economic activities under the provisions of Law No. 507/2002 on Economic Activities performed by Individuals.
- Consumers' cooperatives and craftsmen's cooperatives, as well as their regional associations organized in accordance with Decree-Law No. 66/1990 on the Organization of Craftsmen's Cooperatives and Law No. 109/1996 on the Organization and Functioning of Consumers' and Credit Cooperatives.

- Corporate entities organized and carrying out business in accordance with Company Law No. 31/1990, including subsidiaries of foreign companies.

The current regulations are inapplicable to state-owned companies for which the Government has set up or will set up special financial monitoring procedures (over the periods when they are subject to such procedures), and to the "regies autonomes" (for which a special procedure applicable in case of insolvency is instituted by law).

Law No. 64/1995 sets up the mandatory conditions, which need to be cumulatively met in order to start the bankruptcy procedure and the procedures for debtors who are not able to pay their dues. The bankruptcy procedure becomes applicable in the following cases:

- The debtor expressed the wish to enter bankruptcy or did not express the intention to reorganize its activity and none of the persons in charge proposed a reorganization plan;
- The debtor wished to reorganize its activity, but did not propose a reorganization plan or the plan proposed was not accepted, and none of the persons in charge proposed another reorganization plan, or none of the plans proposed by such persons was accepted.

There are several stages which are to be observed in a bankruptcy procedure starting with the identification of debts and creditors, followed by the liquidation and the distribution of the amounts obtained from liquidation. The main stages of the bankruptcy procedure are as follows:

- Lifting the debtor's right to administer its property and sealing the debtor's assets, with a view to put together and preserve an inventory;
- Establishing liabilities: drawing up the list of creditors, the list of debtor's assets and the profit-and-loss account for the year prior to the date of filing the bankruptcy application, verifying the creditors' claims and drawing up the list of claims, settlement by the judge of any objections, drawing up and posting the final chart of the debtor's liabilities;
- Carrying out of liquidation: sale of the debtor's assets by auction or by direct sale (wholesale or retail), payment of taxes, stamp duties and all sale-related expenses, payment of secured creditors (the secured creditors are such creditors who have mortgages, pledges, or retention rights on debtor's assets);
- Distributing the amounts resulting from liquidation: covering the expenses related to the liquidation procedure, drawing up the final report and balance sheet by the liquidator, settlement of the objections thereof and approval of the same by the judge and final distribution of the debtor's funds;
- Closing the liquidation process, upon the liquidator's request, conveyed in a decision of the syndic judge.

1.2.7. Environmental Protection

Starting in 1995 when the Law No. 137/1995 was passed, regulations on environmental protection have been one of the Romanian legislative priorities in view of its integration

process into the European structures. The current regulations are based on several legal principles, generally recognised in this area, such as:

- The "polluter pays" principle;
- Establishment of an integrated national monitoring system; and
- Priority in removal of polluting agents seriously threatening public health.

Main regulations

- Law No. 137/1995 as re-published, on Environmental Protection ("Law No.1995");
- Law No. 107/1996 on Water Protection ("Law No. 107/1996");
- Emergency Government Ordinance No. 243/2000 on Atmosphere Protection ("EGO No. 243/2000");
- Government Decision No. 573/2002 on the Approval of the Authorization Procedures for the Operation of Corporate entities ("GD No. 573/2002");
- Emergency Government Ordinance No. 78/2000 on Waste Regime ("EGO No. 78/2000");
- Order No. 184/1997 on the Approval of Environmental Balance Procedure ("Order No. 184/1997");
- Law No. 111/1996, republished, on Nuclear Activities Performance ("Law No. 111/1996").

Authorization of activities having an impact on the environment

Law No.137/1995 provides for the obligation of individuals and legal entities to apply for the issuance of an environmental permit or authorization in case they perform or intend to perform an activity having an impact on the environment. The law expressly lists the economical and social activities deemed to have such an impact. The authorization procedure is public.

1.2.8. Intellectual property

Romanian legislation on intellectual property is generally in line with the world standards in the sector, although some further improvements need to be made. Moreover, beginning with the Paris Convention on the Protection of Industrial Property, dated 20 March 1883, and the Berne Convention on the Protection of Literary and Artistic Work, dated 9 September 1886, Romania gradually adhered to almost all the international conventions on intellectual property, both to those administered by the World Intellectual Property Organization ("WIPO") and by other organizations. Presently, Romania, a founding member of the ("WIPO"), is a signatory of almost all the international conventions binding the EU associated-states or the members of the World Trade Organization ("WTO").

Main regulations

- Law No. 64/1991 on Patents, as republished ("Law No. 64/1991");
- Law No. 16/1995 on Integrated Circuit Topography Protection ("Law No. 16/1995");
- Law No. 129/1992 on Industrial Designs, as further amended and completed ("Law No. 129/1992");
- Law No. 84/1998 on Geographic Trademarks and Indications ("Law No. 84/1998");

- Government Ordinance No. 41/1998 on Industrial Property Protection Taxes, as further amended ("GO No. 41/1998");

Competent Authorities

State Office for Inventions and Marks ("OSIM")

The OSIM is the sole Romanian authority meant to ensure the protection of industrial property in accordance with the national legislation and international treaties to which Romania is a party. OSIM has, among others, the following main powers:

- To record and examine applications in the field of industrial property;
- To issue protection titles granting exclusive rights on the Romanian territory to their holders;
- Is the depositary of the national registers of intellectual property protection;
- Submits applications for protection titles granted for inventions, trademarks, geographic indications, industrial designs, integrated circuit topographies, new plant breeds, etc.

1.2.9. Investment Protection, including expropriation

The Romanian legislation provides national treatment to foreign investors. Non-resident investors benefit from the same rights as any domestic investor. There is no limit on the foreign participation in companies; a foreign investor may establish or acquire 100 percent of the shares in a Romanian enterprise. The capital of a foreign investor may take many forms, including foreign currency, equipment, services, rights of intellectual property, know-how and management expertise and the proceeds and profits from other businesses in Romania. Romanian legislation also provides guarantees against nationalization and expropriation, and other similar measures.

The present legislation is based upon general principles, according to which any investor, foreign or local, benefits from:

- The freedom of investment forms and methods;
- The possibility of investing in any field and under any juridical form provided by the law;
- Fair, equal and non-discriminatory treatment;
- The guarantees against nationalization, expropriation or any other measures with similar effect;
- The right to benefit from customs and fiscal incentives set forth by the law (see below);
- The right to obtain assistance in filing administrative formalities;
- The right to own movable and immovable assets, except land which may only be acquired by Romanian natural or legal persons;
- The right to chose the competent court or arbitration authorities to settle potential investment-related disputes.

The investment protection is guaranteed by Law No 241/1998 on the Encouragement of Direct Investment, and Law No 35/1991 on the Foreign Investment Regime. Article 4 describes the guarantees and incentives from which the investors benefit. The Romanian Constitution – Article 44, paragraph 3, on "Rights to Private Property", stipulates that nobody may be expropriated unless it is for a public utility cause, established by law and against payment of any damage caused.

Law No 35/1991 on the Foreign Investment Regime stipulates that foreign investment in Romania must not be nationalised, expropriated or submitted to any other similar measures unless it is in a public interest purpose, respecting the procedures provided by law. Law No 241/1998 on the Encouragement of Direct Investment stipulates that foreign and domestic investors, residents or non-residents, are equal before the Romanian law.

Dispute Settlement

Non-resident investors may choose settling their disputes with the Romanian State under the procedures provided by any of the following:

- Law no. 29/1990 on Administrative Disputes, with due application of Law no.105/1992 on Private International Law Relationships;
- The Washington Treaty on the Settlement of Investment Disputes Between States and Nationals of Other States, of 18 March 1965 (the "ICSID Convention"), ratified by Romania through Decree no. 62/1975;
- UNCITRAL/CNUDCI Rules of Arbitration.

***The Romanian Agency for Foreign Investments (ARIS*)**

ARIS has been established by Law no. 390/2002 with a view to supervise the coherent implementation of the State policy on promoting and attracting foreign investments and assisting foreign investors in identifying the opportunities offered by the investment environment in Romania. The new institution has taken over and unified the competences of various former bodies, which previously used to cater the needs of non-resident investors.

Incentives

Romania grants the following investment incentives:

- The right too transfer abroad all the due profits, according to Romanian currency requirements, after payment of taxes and settlement of other obligations provided by the Romanian law;
- The right to transfer abroad, in the currency in which the initial investment had been made, in accordance with the currency regulations in Romania, any proceeds obtained by selling shares or from terminating the investment;
- The right to transfer abroad, in the initial investment currency, any proceeds obtained as compensation for the expropriation of the investment, or for measures with equivalent effect.

New investments made by 1 January 2005 benefit from a deduction for tax purposes of 20% of their value. For new investments made by 1 January 2005 the accelerated depreciation may be applied subject to prior notification to the local fiscal authority.

These incentives are granted to investors for the whole period of existence of the investment. Should the investment comply with the conditions required in order to benefit from more than one regime of incentives granted under various laws, the investor may choose only one incentives regime to apply to its investment.

According to Art. 1 of Law no. 332/2001, these incentives are granted to investments exceeding USD 1,000,000 and having a substantial impact on the economy, provided that they contribute to the development and modernization of the Romanian business infrastructure and determine a positive economic stimulus and the creation of new jobs.

Furthermore, in order to benefit from the provisions of the Law no. 332/2001, investments must cumulatively meet the following conditions:

- They should be made in cash, either in ROL or in hard currency;
- They should be performed within 30 days from the date of their registration for statistic purposes with the Ministry of Administration and Internal Affairs;
- They should not conflict with the environmental protection regulations;
- They should not violate the Romanian national security and defence interests;
- They should not damage the public order, public health and public moral.

1.2.10. Concessions

Law no. 219/1998 deals with regulating and organizing the concession system for assets publicly or privately owned by the State, or by a county, a town or a commune, as well as for public activities and services of national or local interest.

In compliance with the provisions of Law no. 213/1998, the public ownership rights on the assets that, according to the law or by their nature, are of public interest or use, belong to the State or to the local administrative units. The ownership right over public property assets may not be transferred. However, private investors may operate such assets under concession contracts.

The following commodities, public activities or services in the following fields can be licensed:

- Public transports;
- Highways, bridges and road tunnels with passage fee;
- Road, railway infrastructure, harbours and civil airports;
- Construction of new hydropower stations and their use, including those that are mothballed;
- Post services;
- Frequency spectrum and telecommunication distribution networks;
- Economic activities related to natural and artificial river flows, water sewage works and their pending installations, hydrological meters, weather forecast and water quality devices and fisheries;
- Publicly owned grounds, beaches, quays and free zones;
- Electricity and heat distribution and transmission networks;
- Transmission networks through pipes and oil and fuel gas distribution pipes;

- Public transport and distribution networks for drinkable water;
- Turning to good account of mineral ores and solid and fluid substances;
- Turning to good account of thermal springs;
- Natural resources of the economic sea zone and that of the continental plateau;
- Sports bases, past-time places, professional institutions for shows;
- Health entities, their sections or laboratories as well as the auxiliary medical services;
- Economic activities connected with exhibiting historical monuments and sites;
- Collecting, depositing and turning to good account of wastes;
- Any other goods, activities or public services that are not forbidden by special organic laws.

Goods, public activities or services that have no regulating authority with compulsory rules for licensees regarding prices and tariffs cannot be objects of concession. The Government, county or local councils can approve the concession of other goods, activities or services that are the private property of the state.

Further information concerning the issue of concessions and licences is included in section IV. below.

1.3. International Agreements

1.3.1. Bilateral Investment Treaties

Romania has concluded bilateral agreements on the promotion and protection of foreign investment with the following countries:

Albania (Law no. 107/1994); Algeria (Law no. 110/1994); Argentina (Law no.39/1994); Armenia (Law no. 38/1995); Austria (Law no. 34/1997); Australia (Law no. 6/1994); Azerbaijan (Law no. 682/2003); Bangladesh (Law no. 221/1987); Belarus (Law no. 93/1995); Belgium and Luxembourg (Law no. 8/1997); Bolivia (Law no. 39/1996); Bosnia and Herzegovina (Law no. 620/2001); Bulgaria (Law no. 106/1994); Canada (Law no. 6/1997); China (Law no. 8/1995); Chile (Law no. 94/1995); Cuba (Law no. 58/1997); Czech Republic (Law no. 62/1994); Cyprus (Law no. 30/1993); Denmark (Law no.7/1995); Ecuador (Law no. 12/1997); Egypt (Law no. 5/1997); Finland (Law no. 113/1992); France (Law no. 88/1995); Georgia (Law no. 113/1998); Germany (Law no. 125/1997); Greece (Law no. 166/1997); Hungary (Law no. 63/1994); India (Law no. 158/1998); Indonesia (Law no. 8/1998); Iran (Law no. 442/2003); Israel (Law no. 59/1999); Italy (G.D. no.319/1991); Yugoslavia (Law no. 38/1996); Jordan (Law no. 110/1995); Kazakhstan (Law no. 9/1997); Kuwait (Law no. 90/1993); Latvia (Law no. 433/2002); Lebanon (Law no. 28/1995); Lithuania (Law no. 82/1994); Macedonia (Law no. 146/2001); Malaysia (Law no. 25/1997); Mauritius (Law no.213/2000); Mongolia (Law no. 57/1996); Morocco (Law no. 61/1994); Moldova (Law no. 3/1994); Netherlands (Law no. 114/1994); Nigeria (Law no. 116/1999); Norway (G.D. no. 659/1991); North Korea (Law no. 12/2001); Pakistan (Law no. 4/1996); Paraguay (Law no. 115/1994); Peru (Law no. 105/1994); Philippine (Law no. 108/1994); Poland (Law no. 109/1994); Portugal (Law no. 92/1994); Russia (Law no. 81/1994); Slovakia (Law no. 97/1994); Slovenia (Law no. 64/1996); Spain (Law no. 63/1995); Sri Lanka (Law no.342/1981); Sweden (Law no. 651/2002); Switzerland (Law no. 40/1994); South Korea (Law no. 55/1997); Turkey (Law no. 10/1992); Thailand (Law no. 7/1994); Turkmenistan (Law no. 37/1995); Tunisia (Law no. 58/1996); Ukraine (Law

no. 54/1995); United Kingdom (Law no. 109/1995)U.S.A. (Law no. 110/1992); Uruguay (Law no. 38/1991); United Arab Emirates (Law no. 94/1993); Uzbekistan (Law no. 59/1997); Vietnam (Law no. 8/1995); Qatar (Law no. 11/1997).

1.3.2. Membership in international organisations

Romania is a member of the following international organisations:

- World Trade Organisation (WTO);
- United Nations Organisation (UNO);
- North Atlantic Treaty Organisation (NATO);
- European Council;
- Energy Charter;
- Organisation for Security and Co-operation in Europe (OSCE);
- Black Sea Bank for Trade and Development (BSBTD);
- European Council's Development Bank (ECDB);
- International Fund for Agricultural Development (IFAD);
- International Monetary Fund (IMF);
- World Bank Group (WBG);
- Central European Free Trade Agreement (CEFTA);
- Central European Initiative (CEI);
- Southeast European Stability Pact (SEESP);
- Black Sea Economic Co-operation Organisation (BSECO).

1.4. Exceptions to the Principle of National Treatment

Romania currently maintains one exception in the "Blue Book" concerning the acquisition of real estate by foreign investors. The Romanian authorities have suggested narrowing this exception as a result of recent legislative changes (see Annex I).

2. Organisation and Regulation of the Energy Sector

2.1. Overview

In order to speed up the reforms and prepare the Romanian energy sector for integration in the EU internal energy market the Government of Romania adopted "The National Strategy for Energy Development on Medium Term 2001 – 2004" (published in Official Journal No. 444/07.08.2001). The main aims of this strategy, fully in line with those of the EU, are (1) to ensure security of supply, (2) competition in the energy sector and (3) environmental protection. The Strategy identifies the following priorities and objectives of Romania's energy policy:

- Consolidating a stable and transparent energy regulatory framework;
- Accelerating the restructuring and privatisation of the generation and distribution companies;
- Gradually increasing the opening of the electricity and natural gas markets in order to enhance competitiveness in the energy sector;
- Improving the pricing methodologies for electricity and natural gas by independent regulatory authorities;

- Improving environment protection in the energy sector;
- Advancing the construction of the Unit 2 of Cernavoda Nuclear Power according to the schedule for 2001-2004;
- Setting up a market for energy services, capable of providing high quality and security of energy supply, efficient use of energy and environmental protection;
- Pursuing and developing international co-operation; paying special attention to projects aiming at ensuring inter-connection with the international energy networks and mainly with those of the EU.

The Strategy was extended in 2003 by the elaboration of the long-term strategy paper covering the period until 2015 titled "Energy Road Map of Romania" (adopted by Government Decision No. 890/29.07.2003). The "Road Map" also establishes the main actions to be taken in the energy sector in order to enhance competitiveness for integration into the EU Internal Energy Market. The aim of the "Road Map" is to stimulate the investors´ interest in the privatisation process by ensuring a stable legal framework, which will allow for a clear business planning in the long term, and by promoting non-discriminatory regulations for the pricing and functioning of the market in order to increase transparency.

The "Road Map" provides for measures for restructuring and privatisation of the energy sector in order to set up a competitive environment. In order to reach this aim the "Road Map" stipulates:

- A timetable for the liberalisation of the electricity and natural gas markets in conformity with the new acquis communautaire in this area (Directive 2003/54/ EC concerning common rules on the Internal Market in Electricity, and Directive 2003/55/CE concerning common rules on the Internal Market in Natural Gas), leading to a fully opened market by 1 January 2007 for non-household customers, respectively 1 July 2007 for all customers;
- A timetable for decommissioning of the non-viable heating power plants;
- Measures regarding Romania's participation in the regional electricity market.

Based on the Strategy and the "Road Map" the regulatory framework has been developed and improved, the restructuring process has been accelerated and the privatisation process has continued.

The main legislation in the energy sector includes:

- Electricity Law No. 318/2003 ("Law No. 318/2003");
- Law No. 326/2001 on Public Community Services, subsequently completed and amended ("Law No. 326/2001");
- Government Ordinance No. 73/2002 on the Organization and Operation of the Public Services for Thermal Power Supply produced at a Centralized Level ("GO No. 73/2002");
- Law No. 199/2000 on Efficient Energy Use, republished ("Law No. 199/2000");
- Law No. 111/1996, on the Safe Performance of Nuclear Activities, with subsequent amendments, republished ("Law No. 111/1996");
- Oil Law No. 134/1995, with subsequent amendments ("Law No. 134/1995");
- Government Ordinance No. 60/2000, regulating the Activities in the Natural Gas Sector, approved by Law No. 463/2001 ("GO No. 60/2000");

- Mining Law No. 85/2003 ("Law No. 85/2003").

2.2. The Electricity Law and related Regulations

Law No. 318/2003 (the Electricity Law) regulates the activities in the energy sector regarding electric power production, transport, distribution and supply, the operation of the electric power market, as well as the construction and exploitation of relevant installations, and the import and export of electricity.

According to this Law, the national energy strategy is set forth by the Government, after consultation with non-governmental organisations, and is approved by law. The competent ministry elaborates the national energy policy and ensures its fulfilment by exercising the following main powers:

- Drafting programs and plans for the implementation of the Government policy in the electricity sector, including energy efficiency plans and plans for the promotion of regenerative energy sources;
- Drafting bills or enactments for the energy sector;
- Drafting the program for the constitution of safety fuel stocks and export promotion programs;
- Endorsing the relevant labour protection norms together with the Ministry of Labour, Social Solidarity and Family.

The Electricity Law states that the access to the network is regulated. According to the provisions of this law, Romania already applies the regulated third party access.

The National Energy Regulatory Authority (ANRE) is the competent authority in the *electricity and heating sector* – an autonomous public institution of national interest, with legal personality and under the control of the competent ministry. According to Government Decision No 567/1999, its activity is fully financed from extra-budgetary incomes, obtained from tariffs for licenses and the granting of authorizations, as well as from contributions of international bodies or legal entities.

ANRE has, inter alia, the following powers:

- To issue mandatory norms and instructions regarding the operation of the electro energetic system, as well as authorizations and licenses stipulated by Law No. 318/2003;
- To set up the tariffs applicable to constrained consumers and the tariffs used by electricity entities, as well as the calculation methodologies required for the set up of prices and tariffs;
- To supervise the enforcement of specific electricity regulations;
- To issue regulations for the efficient and transparent functioning of the national energetic system;
- To issue authorizations and licenses for the economic operators in the electricity and heating sector;
- To establish the methodology for calculating the prices and tariffs applicable to the natural monopoly activities in the sector;

- To approve the standard framework contracts between the economic operators in the energy sub-sectors of selling, acquisition, transport, dispatching and distribution of electricity and heating to the end consumers;
- To approve the power transit contracts through the national energetic system, upon proposal of Transelectrica SA.

2.2.1. Production, transportation, distribution and supply

Production of electricity

Electric and thermal power production is undertaken by business entities with domestic or foreign capital, licensed according to the law. Energy may also be produced by self-producers. A self-producer is an entity that, besides its main basic activities, produces by own means the electric power necessary mainly for its own consumption. Self-producers may participate in the energy market as licensed producers and suppliers or as consumers.

The main obligations of the electricity producers are as follows:

- Ensure the electric power supply in compliance with the licenses, contractual clauses and regulations in force;
- Offer the entire electric power available, as well as technological services under non-discriminatory conditions;
- Maintain satisfactory fuel/water (as the case may be) reserves in order to comply with its obligations of continuous production and supply of electricity;
- Comply with the operational requirements of the transport and system operator and establish its own levels of operative management.

Electricity producers have mainly the following rights:

- To have access to the electric networks of public interest according to the law;
- To obtain passage for their own electric lines;
- To trade the electric power and technological services of the system on the regulated and competition market;
- To establish and maintain their own telecommunication systems for the connection to their production units, consumers or the operative management levels.

Electricity transportation

Electricity transportation is carried out by the transportation and system operators - legal persons holding a license. The transportation and system operators must draft prospect transportation plans, in compliance with the present stage and future trends of energy consumption and sources. These plans must include the relevant financial sources and the means to realise investments in transportation installations, taking into account the territorial planning applicable to the areas covered by their transport installations. The plans are subject to endorsement by the competent authority - ANRE - and to approval by the relevant ministry.

The electricity transportation network (network with nominal voltage of more than 110 kV) is of national and strategic interest. It is therefore in State property, including the land on which it is placed. The transportation and system operator provides the service of public

transportation for all transportation network users under non-discriminatory conditions, and ensures access to transportation networks to any applicant meeting the requirements of Law No. 318/2003.

Electricity distribution

Distribution represents the transmission of electricity through distribution networks from the transport networks or from producers to consumer installations. The power distribution networks are developed in compliance with the urbanism plans, rights in real property, environmental protection, health and life of individuals and energy saving principles and regulations, according to the technical and safety norms included in the technical prescriptions.

Distribution operators are licensed entities, having the following main powers:

- To ensure users' access, under technical connection conditions;
- To operate, upgrade, rehabilitate and develop electric distribution networks, observing the technical regulations in force;
- To ensure the operative management in accordance with the distribution license;
- To perform works for the development of electric distribution networks through optimum development programs, based on perspective studies, upon consultation, as the case may be, with the transportation operator and through specific upgrading programs for installations.

Electricity supply

Electricity supply and use represents an activity by which a licensed legal entity sells energy to interested customers. The contract concluded between the supplier and customer for this purpose should include at least the minimal clause established by the competent authority in standard contracts set forth for different customers. In this respect, Law No. 318/2003 regulates two consumer categories:

- Eligible consumers: the consumer that may choose the supplier and conclude a contract for necessary power supply, directly with the producer, having access to the transportation and/or distribution networks; and
- Constrained consumers: the consumer, who due to technical, economic or regulatory reasons cannot choose its supplier.

Consumers may not transfer or further sell the electric power to other consumers, unless the consent of the supplier and the distribution operator has been obtained.

Suppliers are liable for all damages caused to the consumer due to their fault, under the conditions set up by the supply contract. The supplier is entitled to recover the damages caused to the consumers by the distribution operator, the transport and system operator or the producer.

2.2.2. Prices and tariffs

The necessary costs required for the operation of the companies in the field of electric power production, processing, transportation, distribution and trading as well as the

development and environmental protection costs are covered by the electric power prices. The prices and tariffs for electric power may include the cost of the units and services financed by the entities aiming at the reduction of power and fuel consumption at the consumer-end level, which represents a feasible option meant to avoid unfounded costs in order to build new energy sources or networks.

As regards electric power produced and sold on the domestic market, the following price and tariff categories are applied:

- The prices resulting from the competitive market mechanisms;
- Regulated tariffs for co-generated thermal energy;
- Regulated tariffs for electricity transportation and distribution services, which are deemed as natural monopoly activities;
- Regulated tariffs for electricity supply to Constrainedconsumers;
- Regulated tariffs to ensure technological services until the creation of a competitive market;
- Regulated tariffs for transformation and interconnection services;
- Regulated tariffs for network connection;
- Tariffs used by the transportation and system operator and by the electricity market operator for the services provided to market participants.

ANRE establishes prices and tariffs for electricity to constrained consumers, based on its methodologies and on the following principles:

- Consumer protection;
- Ensuring the economic and financial viability of the agents in the sector;
- Encouraging increase in economic efficiency;
- Attracting investors.

The tariffs for constrained electricity consumers are the same all over the country.

From October 2001 to January 2004, the electricity prices for the final customer have been increased by 84% as follows:

- Monthly by 3.6% over the period October 2001 – March 2002;
- By 14% in April 2002;
- By 1.5% in July 2002;
- By 2.1% in January 2003;
- By 17.5% in September 2003;
- By 10% in January 2004.

After these price increases, the average electricity price without VAT is USD 68/MWh for the constrained final customer as follows:

- USD 67/MWh for non-household customer;
- USD 71/MWh for household customer.

Cross-subsidies between household and industrial consumers were eliminated during 1999, and cross-subsidy between electricity and heating was eliminated in 2000. For low income

persons, a social tariff was established, funded by the other household consumers. The social tariff covers a monthly consumption of about 78 kWh per consumer.

Starting with the fourth quarter of 2004, the decommissioning costs in the nuclear field will be gradually included in the electricity price. The environmental costs will continue to be included, based on the investment programs of economic operators in the electricity sector taking into consideration the timetable for the implementation of the relevant environment directives, which will be agreed during the negotiations on chapter 22 “Environment”.

The regulated electricity prices are established by the Regulator ANRE based on transparent procedures, published in the Romanian Official Journal. The companies in this sector can request price increases justified by major changes of their costs. The ANRE adjusts the prices correspondingly.

2.2.3. Authorizations and licenses

The development of new energetic capacities and the refurbishment of existing ones are subject to authorization. Electricity production, transport, system service, distribution and supply, as well as the activities of the electricity market operator and those for the supply of technological services to the system are performed under licenses granted in accordance with the law. Licensed providers have the obligation to ensure public electricity supply according to the licensing conditions.

ANRE issues:

- Authorizations for:
    - Building of new energetic capacities for the electric and thermal power co-generated production, or the refurbishment of existent capacities having a power of more than 10 MW;
    - Performance of electricity lines and transportation stations or refurbishment of existent ones;
    - Performance or refurbishment of electric networks with nominal line tension higher or equal to 110 kV.

- Licenses for:
    - Commercial exploitation of electric and thermal co-generated production capacities;
    - Commercial exploitation of electric transportation capacities;
    - Commercial exploitation of electric distribution capacities;
    - System services supply activity;
    - Electricity market operator activity;
    - Electric power supply activity;
    - Providing technological services to the system.

Energetic capacities for electric power production with an installed power of less than 10 Mwe, and low voltage distribution installations are not subject to authorization. Electric network distribution installations of medium voltage are authorized based on an annual program.

In order to ensure fairness in the electric power transactions, a license for electric power supply may not be granted to companies operating as transport operators and/or system operators.

In case of a fundamental change of the conditions existing on the date of the authorization or issuance of the license, or in case of certain events substantially affecting power production, transportation or distribution in the power market, ANRE may decide to amend the authorizations or license in order to adjust to the constraints imposed by such circumstances. The principles of equal treatment and proportionality need to be observed.

If the status of the holder of an authorization or license changes – resulting from split-up, merger, transformation, change of the object of activity, registered offices, modification of the registered capital, etc.- or adjustments of its patrimony affecting the issued authorization or license, the holder shall notify ANRE of the adjustment request within 30 days as of the occurrence of the such event.

In case the authorization or license holder fails to meet its legal obligations, or if the conditions, limitations, restrictions or duties set out by the authorization or the license are disrespected, ANRE shall impose a timeframe for compliance or the suspension or withdrawal of the authorization or license, as the case may be.

ANRE suspends the authorization or license, if the holder is undergoing legal reorganization or bankruptcy procedures. ANRE will withdraw the authorization or license in case of the holder's inability or bankruptcy, as well as upon the cessation of the concession or lease of the energy enterprise, or upon its sale by the holder.

2.2.4. Regenerative and unconventional power sources

According to Law No. 318/2003, ANRE regulates the technical usage conditions, from the energetic point of view, of the regenerative and unconventional sources, such as: solar energy, hydro-electric energy, wave energy, geothermal energy, wind energy, biomass, biogas, and fuel alcohol. The development and use of these sources are encouraged by incentives granted by Government decision, upon ANRE's proposal.

2.3. Thermal Power

2.3.1. Special regime of thermal power produced at a centralized level

By virtue of Law No. 326/2001 that includes the supply of thermal power produced at a centralized level into the local administration of public services, the Romanian Government issued GO No. 73/2002. Under this enactment, the public services for the supply of thermal power produced at a centralized level (called "energetic services of local interest" according to GO No. 73/2002) cover all actions taken and activities performed locally, under the supervision, coordination and control of the local administrative authorities, with a view to providing a centralized supply of thermal power for heating and preparation of hot water for domestic consumption or for consumption in institutions, social-cultural establishments and companies.

These services are established and organized in all cities/towns having a centralized public system for thermal power supply, irrespective of their size. The local systems designated for

production, transport, distribution and supply of thermal power are part of the local zoning infrastructure and the local public property.

2.3.2. Authorities and competencies

The power to establish, organize, manage, coordinate and control the operation of the energetic services of local interest is an exclusive right of the local public administration authorities. Additionally, these authorities have the power and the responsibility to monitor and control the management of such services, as well as the operation and exploitation of the related infrastructure.

Since September 2002, according to Government Decision No. 373/18.04.2002, the regulatory authority in the heating sector is the National Authority for the Regulation of the Communal Services (ANRSC), except for co-generation units, which are regulated by ANRE. ANRSC is a public institution of national interest, under the co-ordination of the Prime Minister.

Its main task is to regulate and control the activities of operators regarding their compliance with the service performance indicators, substantiation of prices and tariffs, consumer protection, and the efficient operation of the public and/or private property of the local administrative authorities, related to such services. ANRSC grants licenses and authorizations for the energetic services operators of local interest.

2.3.3. Management of thermal power supply

The management of urban energetic services may be organized in the form of direct management, or indirect (delegated) management. The management form is chosen by county or local council decision, as the case may be, according to the law. The local public authorities may associate with other local public authorities or with third parties (Romanian legal entities) to establish public or joint companies, in order to manage energetic services of local interest.

In case of *direct* management, the local public administration authorities shall undertake all tasks and responsibilities regarding the organization, leadership, administration, financing, management and control of energetic services of local interest. Direct management is ensured either by specialized departments organized within the county or local council, as the case may be, or by public services with legal status, organized under the subordination of the county or local council, and authorized according to the law.

In case of *delegated* management, the local public administration may fully or partially transfer their responsibilities concerning services management, as well as the management and operation of the local energetic system, to one or several supplier/provider operators, by delegating to them, by means of a management delegation contract, the right to operate the energetic services of local interest.

During the period of a management delegation contract, the public and/or private movable and immovable assets belonging to the local administrative authorities, destined for certain services, will be entrusted to the operator who was granted the management delegation contract. The latter shall pay royalties to the local public administration authorities, at a rate

agreed upon the contract execution. Delegation of the energetic services of local interest management may be performed by:

- Direct negotiation, for operators with local public or public-private participation, established by the local public administration authorities, or resulting further from the administrative reorganization of the energetic services of local interest;
- Public auction in case of different operators, irrespective of the capital form or their organization form. If the public auction procedure ended with no winner selection and assignment of a management delegation, the direct negotiation procedure will apply.

The local public administration authorities have the right to request the termination of the contract and organize a new auction for management delegation, if for two consecutive years the service operators fail to meet their contractual obligations in terms of service quality and the economic and financial objectives agreed. According to EGO No. 73/2002, management delegation must comply with the standard contract and the standard regulations for the delegation of energetic services of local interest, approved by Government decision. As such Government decision has not yet been passed, the management procedure may not be implemented at this moment.

2.3.4. Prices and tariffs

Prices and tariffs shall cover the costs of production, exploitation, maintenance, modernizing and refurbishment, as well as a 10% maximum profit margin. The competent regulatory authorities will set the prices and tariffs for thermal power produced and supplied to the users, based on the proposal of the economic operators that produce, transport, distribute and provide thermal power to end consumers, based on the prior endorsement of the involved local public administration authorities.

The prices and tariffs for heating are regulated by ANRSC according to the principles stipulated by Government Ordinance No. 73/2002 regarding the organisation and functioning of the public utilities for centralised heating energy supply. It refers to:

- Covering the operation and development costs and obtaining a maximum 10% profit margin;
- Guaranteeing the efficient use of the heat and the increase of quality standards with the lowest costs and in compliance with the environment protection regulations and the equal treatment of all customers.

ANRSC requests the operators to draw up and apply programmes of technological upgrading and restructuring in order to comply with the abovementioned principles and to improve the efficiency.

ANRSC adjusts the prices at the request of the operators based on justified documentation. Starting with the second semester of 2005, the environmental costs will be included in the heating price. Currently, the average prices for the household customers for heating supplied by the centralised heating system are:

- USD 40.9 – 42.4/Gcal for heating produced on the basis of natural gas;
- USD 54.5 – 57.5/Gcal for heating produced on the basis of light liquid fuel.

As of 1 August 2004 the tariff for heating will be increased by 12%.

Financial support is granted to household customers in the heating sector. It represents the difference between the national reference price and the suppliers' prices. Currently, the national reference price is ROL 800,000/Gcal.

2.4. Oil

2.4.1. Competent authorities

The competent authority assigned to implement the regulations in the mineral oil sector is the National Agency for Mineral Resources ("ANRM"), organized under Governmental subordination. It has legal status with the following powers:

- To manage the State oil resources;
- To conclude oil agreements;
- To set, together with the Ministry of Public Finance, the price for the oil extracted in Romania;
- To elaborate and maintain the Oil Record Book (record instrument containing all legal instruments, irrespective of their nature, regarding an oil perimeter or related to the same, as well as all data on land property, the topographic status of the perimeter and all the works and facilities existing in that perimeter, the reserve status and the production of derived products).

2.4.2. Concessions in the oil sector

Overview

According to Law No. 134/1995, the oil resources on the Romanian territory pertain exclusively to the public property of the Romanian State. By oil concession (oil agreement), the State, represented by ANRM, grants to Romanian or foreign legal entities the right to perform oil operations. ANRM establishes annually the list of perimeters to be granted in concessions, and publishes such list in the Official Gazette of Romania.

The oil agreement is concluded by ANRM and the Romanian or foreign legal entity selected under the procedures stipulated by law. The concession period may not exceed 30 years. The concessionaires are selected by comparison of offers. The bidders must prove certain financial capacities and adequate technical resources. The oil agreement must be concluded in writing and comes into force upon its approval by the Government. The foreign legal entities are bound to maintain a branch or a subsidiary in Romania for the whole concession period, and under the terms stipulated in the oil agreement.

Royalties

The holders of an oil agreement must pay an oil royalty to the State budget as follows:

- A quota of the gross extracted production value, for oil reserves operations;

- A 5% quota from the value of the gross incomes obtained from operations of oil transport, as well as from oil operations performed through oil terminals, located on State property.

The oil royalty is due from the beginning of the oil operations, and is payable on a quarterly basis.

Incentives

According to Law No. 134/1995, the holders of oil agreements benefit from incentives, such as exemptions from custom duties, VAT exemptions as well as other incentives related to currency transactions. Many of these incentives are stipulated especially for foreign legal entities, which are a party to oil agreements. Pursuant to Law No. 134/1995, such incentives are set forth for each oil agreement, and shall not be modified for the whole period of the oil agreement.

The exemption from custom duties applies to:

- Imports performed by the agreement beneficiaries or by their subcontractors, for goods needed for the oil operation performance;
- Imports of household and personal use, necessary to the staff of the foreign beneficiary, the affiliated companies and their foreign subcontractors;
- Export of the oil quotas due to the agreement beneficiaries, as well as export of goods imported by them and their foreign staff, according to the terms stipulated in the above paragraph.

The delivery of machinery and equipment, as well as the provision of services directly related to oil operations performed by the oil agreement beneficiaries, foreign legal entities, is exempt from VAT. The suppliers and service providers shall deduct the tax related to the purchased goods and services meant for these operations.

The foreign beneficiaries of oil agreements are entitled under Law No. 134/1995 to:

- Perform foreign currency collection operations, with currency amounts obtained from the export of the oil production share of such agreement beneficiary, and to keep such currency abroad, after settlement of all obligations towards the Romanian State;
- Convert in foreign currency the proceeds obtained in Romanian currency (ROL), and to freely dispose of the foreign currency proceeds (including free transfer abroad) after settlement of all obligations towards the Romanian State, in case the oil due to the agreement beneficiary is sold in Romania.

Termination of concession

Under the law, a concession may be terminated in the following cases:

- Expiry of the period for which the concession was granted;
- The oil agreement holder waives the concession right;
- Withdrawal of a concession by ANRM for breach of the concession terms;

- Force majeure, as defined in the oil agreement, rendering impossible the initiation, or, as the case may be, the continuation of oil operations.

From the moment of the termination of the concession, the oil perimeter, with all its facilities and annexes, is transferred to the State property, with no indemnity payable and free of any charges whatsoever. The law stipulates certain exceptions from this principle, wherein the agreement beneficiary is entitled to receive damages from the Romanian State.

2.5. Natural Gas

2.5.1. Competent authority

The National Regulatory Authority in the Natural Gas Sector ("ANRGN") is a public institution with legal status, coordinated by the Ministry of Economy and Trade. It has been established in February 2000 by Government Ordinance No. 41/2000, approved by Law No. 791/2001, with subsequent amendments. It is a public institution under the coordination of the Prime Minister and under subordination of the Government.

Following ANRGN's establishment, the competences of the National Agency for Mineral Resources (ANRM) concerning natural gas have been restricted to the granting of concessions of operation blocks.

ANRGN represents the competent authority assigned to elaborate, monitor and implement the mandatory regulations in the natural gas sector. ANRGN has the following powers and duties:

- To issue, change, suspend or, if the case may be, withdraw the certificates and licenses for companies active in the natural gas sector;
- To approve the clauses and terms of the concession agreements for the natural gas transportation and distribution systems;
- To draw up and approve standard contracts between natural gas companies regarding the sale, purchase, transport, transit, deposit and distribution of natural gas to final consumers;
- To issue technical norms upon the proposal of companies from the natural gas sector;
- To establish criteria and methods for price and tariffs calculation in the natural gas sector, taking into account the protection of the interests of the natural gas consumers.

2.5.2. Production, transport, transit, distribution, storage and supply

The natural gas producer may be a Romanian or foreign legal entity. He must be authorized and/or be the holder of a supply license for the production of natural gas destined for subsequent sale.

Transport of natural gas (a public service of national interest) may be performed by Romanian or foreign legal entities. They must be authorized and/or be holders of a transport license.

Law No. 463/2001 states that the access to the network is regulated. According to the provisions of this law, Romania already applies the regulated third party access.

The National Natural Gas Transport System (SNT), in high pressure regime of over 6 bar, consists of main pipelines, and all the installations, equipment and related facilities ensuring the transportation of natural gas extracted from the exploitation perimeters or coming from imports, in order to be fed to dispatchers, direct consumers, or export and/or storage of such products. SNT is part of the State public property and is considered of having strategic importance.

Transit activity consists in transport through the national transport system and/or through main pipelines on the Romanian territory, with or without reloading the natural gas from another state, destined to a third state. Natural gas transit through already existing pipelines is ensured by the SNT operator. The transit contracts are negotiated by the SNT operator based on a framework contract issued by ANRGN with the corresponding entities of the involved states.

Distribution of natural gas is a public service of national interest. The natural gas distributor may be a Romanian or foreign legal entity, authorized and/or licensed to act in the natural gas distribution and sale to constrained consumers in a restricted area. According to GO No. 60/2000, constrained consumers are persons obliged, due to the distribution system features, to acquire natural gas from a certain producer or distributor, who is holder of a supply license. Natural gas distributors have, among others, the right to use - with the consent of the local public authorities, and free of charge, - the land under local public domain, for the purpose of execution, exploitation, maintenance and repair works.

The holders of natural gas deposit licenses must grant the producers and/or suppliers equal and non-discriminatory access to storage facilities. They also have the obligation to reserve a minimal storage capacity for the carrier, so that it may at any moment maintain the physical balance of the general natural gas supply system in any period of the year, and maintain the minimal operational parameters of the national transport system.

Supply of natural gas is an activity performed by holders of supply licenses by virtue of a supply contract concluded between the supplier and the consumer/client. It must contain the clauses stipulated by ANRGN in the standard contracts set forth depending on consumer categories. The natural gas being subject to the supply contract may not be re-sold by the final consumer.

2.5.3. Prices and tariffs

GO No. 60/2000 stipulates the following prices and tariff categories:

- Negotiated - as a result of the mechanisms of market competition between suppliers and eligible consumers. The eligible consumer is the Romanian or foreign individual or legal entity that has the complete freedom to buy natural gas from any producer and/or supplier having access to the system;
- Regulated.

Regulated prices are:

- Supply prices for activities that result from the public service obligation;
- Supply prices for natural gas supply of constrained consumers.

Tariffs and services are regulated for:

- Natural monopoly-type activities, including tariffs for natural gas transport and storage services;
- Natural gas distribution;
- Transit.

ANRGN sets the regulated tariffs for constrained consumers of natural gas, based on proposals substantiated and submitted by the companies from the natural gas sector.

During 2001-2004, the prices for natural gas have been significantly increased as follows:

- USD 45.6 / 1,000 cm. in 2001;
- USD 82.5 / 1,000 cm. in 2002;
- USD 90 / 1,000 cm. as of 1 March 2003;
- USD 99 / 1,000 cm. as of 1 July 2003;
- USD 110 / 1,000 cm. for non-household customers, and USD 120 / 1,000 cm. for household customers as of 1 September 2003;
- USD 115 / 1,000 cm. for non-household customers, and USD 125 / 1,000 cm. for household customers as of 1 November 2003;
- USD 120 / 1,000 cm. for non-household customers, and USD 130 / 1,000 cm. for household customers as of 1 January 2004.

During 2001–2004, the natural gas price for household customers has increased by 275%.

2.5.4. Authorizations and licenses

Building new production, transport, storage and distribution facilities, upgrading and refurbishing the existing capacities as well as their commissioning may only be performed by Romanian or foreign legal entities authorized by ANRGN. Commercial exploitation of production, transport, storage and distribution facilities, and natural gas sales, may be performed only by Romanian or foreign legal entities, licensed by ANRGN.

2.5.5. Concessions in the natural gas sector

Romanian or foreign legal entities may receive a concession for natural gas production, transport, storage and distribution facilities, the land belonging to them, as well as the natural gas transport, storage and distribution.

The following specific criteria are taken into consideration when granting a concession:

- Obligation of the concessionaire to produce, transport and store natural gas according to the quality and technical parameters stipulated by the technical norms in force;

- Obligation of the concessionaire to transport and/or distribute natural gas in certain consumption area and to supply any consumer in that area who meets the conditions stipulated by Ordinance No. 60/2000;
- Obligation of the concessionaire to observe the operative orders of the dispatcher;
- Obligation of the concessionaire to observe the deadlines set and the measures provided in the control documents concluded by the conceding authority.

Investors interested to participate in an auction to obtain a concession must obtain an authorization or a temporary license from the competent authority regarding the performance of the activity that is the subject of the concession. After the concession is granted, the temporary authorization/license shall be transformed into a permanent authorization/license.

The concession ceases by waiver or withdrawal of the authorization and/or license as well as under the terms stipulated by Law No. 219/1998 on Concession Status.

2.6. Mineral resources

The National Agency for Mineral Resources (ANRM) is the competent authority responsible for the application of Law No. 85/2003. ANRM has the following main responsibilities in the mining sector:

- To manage the mineral resources and the national geologic resources, the public State property, to issue licenses and permits required by law;
- To set the permits and licenses clauses and conditions and to regulate the performance of mining activities through norms, rules and technical instructions issued for the law application;
- To monitor and test the production of natural minerals in order to calculate royalties;
- To order the suspension of exploring and operation works outside the instituted perimeter, of any works lacking authorized technical documentation, as well as of any works that involve irrational exploitation or resources degradation, until their causes are removed.

2.6.1. Concessions in the mining sector

Overview

The mineral resources located on the ground and underground of the Romanian territory as well as those on the continental platform and in Romania's Black Sea economic area, belong to the public property of the State. The mineral resources are exploited by mining activities. They may be authorised in concessions to Romanian or foreign legal entities or may be granted under management to public institutions by the competent authority according to the law.

The mining activities, as defined by law, include works regarding prospecting, exploring, developing, exploiting, processing, concentrating, metallurgical extracting and sale of mining products, preservation and closing of mines, including works for environmental recovery and rehabilitation.

Prospecting is performed on the basis of a non-exclusive permit. The prospecting permit is issued for a maximum of three years based on prior payment of an annual tax. The prospecting permit does not guarantee the issuance of the subsequent exploring and/or exploiting license. The holder of the prospecting permit must submit to the competent authority annual documentations regarding its activity and results as well as a final report containing the investigation methods used and the obtained results.

Exploring activities are performed on the basis of an exclusive license granted to Romanian and foreign legal entities, who are winners of a public tender. Submission of a work program and a proper bank guarantee for environmental rehabilitation are required. The exploration license is granted for a maximum of five years, with the possibility of a maximum extension of three additional years, based on prior payment of an annual tax. Upon request of the license holder, the latter is entitled to obtain the operation license for any of the mineral resources explored.

The mining operation is based on an exclusive license granted for a certain perimeter. The areas are set by an order issued by ANRM. The exploitation license is granted for a maximum of twenty years, with the possibility of an extension of successive periods of five years.

The exploitation license comes into force upon its approval by the Government. The operating rights obtained by the exploitation and/or exploration license function as guarantee for bank loans, in order to execute mining activities stipulated in the license, with written approval of ANRM. Foreign legal entities that obtained the right to perform mining activities in Romania must establish and maintain a branch in Romania for the whole of the concession period.

Royalties

License holders must pay taxes and a mining royalty to the State budget for the performed activity. The mining royalty is set as a percentage quota of the annual mining production, according to the type of the exploited mining resource. The royalty shall be paid on a quarterly basis calculated from the date of production inception.

Incentives

License holders benefit from the following fiscal incentives: custom duties exemption for imports of goods necessary for performing mining activities in order to obtain the mining product; customs duties exemption for imported new equipment, installations and devices that are not produced in Romania, necessary for the rehabilitation of the environment damaged by the mining activities.

Termination of Concession

The mining concession ceases upon:

- Expiration of the period for which it was granted;
- Waiver by the license holder;
- Cancellation of the license/permit by the competent authority;
- Request of the holder, as a result of force majeure;

- Exhaustion of resources (only in cases of concession/management granted for mining operation activities).

At the end of the concession, the perimeter and all the existing facilities and technological dependencies existing at that moment shall be transferred to the State property, with no indemnity and free of any encumbrances whatsoever.

2.6.2. Closure of Mines

Mining operations end in case of any of the following situations:

- Exhaustion of the mineral resources;
- Operation has become impossible because of natural causes, and the effects may not be eliminated by technical interventions;
- Exploitation has become economically unprofitable.

The initiative to end the activity of a mine or a quarry lies with the holder of the operation license, who submits an application and activity cessation plan to the competent authority.

2.7. Energy Efficiency

Law No. 199/2000 establishes the general framework for the elaboration and application of a national policy for efficient energy use, in compliance with the provisions of the Energy Charter Treaty and its Protocol on Energy Efficiency, and the principles supporting sustainable development.

The Romanian Agency for Energy Conservation ("ARCE") was established as a result of GD No. 941/2002, as a national specialized body in the area of energy efficiency, with legal status and functional, organizational and financial autonomy, subordinated to the Ministry of Economy and Trade.

According to this law, efficient energy use means taking measures with regard to products, services or goods being produced/rendered without lowering quality standards, and by cutting energetic consumption needed for such a product, good or service being produced/rendered.

Thus, in order to comply with the national policy on efficient energy use, companies using annual energy quantities exceeding a threshold of 1,000 tones of energy in oil equivalent, and local public authorities in cities with more than 20,000 inhabitants are bound, by law, to draft programs on energy efficiency. The summary of these programs in the national economy framework, elaborated by ARCE, is annually approved by the Government, upon the proposal of the Ministry of Economy and Trade.

The law sets obligations and incentives for energy producers and consumers meant for the efficient use of energy. Thus, energy consumers (legal entities) are bound to:

- Comply with the technical regulations in force regarding the setting up, operation, maintenance, repair of their own installations and energy receiver units, as well as the acquisition of measuring/control devices.

- Have their own recording and monitoring system of energetic consumption and provide information regarding energetic consumption and energetic efficiency indicators to the competent institutions.

Companies acting in the field of production, transport and distribution of fuel and energy are bound to take steps meant to:

- Reduce own fuel and energy consumption;
- Promote solar, wind, geothermal, biomass, biogas energy and the energy produced from domestic waste.

The law provides for several financial and fiscal incentives for activities resulting in an increase in energy efficiency, such as:

- Financial aid from the Special Fund for the development of the energetic system, for works aiming at an increase in energy efficiency;
- Exemptions and discounts from profit tax payment;
- Loans for works aimed at an increase in energy efficiency, with maximum interest rates of 75% of the bank established interest rate, and the balance payable from annual grants from the State budget;
- Imports exempted from customs duties in case of devices, machinery and equipment used in projects for the increase in energy efficiency.

The amount and procedure for granting the fiscal and financial incentives shall be approved by Governmental decision upon a proposal by the Ministry of Economy and Trade.

V. MARKET STRUCTURE (INCLUDING MONOPOLIES AND PRIVATISATION)

1. Overview of the Privatisation Process

From the early 1990s, the Romanian authorities have been initiating economic reform, aiming at liberalising foreign trade and prices, privatising state owned undertakings and developing the financial sector. The policy of the Government targeted to reduce the state involvement within the decision-making processes. The reorganization and restructuring of the energy sector is developing on the principles of a market economy. The legislative framework has been improved and regulatory authorities have been established competition and to attract foreign investors. The Ministry of Economy and Trade elaborated the National Strategy regarding the Energy Sector in the Medium Term (2001-2004).

Before 1997, the privatisation process in Romania was oriented towards small and medium sized enterprises. In spite of the numerous privatisations realized between 1995-1996, 58% of the industrial production still took place in the public sector in 1997. In 1998-1999, the number of privatised large enterprises increased substantially. In compliance with Government Ordinance No. 30/1997, the autonomous “regies” in the public sector being of national interest have been transformed into companies before they are privatised.

A major objective in the energy sector is that the companies from the National Energy System (SEN) should become efficient and competitive. To this end, closing of capacities

that cannot be rehabilitated, on one hand, and upgrading and revamping the viable ones, on the other hand, is envisaged. The aim is to ensure cost decreasing and profitability in order to set proper conditions to start privatisation, according to the Government programmes, which will be drawn up.

In order to implement the strategy of the Ministry of Industry and Resources on the Privatisation of the National Companies in the Energy Sector, the Office of State Ownership in Industry has been set up. It is operational since November 2001.

2. Market Structure in Individual Sectors

2.1. Natural Gas

Romania has the largest natural gas market in Central Europe and was the first country that used natural gas for industrial purposes. The natural gas market reached exceptional dimensions at the beginning of the 1980s as the result of some government policies oriented toward eliminating the dependence upon imports. Putting into practice these policies lead to an extensive use of the internal resources, and subsequently to the decline of internal production.

In 2003, from a total consumption of 18.07 Bcm, internal production was 70%. The difference of 30 % (5.4 Bcm) was imported from the Russian Federation. The whole natural gas quantity, both from internal sources and imports, was destined for the domestic market. The highest natural gas consumption was recorded in the industrial sector (about 57% of total consumption).

The Romanian natural gas sector is complex. Important companies include the following:

- *Producers*: S.N.G.N. Romgaz S.A., S.N.P. Petrom S.A., Amromco Energy L.LC. New York;
- *Storage system operators*: S.N.G.N. Romgaz S.A., S.C. Depomures S.A.;
- *Transporter*: S.N.T.G.N. Transgaz S.A.;
- *Distributors*: S.C. Distrigaz Sud S.A., S.C. Distrigaz Nord S.A., S.N.P. Petrom S.A., S.C. Congaz S.A. , and other small distributors (21 in total);
- *Suppliers*: S.C. Distrigaz Sud S.A., S.C. Distrigaz Nord S.A., S.N.T.G.N. Transgaz S.A., S.N.P. Petrom S.A., S.N.G.N. Romgaz S.A., S.C. Congaz S.A., Amromco Energy, L.LC. New York, S.C. Depomures S.A. etc. (35 in total);
- *Transit system operator*: S.N.T.G.N. Transgaz S.A. ;
- *Importers*: S.C. Distrigaz Sud S.A., S.C. Distrigaz Nord S.A., Termoelectrica, Wirom, etc.

The EU principle of unbundling of production, transport and distribution activities has also been transposed in the natural gas sector. By restructuring the natural gas sector, the conditions for the initiation of the privatisation process have been laid down.

In compliance with Government Decision No. 334/2000, S.N.G.N. ROMGAZ. S.A. was divided into five state owned independent companies: S.C. DISTRIGAZ SUD S.A. Bucuresti – for natural gas supply and distribution, S.C. DISTRIGAZ NORD S.A. Targu-Mures - for natural gas supply and distribution, S.C. EXPROGAZ S.A. Medias – for natural

gas production and underground storage, S.C. DEPOGAZ S.A. Ploiesti – for natural gas underground storage, and S.N.T.G.N. TRANSGAZ S.A. Medias – for natural gas transmission and transit over Romanian territory.

In 2001, following an analysis of the activity of the companies EXPROGAZ S.A. and DEPOGAZ S.A., Government Decision No. 575/2001 provided for the merger of the two companies into the company - S.N.G.N. ROMGAZ. S.A.. It deals with natural gas exploration, production and underground storage.

By Decision No. 1283/2003, the Government approved the strategy for privatisation of the two state owned natural gas distribution companies (SC Distrigaz Sud SA Bucuresti and SC Distrigaz Nord SA Tg-Mures).

At present, several private companies operate in the natural gas sector:

- One in the production sub-sector;
- One in the storage sub-sector;
- Sixteen in the local distribution and supply sub-sectors;
- Twelve in the area of supply in the natural gas wholesale market.

On 1 August 2001, the initial degree for opening the internal natural gas market was established, representing 10% of the total internal consumption of natural gas for the year 2000. For the year 2002, the opening degree of the internal natural gas market was established at 25%. For the year 2003, the opening degree of the internal natural gas market was established at 30%. 54 companies were accredited for a total consumption of 4.8 Bcm – representing a 30% effective opening of the internal market. For the year 2004, the opening degree of the internal natural gas market has been established at 40%.

By Order of the Minister of Industry and Resources No. 85/02.04.2001, a Market Operator was set up at the National Natural Gas Dispatching Centre Bucharest, within the structure of the National Natural Gas Transmission Company SNTGN TRANSGAZ SA Medias. The objective is to provide an organizational framework regarding the fair and non-discriminatory allocation of natural gas from domestic production and from import.

In this regard, the Market Operator:

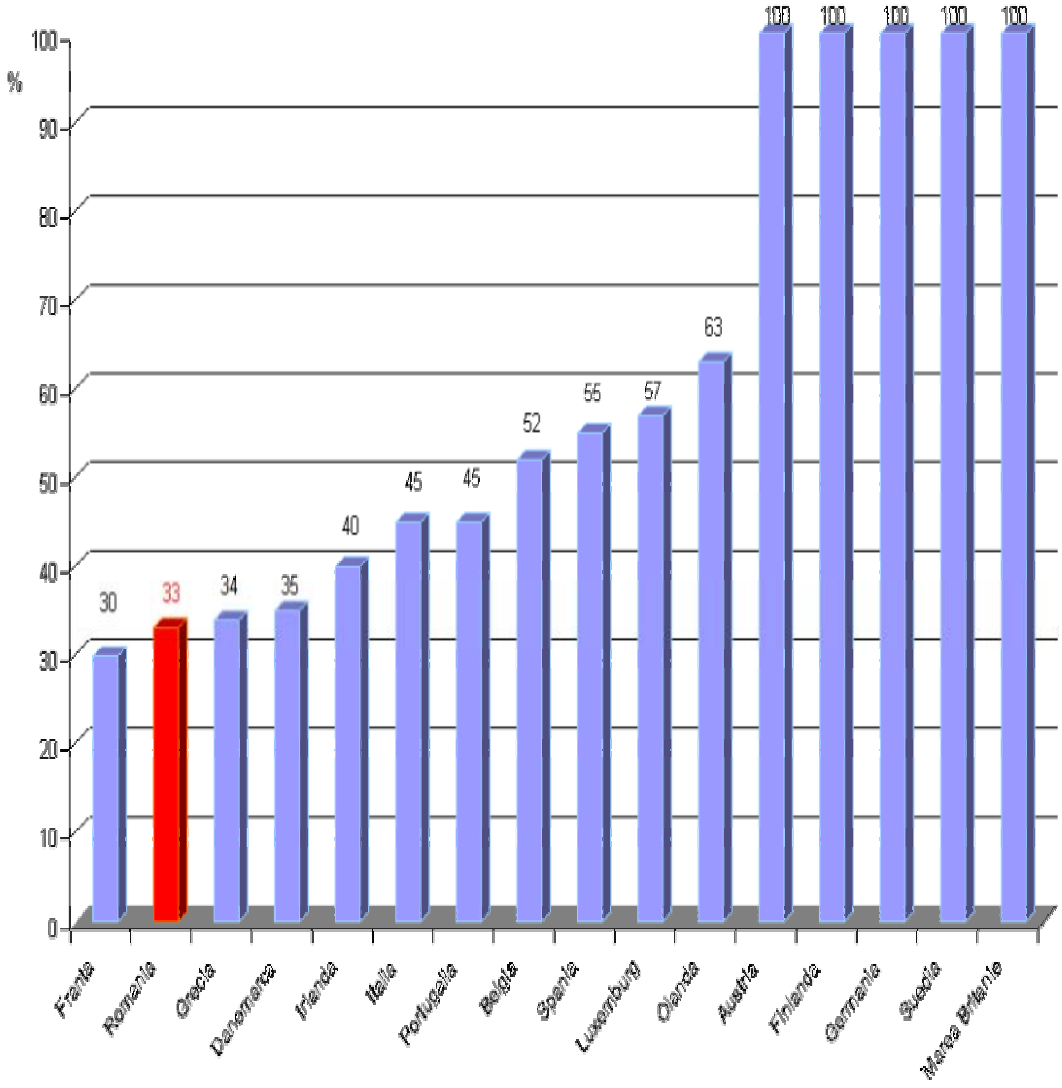
- Establishes, on a monthly base, the quantitative percentage rates of the mixture of natural gas from domestic production and the import necessary for all licensed suppliers/distributors according to the Government Decision No. 784/2000 republished, as well as for eligible consumers;
- Monitors on a daily basis the natural gas acquisitions/consumptions from internal sources/imports;
- Draws up the monthly report on the acquisitions of natural gas from domestic production and from imports achieved by each operator acting on the Romanian market and by each eligible consumer, sending them the import/total consumption dosage for billing the natural gas.

2.2. Electricity

2.2.1. Overview of Market Structure

The electricity market created and developed on principles issued by ANRE was opened concurrently with the reorganisation of the sector. The opening degree of the market was set at 33%, which places Romania on the same level or even ahead of several other countries in the region, such as the Slovak Republic (31%), Czech Republic (30%) and Bulgaria (30%). The degree of electricity market openness in the EU member countries is given in Table 4.

Table 4. Degree of Openness of EU Electricity Market

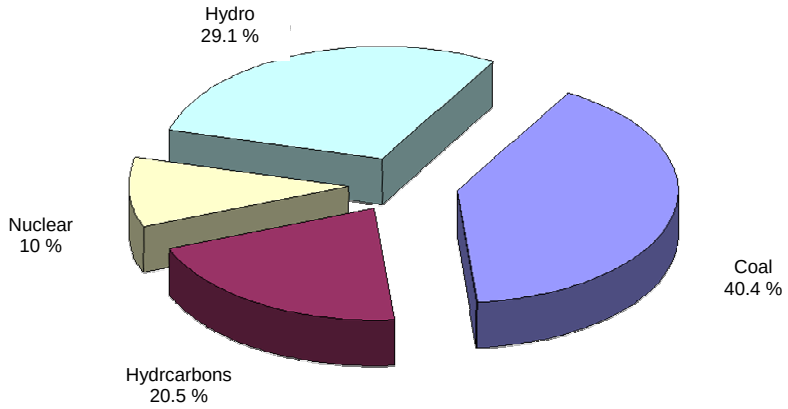


Source: Commission staff working paper - Second benchmarking report on the implementation of the internal electricity and gas market, Oct. 2002

The evolution of the electricity generation, the producers' participation and the types of fuel used for electricity generation are given in Table 5. Power reserve in the main reservoires was of 1732 GWh on 31 December 2002, as against 467 GWh at the end of 2001.

Termoelectrica thermal production in 2002 was 72 thousand TJ (17.2 thousand Tcal) as compared to 108.7 thousand TJ (26 thousand Tcal) in 2001.

Table 5 Type of Fuels used for Electricity Generation in 2002



Functioning of the electricity market

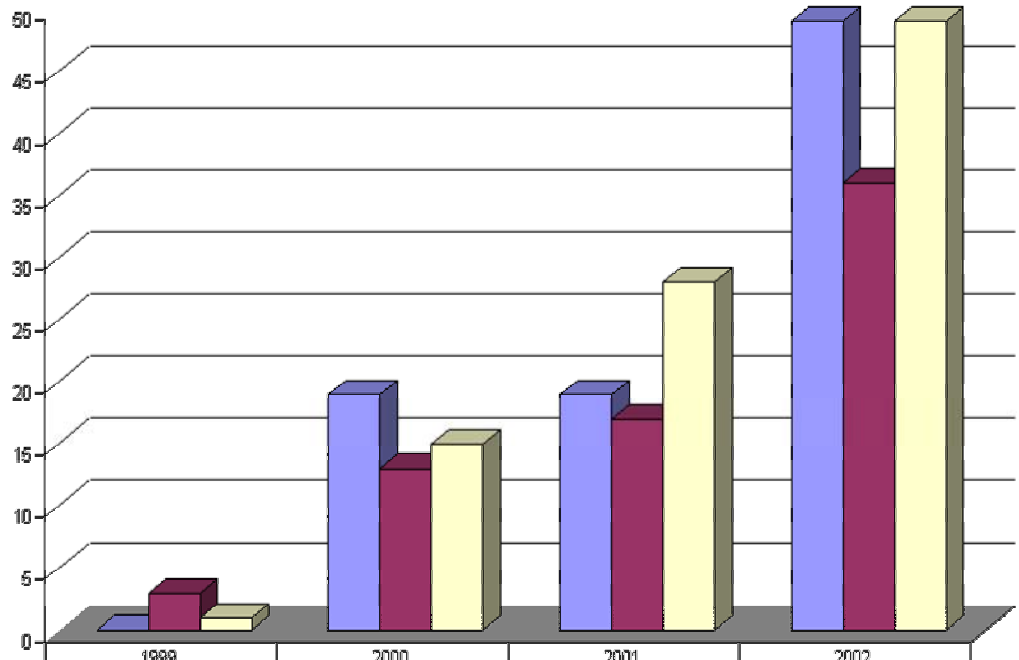
In accordance with the international evolution and with the progress of the Romanian electricity sector legislation, ANRE laid out the principles for the development of a two-component electricity market: the regulated and the competitive market. According to this two-component market, commercial arrangements between participants are based, for most of their part, on the framework contracts issued by ANRE. The option for the two components was sought to encourage long-term commercial arrangements with guaranteed prices and quantities. Furthermore, by facilitating the conclusion of bilateral contracts and the sale/purchase on the spot market producers and suppliers are assisted in acquiring proper managerial abilities for a competitive electricity market.

By the end of 2002, there were 36 electricity generation licensees, 49 electricity supply licensees and 49 accredited eligible customers. 53% of the producers, 15% of the suppliers and 23% of the eligible customers operated on the electricity wholesale market.

The wholesale electricity market has two components:

- The regulated market, based on portfolio contracts or type PPA sell-buy contracts between producers and suppliers;
- The competition market, i.e. the conclusion of bilateral contracts negotiated by eligible consumers and electricity producers, and commercial agreements on the spot market.

Table 6 Evolution of eligible consumers, producers and suppliers – licence holders



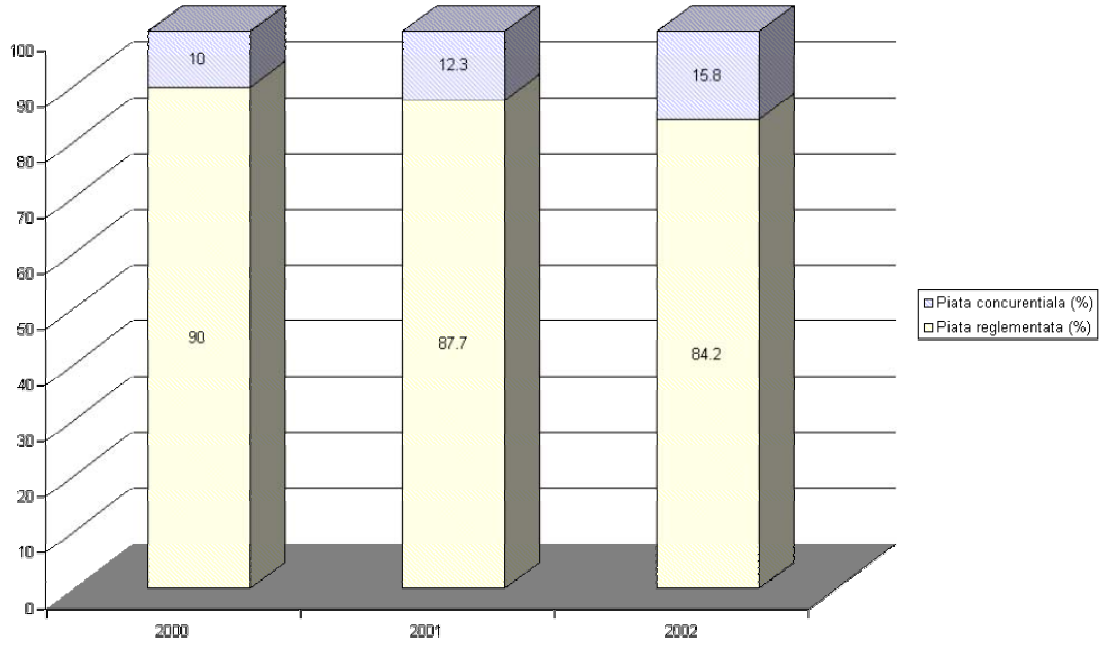
	1999	2000	2001	2002
Eligible consumers	0	19	19	49
Producers, license	3	13	17	36
Suppliers, license holders	1	15	28	49

The electricity amount delivered in the National Energy System (SEN) by the producers and from import activities is allocated as follows:

- 84.1% to cover constrained consumers demand and the own technological consumption in the distribution networks;
- 7.7% for consumers choosing their supplier;
- 8.2% for export and to cover the own technological consumption in the electricity transmission network.

In 2002, 84.2% of the electricity delivered in SEN was transacted on the regulated market and 15.8% on the competitive market.

Table 7 Evolution of the Electricity Wholesale Market Structure



SEN interconnection tests with the UCTE transmission system were completed on 1 February 2003. GD No 87/2003 was adopted with a view to enhance co-operation between the national power systems of Romania and Bulgaria, and to encourage the creation of the Southeast European regional market.

2.2.2. Restructuring and Privatisation

General

The electricity sector is in a full restructuring process. Romania accepts the entire acquis communautaire of the EU in this area, and does not foresee any problems in fully applying it upon Romania's accession to the EU.

According to the National Strategy for Energy Development, it is envisaged to complete the privatisation of the electricity *distribution* sector by 2004, and to privatise 25-40% of electricity *production*. The *transport network* will remain state owned.

In 1998, a first stage was the complete separation of the nuclear power sector. In August 2000, the second stage provided for the division of the former National Company for Electricity (CONEL) in four economic and legal independent structures according to Government Decision No. 627/2000. The basic goal was to ensure a legal and institutional framework enabling efficient sector operations. These entities, which are entirely state-owned and function on the basis of licenses granted by the National Authority for Energy Regulation (ANRE), are:

- Compania Nationala de Transport al Energiei Electrice "Transelectrica" -S.A.;

- Societatea Comerciala de Producere a Energiei Electrice si Termice "Termoelectrica" - S.A.;
- Societatea Comerciala de Producere a Energiei Electrice "Hidroelectrica" - S.A.;
- Societatea Comerciala de Distributie si Furnizare a Energiei Electrice "Electrica" - S.A.

The companies thus established act in the specific electric and thermal power field coordinated by the Ministry of Economy and Trade. The State is the sole owner of the registered capital of these companies and exercises all the rights conferred upon it, as shareholder, through the agency of the Ministry of Economy and Trade.

Although the commercial relations between the companies resulting from CONEL's split-up are conducted on a contractual basis, the Government continues to control the economic mechanisms on which the commercial relations between the newly established companies are founded. The Ministry of Economy and Trade checks such entities monthly, and, based on the data received, it monitors their compliance with the contractual obligations undertaken, as well as the status of payments between such companies.

On the electricity market operate also the National Company Nuclearelectrica SA and other independent producers and self producers.

The establishment of a legal framework to encourage and support the restructuring and reform of the electricity and heat sector was a priority on the Government 2002 agenda.

Development in individual companies

- ***CN Transelectrica SA***

The transmission and system operator CN Transelectrica SA was set up by GD No. 627/13.07.2000. It has the function of transport operator for the national system of energy transport (TSO) and system operator for the national energetic system. Transelectrica SA is in charge of the national transport system of electric energy, under conditions of quality, safety, economic efficiency and environment protection. It functions on the basis of regulated tariffs for electricity transmission and for electricity dispatching - established by ANRE. According to the license, Transelectrica SA does not have the right to trade electricity. The only allowed transactions are the acquisition of electricity in order to cover the losses in the transport network. Transelectrica SA is completely independent from others utilities in the sector, ensuring a non-discriminatory functioning of the system.SC OPCOM SA, the commercial operator of the electricity market is a legal subsidiary of Transelectrica SA.

In July 2001, CN Transelectrica SA has been re-organized. According to Government Decision No. 710/2001, the activities concerning the maintenance of the electricity networks were separated, and the company SMART SA, was established as a subsidiary of CN Transelectrica SA. The activities of SMART SA consist in maintaining and repairing the basic equipment from the electricity networks, remedying incidents in the electrical equipment, and supplying services in the energy field and electrical equipment micro-production.

ANRE established regulated tariffs for transport and system services for CN Transelectrica SA.

Transelectrica continued its restructuring process with a view to increasing efficiency of its basic activities by setting up the following auxiliary service subsidiaries:

- OMEPA – the metering operator of electricity transacted on the wholesale market;
- TELETRANS – telecommunication and information technology services using the electricity transmission grid and FORMENERG – a training company for power engineers.

SC Termoelectrica SA

Its main field of activity is production and supply of electricity and heating. It has 20 branches. In 2001, the operations of 15 non-viable power plant facilities have been stopped. 8 loss-making power plant facilities have been closed in order to be sold or dismantled. 8 power stations were separated from Termoelectrica, out of which one was transferred to local public administration management, and 7 were transformed into independent state owned companies, co-ordinated by the Ministry of Industry and Resources. At the same time, Deva SA company was established as a subsidiary of Termoelectrica SA.

Starting in 2001, 18 power plants were transferred from SC Termoelectrica SA to the administration of the public local authorities, and 1 to the administration of SC Rompetrol SA. The aim was to reduce the concentration degree of electricity generation and to adjust the heating generation capacities to the current local consumption needs, which led to a direct functional relation between the thermal agent for heating and the public administration authorities. By Government Decision No. 1182/27.11.2001, the SC Electrocentrale Deva SA was set up as a subsidiary.

In order to improve Termoelectrica's collection rates, "escrow" accounts are operational by Emergency Government Ordinance No B115/2001 as of 1 October 2001. Payments from heat energy consumers and state and local budget subsidies are collected in the accounts and, subsequently, payments are made to Termoelectrica and heating distributors. At the same time, in order to increase efficiency, the branches of Termoelectrica SA were organised as cost and profit centres.

As a result of the reorganization process, 6 large commercial companies currently operate in the thermo-electric sector:

- SC Electrocentrale Deva SA;
- SC Electrocentrale Rovinari SA;
- SC Electrocentrale Turceni SA;
- SC Electrocentrale Bucuresti SA;
- SC Electrocentrale Galati SA;
- SC Termoelectrica SA.

ANRE establishes different prices for each of the new companies based on the specific generation conditions. Each of these companies concludes distinct contracts for electricity sale, and participates individually with offers on the spot market. This restructuring

decreased the concentration of the electricity generation market and ensured a competitive environment in the sector.

In order to stimulate the competition in the generation sector, the Government established 3 lignite-based generation companies in 2004:

- Rovinari Complex, comprising the power plant and the supplying coal mines;
- Turceni Complex, comprising the power plant and the supplying coal mines;
- Isalnita-Craiova Complex, comprising two power plants and the supplying coal mines. The Isalnita-Craiova power plants were separated from SC Eletrocentrale Bucuresti SA.

By the end of 2005, non viable generation heating groups, with an installed capacity of 1,280 MW, will be withdrawn from exploitation.

The privatisation and investment process in the thermo-energy sector has continued as follows: In December 2003, the privatisation announcement for the power plants of Turceni, Rovinari, Craiova-Isalnita was published in order to attract investors in the heating and electric generation based on lignite. A "green field" investment in new generating groups was made at the Iernut power plant. Finally, the power plants Galati and Braila were offered for privatisation. Some investors expressed their interest.

SC Electrica SA

Its main field of activity is the distribution of electricity. It has 8 branches. The company has been restructured in 8 electricity distribution and supply branches based on economic efficiency criteria and suitability for investment. The new structure has been operational since August 2001. The aim of this measure was to increase the economic efficiency and to attract potential investors. According to the National Strategy for Energy Development and following restructuring, the Government approved to start the privatisation of the Constanta and Timisoara distribution branches.

Following the restructuring of Electrica at the end of 2001, efforts concentrated on the strategy for the privatisation of the electricity distribution and supply subsidiaries Electrica Dobrogea1 and Electrica Banat2. After the decision for privatisation was taken, the call for privatisation was published and the pre-qualified investors listed.

According to GD No. 1342/27.12.2001 regarding the Reorganization of the Commercial Company for Electricity Distribution and Supply "Electrica" SA, the 8 distribution and supply branches became subsidiaries in January 2002. Their activity is electricity distribution and supply. At the same time, 8 maintenance and energy services branches were set up.

Following the restructuring of SC Electrica SA in 2002, the privatisation procedures of the new companies started. The current stage of privatisation is as follows:

- GD No. 1377/06.12.2002 concerning the approval of the privatisation strategy for the privatisation of Banat and Dobrogea subsidiaries was adopted. The decision establishes the privatisation forms and methodologies. The Strategy provides for the privatisation by negotiation of a 51% share-package of each commercial company to

a strategic investor selected on the basis of offers. Following the publication of the privatisation announcement in January 2003, 5 companies submitted letters of intent in March 2003.

- The Consultancy Contract with the Bank of America for the privatisation of Moldova and Oltenia subsidiaries was signed in April 2003, and the privatisation strategy for these two companies has been approved.

SC Hidroelectrica SA

Its field of activity is production and supply of electricity in hydropower plants. It has 10 branches. SC Hidroelectrica SA was restructured by separating the maintenance activity and other services, and by setting up 8 subsidiaries. According to Government Decision No. 857/16.08.2002, these subsidiaries became legal persons whose main activity is to provide repairing services.

The National Energy Strategy on Medium Term 2001-2004 stipulates that priority should be given to privatising the hydro units, which are in the process of being finalized. The procedures for the privatisation of 10 micro hydropower plants from SC Hidroelectrica SA were launched.

Pursuant to GD No 1524/2002, SC Hidroelectrica SA will operate during 2004 – 2006 under a regulated regime in order to ensure protection of constrained consumers through impartial allocation of hydro rent. Thus, the energy quantity traded in the wholesale market will be centrally optimised by the market operator. The offer of SC Hidroelectrica SA on the day-ahead spot electricity market, the balancing market and the ancillary service market will be established, using special hydro optimisation software. Starting in 2007, SC Hidroelectrica SA will participate in the electricity market on the basis of free competition.

SC Nuclearelectrica

Its mission is to produce nuclear-generated electricity and heat. The power generated annually by Cernavoda Unit 1 represents about 10% of the overall power production in Romania. By the end of 2003, electricity supplied to the grid amounted to around 35.6 million MWh. In addition, Unit 1 annually supplies 60,000 to 80,000 Gcal for district heating of the city of Cernavoda, and for industrial consumers in the local area. The Unit 2 of the Nuclear Power Plant is constructed to 54%, and scheduled for completion by 2006. The Units 3 and 5 are preserved.

2.3. District Heating

According to the national statistical data, 30.9% of the Romanian homes are connected to district heating. With this structure, Romania ranks fourth after Ukraine, Poland and Germany as regards the number of homes connected to the district-heating system.

There are approximately 3 million apartments in Romania in multi family blocks (from a total housing stock of approximately 7.8 million). Of these, approximately 2.5 million are heated by district heating, and 0.5 million have block level heating.

Energy efficiency of district heating supply, distribution, and end-use are all at a low level. Controls on boilers and burners are in most cases manual, and therefore efficiency is low.

Heat exchangers are normally steel or copper pipe, rather than the modern plate heat exchange technology. Distribution networks are a source of losses, both in the form of heat and water losses from cracked or corroded pipes, and because of high energy consumption from pumping due to over-extended distribution networks. Water losses are up to 30% in distribution on some systems (causing flooding and further damage to pipe insulation). Finally, at the level of consumers, few meters have yet been installed at the distribution/ block interface, and even fewer controls exist in apartments.

More than 90% of household energy consumption is used for heat and domestic hot water. A proportion of the heating costs is being subsidised. Affordability of heat is a major social issue, with heating and hot water bills accounting for a substantial proportion of household income.

In accordance with the IMF Memorandum, the national reference price paid by consumers for district heating was substantially increased to the equivalent of US$20/Gcal in July 2002. The difference between the actual cost and national reference price is to be met by a government subsidy, shared by the local government (55%) and the state (45%). Some local governments provide the subsidy, but most provide only a fraction.

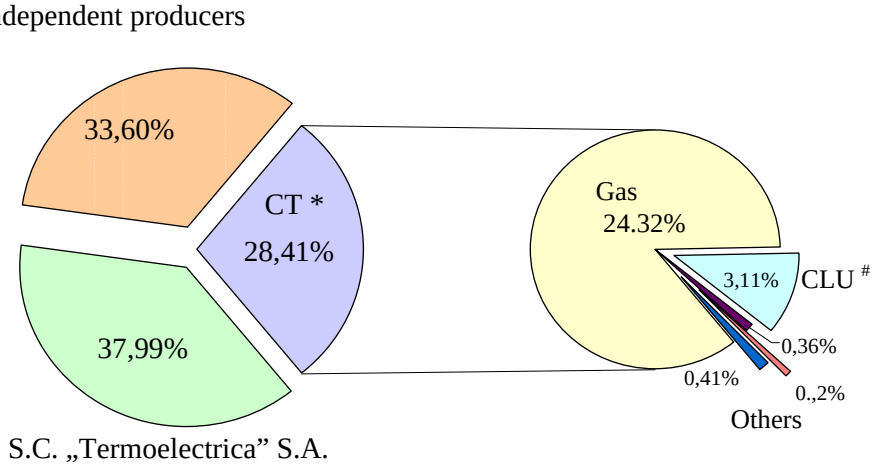
In 2002, the Regulatory Authority for Public Services of Municipal Services was established. Public services of urban management, which are under local administration, include, among others, the public lighting and district heating systems.

The Local Public Services are regulated by the following legislation:

- Law No. 326/2001 on Local Public Services, a framework law which sets important tasks concerning the responsibilities of the Government and the structures of the central and local public administration regarding the general state policy in this field. This law has to be supplemented by secondary legislation.
- Governmental Decision No.373/April 2002 regarding the organisation and functioning of the National Regulatory Authority for Municipal Services.
- Governmental Ordinance No 73/ 31 August 2002 regarding the organisation and functioning of the district heating services. This Ordinance clarifies the role of the central administration vis-à-vis the local administration, the new policy on setting and approving tariffs, delegated management, minimum level of services etc.
- Government Ordinance No 5 and 6/2003 reviewing billing and collecting systems and promoting new social aid policies.

Following the externalisation, Termoelectrica’s weight in the district-heating segment decreased from 63.3% to 38%. Independent producers and auto-producers currently cover 34% of the district-heating generation to householders.

Table 8: Heat Production Structure (Households) in 2002



***** CT = Thermal Plant (no cogeneration)
# CLU = Light Fuel

An average heat price of 118421 ROL/GJ (495000 ROL/Gcal), without VAT, was set through ANRE Order No 6/2002, while Order No 16/2002 sets an average price of 160287 lei/GJ (670000 lei/Gcal), without VAT.

In setting up heat prices for Termoelectrica, the two Orders took into consideration the GEO No 115/2002 provisions for Termoelectrica production that stipulate 3,59 USD/GJ (15 USD/Gcal) starting 1 April 2002, and 4.78 USD/GL (20 USD/Gcal) starting 1 July 2002.

2.4. Oil

Crude oil processing has an old tradition in Romania. The first refinery in Europe was commissioned in Ploiesti in 1857. The nominal processing capacity is about 34 mil tonnes; effective capacity is estimated not more than 22 mil/tonnes. There are 10 refineries, 5 of them represent 80% of the total capacity .In 2003, the crude oil production was about 5,6 mil tonnes and about the same quantity was imported.

Petrom SA is the national oil and gas company of Romania, and is 92.96% owned by the Romanian State through the Ministry of Economy and Trade. The remaining 7.04% of shares are listed on the Bucharest Stock Exchange, and the current market capitalization amounts to approximately US$2 billion. Petrom SA is a vertically integrated oil and gas company. It is the largest company in Romania and one of Central and Eastern Europe's (CEE) most important oil and gas producers. It accounts for 63% and 35% of the CEE oil and gas production, respectively.

Exploration and Production

Petrom SA is currently the only producer of crude oil in Romania. In 2003, it produced 5.650 million tonnes of crude oil and 6.129 billion scm of natural gas, representing

approximately 45% of natural gas production in Romania. The company operated 300 commercial fields.

Refining, Petrochemicals

From the total of ten refineries, five are considered as large since they include petrochemical complexes: Petrobrazi (Ploiesti), Arpechim (Pitesti), Petromidia (Constanta), Lukoil (Ploiesti) and Rafo (Onesti). The other five refineries are considered as small and were design to manufacture special products, for instance solvents, mineral oils and catalysts for crude oil processing. Except the Arpechim and Petrobrazi refineries. which are included in Petrom, all other refineries are in private ownership.

The refineries are linked to the national pipeline network, allowing crude oil to be transported from Petrom's production fields and the crude oil terminal at Constanta on the Black Sea. The principal refined products are gasoline, diesel, heavy fuel oil, light fuel oil and LPG.

Petrom owns two of Romania's ten refineries - Arpechim and Petrobrazi. The current operational capacity of these two refineries is 8.0 million tonnes per year, representing approximately 35.4% of the operational refining capacity in Romania. In 2003, the two refineries processed 6.112 million tonnes of crude oil, representing about 50% of total crude oil processed in Romania. In 2003, Petrom's estimated market share for gasoline and diesel market through its own distribution network (including refinery gate) was approximately 45%.

Petrom is currently in the final phase of privatisation. The closing of transaction is estimated for the end of June 2004.

Petroleum logistics

The *Oil Terminal Constanta* receives imported crude oil and fuel, as well as petroleum products for export. The oil terminal owns 7 wharves in Constanta harbour, provided by loading-unloading equipment for crude oil and oil products, with 1,7 mil tone storage capacity. It was designed to import approximately 24 million tonnes of crude oil annually, and approximately 10 million tonnes of oil products. It is a state company, and the petroleum strategy approved by the Romanian government does not envisage its privatisation.

Conpet SA Ploiest is the sole operator of the national oil pipeline network and provides crude oil transport. It operates 4,500 km pipeline network (pipeline diameter between 2 and 28 inches) equipped with pumping stations. The annual capacity is about 211 million bbl crude oil.

Petrotrans Ploiesti is the sole operator of the national petroleum products pipeline network. It covers oil products via pipelines (the piping network is 2,454 km long and is connecting refineries to storage) and via railways (65% of the overall conveyed quantity).

Distribution

Oil products are distributed from the refinery to users by two main competitive networks: SNP Petrom (690 filling stations) and a private network with more than 1700 stations (including Shell, Lukoil, OMV, Mol, Rompetrol, and Agip).

2.5. Coal

The coal industry currently plays an important role in the energy output of Romania. Due to the natural reserves and the existing infrastructure of thermo-power plants, this role will be maintained in the medium term. During 2001-2004, the existing capacity will produce 29-30 millions tones lignite, and 3.5 millions tones hard coal annually, destined to the energy output in the thermo-power plants. Coal will continue to be an important energy source, taking into account the reserves potential, the existing infrastructure and trends to reduce the costs per unit, especially for hard coal.

For the technological lines from coal quarries of great capacity which function permanently, and for the mines and coal processing plants equipment in Valea Jiului, upgrading and revamping will be carried out in order to make them more efficient. This is a priority objective of the National Strategy for Energy Development. According to the Strategy, the restructuring process of the coal sector will continue, aiming at the following objectives:

- Improving the economic and financial performances of the viable part of the sector and environmental protection;
- Implementing the Program of closure of non - viable mines and environmental rehabilitation;
- Promoting privatisation;
- Reducing the social impact in mining regions under restructuring;
- Strengthening the management of mining companies.

2.6. Nuclear Energy

The National Strategy for Nuclear Development in Romania and the Action Plan for its implementation were approved through GD No 1259/2002. The design of an efficient electricity market should take into consideration the development trends in the nuclear sector. This is all the more important as investments in this sector are substantial. The surplus of power in the Romanian Power System (SEN) is significant even with only one newly emerged unit.

Romania operates one nuclear power plant, a Canadian-technology CANDU-6 pressurized heavy-water reactor (PHWR). This type of nuclear reactor uses natural uranium fuel to create the nuclear reaction and heavy water as the neutron moderator and reactor coolant. The plant, located at Cernavoda, has a net capacity of 650 Mwe. It was put into commercial operation in December 1996. Cernavoda is run by Societatea Nationala “Nuclearelectrica” SA, which emerged from the split up of *regie autonome* Renel.

During the first year of operation, it produced 5.40TWh, 10 % of the total Romanian electricity generation. The current reactor provides 9-10% of the country's electricity, and a second reactor is under construction. The completion of the second reactor has been declared a national priority. It should be operational by 2005-2006. Nuclear safety is of

particular importance in the enlargement process. In this context, the EU Council adopted a Report on Nuclear Safety in June 2001. The Council made general recommendations to all candidate countries, such as completion of their national programmes on nuclear safety and the management of spent fuel and radioactive waste.

The National Commission on the Control of Nuclear Activities (CNCAN) is the regulatory body for the use and development of nuclear energy.

ANNEX 1 : NON-CONFORMING MEASURE OF ROMANIA AS REPORTED IN THE "BLUE BOOK"

MEASURE

Constitution of Romania, Article 44, paragraph 2.

SECTOR

National Economy.

LEVEL OF GOVERNMENT

National.

DESCRIPTION

Foreign citizens and stateless persons shall only acquire the right to private property of land under the terms resulting from

- Romania's accession to the European Union and other international treaties to which Romania is a party;
- Lawful inheritance.

PHASE-OUT

No plans at present.

OTHER EXCEPTIONS

None.

ANNEX 2 :QUESTION BY THE SWISS EXAMINER OF THE REVIEW AND ANSWERS BY THE ROMANIAN AUTHORITIES

A. Questions by the Swiss Examiner

I. Introductory remarks on the bilateral co-operation between Switzerland and Romania

Switzerland has been building up close contacts with Romania in a number of areas of co-operation since the beginning of the 90ies. Starting from 1996 the Swiss Government has supported Romania in its efforts to enhance the country's economic development by providing financial contributions which amount to more than 75 million Swiss francs. The fields of Swiss engagements are as follows: (1) promotion of private sector development; (2) reform of the health sector; (3) strengthening of the civil society and the rule of law; (4) infrastructure and environment. Switzerland very much welcomes the progress Romania has achieved so far and appreciates the fruitful co-operation with Romania. Switzerland notes with great satisfaction the rapid improvement regarding the overall business climate and a positive trend in the evolution of FDI. Romania is the only country in the region that succeeded to attract more than US$ 10 bn (US$ 1.574 bn) in the past 13 years. Furthermore, in recent years Romania has been successful in reforming and restructuring its economy. Therefore, Switzerland is convinced that in the coming years Romania will become an even more attractive host country for foreign investors.

II. Questions

1. Question referring to the relationship between international law and Romanian domestic law

According to the Romanian Constitution (see Report IV. 1.1., p. 14), international treaties ratified by Romania are a part of its internal (domestic) law. In case of any inconsistencies between the national legislation and the said international treaties, the international treaties shall prevail. Would it be a correct understanding of the report that in case of a conflict between the Romanian Constitution and a provision stemming from an international treaty ratified by Romania, the latter shall also prevail?

2. Question referring to free transfer of payments relating to investments made in Romania

It is said (see Report IV. 1.1. p. 14, IV. 1.2.9. pp. 30) that foreign investors (and foreign investments) shall be granted free transfer of payments relating to investments made in Romania, after payment of taxes and settlement of other obligations provided by the Romanian law. This may disproportionately restrict and / or to some extent contradict investors' rights to free transfer which may be granted by, e. g., a bilateral investment treaty. Obligations of investors or their investments to pay taxes could be subject to litigation – e.

g. the legality of the taxation may be doubtful or the tax itself could be disputable – and thereby delay seriously the free transfer. Furthermore, blocking the questionable transfer of payments until the corresponding decision will be taken may also be a disproportionate measure violating investors' rights to free transfer. Therefore, it would be helpful if the Romanian delegation could provide us with further clarifications taking into account investors rights to free transfer by virtue of a bilateral investment treaty.

3. Question referring to international investment arrangements

Romania has concluded a great number of treaties relating to trade and investments (see Report IV 1.3. pp 33), in particular a large number of bilateral investment treaties (BIT) and the Central European Free Trade Agreement (CEFTA), in addition to its membership to WTO. Following the poor results of the Cancun Ministerial Conference of the WTO Doha development round, many countries, including the EU, USA, etc. are intensifying bilateral negotiations on Free Trade Agreements (FTA). A growing number of FTAs have been concluded so far. (a) Does Romania, in the foreseeable time, consider necessary to join other countries in negotiating Free Trade Agreements, and if so, what would be its guiding policy principles? (b) What is the state of play with regard to accession to the OECD Declaration on International Investment and Multinational Enterprises which may potentially increase the attractiveness of Romania as a host country for foreign investors and investments?

4. Question referring to National Treatment

(a) Romanian Law 241/1998 on the Encouragement of Direct Investment accords foreign investors, whether residents or non-residents, and foreign investments national treatment with respect to any conduct relating to investments (see Report IV 1.2.9. pp 30). What is the meaning of this provision with regard to the establishment of an investment? (b) Art. 44, paragraph 3 of the Romanian Constitution (Right to Private Property) and Law 35/1991 on the Foreign Investment Regime stipulate that foreign investments in Romania are protected against nationalisation, expropriation and measures tantamount to expropriation, unless it is in a public interest purpose, respecting the procedures provided by law and against payment of compensation (damage caused). Law 241/1998 also states that foreign and domestic investors, whether residents or non-residents, are equal before the Romanian law. Would it be a correct interpretation of the said provision of the Romanian Constitution and Law 35/1991 on the one hand and Law 241/1998 on the other hand that national treatment only applies to foreign investors and investments to the extent that an international treaty on investment does not provide for better treatment?

5. Questions referring to competition

(a) The report mentions Romanian harmonization efforts to keep its national laws in line with European legislation on competition (see Report IV. 1.2.3. pp 20). Whereas the report describes briefly the contents of some substantive provisions, procedural rules are not mentioned. In this context it would be interesting and helpful to know what kind of sanctions against prohibited anti-competitive practices are foreseen by Romanian law, how these sanctions will be enforced and which is the competent state authority? (b) Where is the Romanian competition authority to be found in the institutional setting? (c) Is it an

independent institution or is it part of the Romanian government? Finally, we would appreciate to learn how Romania has been able to realise the capacity building and technical know-how of judges dealing with competition cases?

B. Answers by the Romanian Authorities

1. Questions referring to the relationship between international law and domestic law

Concerning the relation between the Constitution and international treaties, the Constitution of Romania, as modified in 2003, provides in article 11, paragraph 3, that in case a treaty contains provisions that are inconsistent with the Constitution, it can be ratified only after amending the Constitution. This provision can be regarded as confirming an "indirect" superiority of international law over the Constitution, similar to article 54 of the French Constitution.

2. Questions referring to free transfer of payments relating to investments made in Romania, according to bilateral investment treaties

Romania has concluded 83 bilateral investment treaties with third countries. The provisions referring to the free transfer of payments guarantee the investors the possibility of transferring funds and payments related to investments. According to the provisions of the bilateral investment treaties, transfers may be made according to the national laws and regulations in force (after the payment of all fiscal obligations which an investor has in the host country). It is not a restriction but a provision in accordance with international practice.

The bilateral investment treaties provide exceptions from the free transfer clause. Accordingly, restrictions from the free transfer of capitals and payments can be imposed only in exceptional financial or economic circumstances, in accordance with national laws and regulations and in conformity with the Articles of Agreement of the International Monetary Fund.

At the same time, Romania proposed to countries with which it has concluded bilateral investment treaties to include an exception related to measures imposed by the European Union, in order to bring these agreements in line with European Community law.

3. Questions referring to international investment and trade agreements

(a) Romania has committed itself in the negotiations with the European Union to align its policy to the commercial policy of the Union towards third countries. Thus, until the date of accession, Romania intends to conclude free trade agreements only with those countries with which the European Unions has done so (for example, within the Mediterranean Partnership). Nevertheless, on the date of accession, all free trade agreements concluded by Romania shall cease to apply and shall be replaced by the agreements to which the European Union is a party.

(b) On 30 March 2004, the OECD Council invited Romania to accede to the OECD Declaration on International Investment and Multinational Enterprises. Following the elaboration of the Country Report, the examination session will take place on 22 September 2004. We estimate end of October as the date for Romania's accession.

4. Questions referring to National Treatment

(a) National treatment regarding the establishment of an investment means, according to Law no. 241/1998, equal treatment between Romanian investors and foreign investors with respect to legal provisions concerning the conditions for establishing an investment (i.e. registration of a company, acquisition of assets[1] etc).

(b) Yes. The international treaties related to investments are part of the internal law and are regarded as "*lex specialis*" in relation to the internal law. It appears obvious that the treatment regulated thereby shall apply, notwithstanding the provisions of the internal legislation (Law no. 241/1998). At the same time, Law no. 241/1998 provides expressly in article 9,paragraph (2), that if a bilateral investment treaty, duly ratified, or a special law enables an investor – natural or legal person – to a treatment more favourable than the one granted by this law, the investor shall enjoy the respective more favourable treatment.
Please note that Law no.35/91 is no longer in force.

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5. Questions referring to competition

(a) Sanctions for the infringement of competition legislation are provided by Law no. 21/1996 (Competition Law), chapter VI (sanctions), articles 54-65, and are as follows: nullity of the legal act that constitutes an anti-competitive practice, administrative sanctions (administrative fees) and criminal sanctions for natural persons, in specific cases.

(b) The competent authority is the Competition Council, a body established and regulated by Law no. 21/1996. Its decisions are mandatory and are published in the Official Journal.

(c) The Competition Council is an autonomous administrative authority - which means that it is not subordinated to the Romanian Government.

[1] See special provisions of article 44, paragraph 2, of the Romanian Constitution, with respect to the acquisition of land (Annex).