EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT
TERMS OF REFERENCE

ROMANIA – Technical Assistance to the Government of Romania with the Development of the New Electricity Law

1. Background


In terms of scope, Directive 2019/944 aims to promote the integration of national energy markets and the cooperation between system operators at EU and regional level. Regulation 2019/941 establishes rules for cooperation between Member States in order to prevent electricity crises, to prepare and manage such crises, in the spirit of solidarity and transparency, and take full account of the requirements of a competitive internal electricity market. Regulation 2019/942 defines the objectives and measures that can be taken by ACER for the purpose of a coordinated assessment of the adequacy of resources at a European level. The assessment is necessary for coordinating national actions related to risk preparedness, in accordance with Regulation 2019/941, ensuring consumers’ welfare, security of supply and decarbonisation, and developing cooperation on cross-border regulatory measures. Regulation 2019/943 on the internal market for electricity establishes the rules for the functioning of the internal electricity market and includes requirements related to the production of energy from renewable sources. It also aims to eliminate the existing obstacles to cross-border trade and to encourage investments in related infrastructure, in more flexible production, providing incentives for investments in distributed generation, energy storage, energy efficiency to meet market needs, to facilitate fair competition and to guarantee the security of supply.

2. Project’s rationale

The Government of Romania is thus required to take the necessary steps to ensure the national legislation is consistent with the EU energy acquis. In view of the above, the Ministry of Economy, Energy and Business Environment of Romania (the “Ministry”) has requested the European Bank for Reconstruction and Development (the “EBRD” or the “Bank”) to provide assistance with the development of a new electricity draft law, which would fully transpose the new European package into national legislation.

In accordance with the latest country strategy for Romania and as part of its efforts to promote green economy investments and policies, the Bank supports the liberalisation of the electricity market in Romania. Therefore, the EBRD is launching a new technical assistance (TA) project aimed at assisting the Ministry with the drafting of a new electricity law and conducting a comprehensive assessment of the impact of the implementation of the legislative package. Such assessment will support the Ministry to
identify policy and regulatory mechanisms that could increase market efficiency and facilitate the transition towards a decarbonised energy industry.

As part of this assistance the EBRD will retain international and local experts (“the Consultant”) who will provide assistance to the Ministry with the transposition and implementation of the legislation mentioned above, assess its impact on the market, and prepare recommendations to ensure optimal functioning of the market and protection of vulnerable groups (“the Project”). The Ministry will invite other competent national authorities such as the Romanian Energy Regulatory Authority (ANRE) and other relevant authorities to take part in a working group on the development of the electricity draft law and other outputs of the Project (“the Working Group”).

3. Objectives

The main objective of the Project is to develop a new electricity draft law consistent with the EU energy acquis. This will include, among others, transposition of the Directive 2019/944 and implementation of the provisions of Regulation 2019/941, Regulation 2019/942 and Regulation 2019/943. In addition, the Project will evaluate the legal, regulatory, economic and technical impact of the new draft law at a national level and ensure consistency of existing energy legislation with the new draft law.

Therefore, the Consultant’s objectives are to:

3.1. Analyse the primary and secondary legislation and identify the specific legal and regulatory measures that need to be modified / updated in the context of the new European energy provisions;
3.2. Draft a new electricity law to ensure compliance with the EU energy acquis and practical application into the Romanian national context.
3.3. Assess the legal, regulatory, economic and technical, environmental and social impact of transposition and implementation of the European legislation;
3.4. Organise workshops with relevant stakeholders to discuss, explain and incorporate comments received during the public consultation process of the draft law;
3.5. Propose measures to reduce the negative impacts on the final and vulnerable consumers and draft relevant provisions;
3.6. Propose measures to reduce the possible negative effects on the security of supply of the internal consumers and on SEN safety and draft relevant provisions;
3.7. Provide capacity building to the Ministry and other relevant authorities in light of the new provisions and requirements introduced by the European energy legislation.

4. Scope of Work

In order to achieve the above objectives, the Consultant shall perform the following tasks:

4.1. Task 1. Analysis of primary and secondary electricity legislation and identification of the provisions that would need to be updated / modified / removed to ensure compliance with the new European energy acquis.

The national legislation to be reviewed by the Consultant will cover, among others, the Electricity and Natural Gas Law No. 123/2012 (“Law No.123/2012”) and the relevant secondary legislation governing the electricity sector.
To complete Task 1, the Consultant will:

- Prepare an inventory of the legislative texts, materials and practices relevant for the transposition / implementation of the above-mentioned Directive and Regulations, as well as other relevant European energy *acquis*;
- Assess the national legislation against the European Directive and the three Regulations and identify the provisions in national legislation that need to be modified / adapted / supplemented or removed in order to ensure compliance;
- Develop an outline of the electricity draft legislation to be discussed by the Ministry and the EBRD;
- Take into account previous amendments to the Law No.123/2012 with the objective to produce a final set of amendments incorporating all changes made from 2012;
- Identify the actions that are needed, at the level of all relevant Romanian Institutions (Ministries, Regulatory Authority, Transmission System Operator, Electricity Market Operator, etc.) in the context of the transposition of the provisions of Directive 2019/944 and for the application / implementation of the three Regulations and other relevant European energy *acquis*, and develop relevant recommendations / proposals for amendments;
- Integrate and aggregate all available information mentioned above and discuss with the Ministry and the EBRD;

4.2. **Task 2. Develop a new electricity draft law**

The Consultant will prepare a new electricity draft law ensuring complete transposition of Directive 2019/944 and efficient and practical application of the provisions of the three Regulations reflecting the specificity of the Romanian energy sector. Previous amendments to the Law No.123/2012 should be considered and incorporated and other legislation should be assessed to ensure consistency of the draft law with the rest of the Romanian legislative framework. The Consultant should work closely with the Ministry and the Working Group to produce the relevant drafts.

In addition to the above, the draft law should include the relevant provisions to ensure:

- Security of supply;
- Increasing the flexibility of the electricity system and maintaining a balanced energy mix;
- Increasing interconnection capacity and energy transfer capacity at regional level;
- Liberalization of the electricity market;
- Risk preparedness by implementing common principles to prevent crisis situations and / or manage them;
- If relevant, ensure compliance with EU environmental legislation;
- Ensuring the stability and accessibility of the energy price for the final consumer;
- Empowering individuals and communities by strengthening/ stimulating the active role of the final consumer in the electricity market;
- Protecting the vulnerable consumer;
- Enhanced regional cooperation (through ROCs, information sharing and transparency practices)
4.3. **Task 3.** Assessment of the legal, regulatory, economic, environmental, social and technical impact of the transposition of Directive 2019/944 and the implementation of the three Regulations taking into account:

- The impact on the internal electricity market;
- The impact on the final consumer, including on vulnerable consumers;
- The impact on the safety of the functioning of the national electricity system (SEN);
- The impact on the security of supply of the domestic consumers;
- The impact of complying with national and EU environmental policies;
- The impact on energy generators, taking into consideration also the regional context;
- The impact on cross-border regional exchanges.

4.4. **Task 4.** Propose measures / recommendations to reduce the negative impact on the final consumer and vulnerable consumer & the possible negative effects on the security of supply of the internal consumers and on SEN safety.

The Consultant shall identify the measures that could be taken to mitigate the impact/challenges of the transition to a decarbonised energy industry and compliance with the European legislation and draft the relevant proposals/texts for relevant amendments to minimize the negative impact.

4.5. **Task 5.** Provision of technical assistance to the Ministry and to the other national authorities responsible for transposing and implementing the relevant European energy legislation.

As part of this task, the Consultant will assist the Ministry during internal consultations with other national authorities, public consultations, inter-ministerial approval and Parliamentary approval. The Consultant will collate all received comments into a legal comparison table, respond to stakeholders’ comments and integrate relevant comments into the final draft law. The Consultant should be considerate of the timing needed for the public consultation process and the legislative approval process in providing the assistance.

5. **Deliverables and Timing**

5.1. **Deliverables**

At the start of the Project (“Inception Meeting”), the Consultant will prepare a work plan for implementing the tasks of this Project and relevant timeline. The work plan and timeline will be then presented to the EBRD, the Ministry, and relevant national authorities and agreed.

The Consultant shall submit the following written deliverables and to perform the following activities:

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Title</th>
<th>Description</th>
<th>Timeframe / Deadline</th>
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<tbody>
<tr>
<td>Inception meeting</td>
<td>Plan of the Project</td>
<td>Work plan implementing the tasks of the Project and relevant timeline (Gant schedule)</td>
<td>To be presented at the Inception Meeting and finalised 7 days thereafter</td>
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<tr>
<td>Deliverable 1</td>
<td>Report on Task 1</td>
<td>A report on the activities listed in Task 1 will be</td>
<td>Due by 15 September 2020.</td>
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<tr>
<td>Deliverable</td>
<td>Description</td>
<td>Details</td>
<td>Due Date</td>
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<td>Deliverable 2</td>
<td>First draft of the electricity law</td>
<td>First draft proposal for an electricity law submitted to the EBRD and the Ministry for comment per Task 2</td>
<td>Due by 1 October 2020</td>
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<tr>
<td>Deliverable 3</td>
<td>Final draft of the electricity law for consultation</td>
<td>Final draft of the electricity law will be submitted to the EBRD, Ministry and relevant authorities per Task 2</td>
<td>Due by 10 November 2020</td>
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<td>Deliverable 4</td>
<td>Draft Impact Assessment</td>
<td>Draft report on Impact Assessment as detailed in Task 3</td>
<td>Due by 30 November 2020</td>
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<td>Deliverable 5</td>
<td>Report on Task 4</td>
<td>Recommendations for reducing the negative impact on the final and vulnerable consumers and ensuring the security of supply of the domestic consumers and the SEN safety to be submitted to the EBRD, Ministry and relevant authorities per Task 4</td>
<td>Due by 30 November 2020</td>
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<td>Deliverable 6</td>
<td>Final Reports on Task 3</td>
<td>Final Impact Assessment incorporating received</td>
<td>Due by 15 December 2020</td>
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<td>Comments</td>
<td>Technical assistance</td>
<td>TBD / Q1 2021</td>
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<td>Consultant will assist the Ministry during the internal consultations with other national authorities, public consultations, inter-ministerial approval and Parliamentary approval</td>
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<td>Deliverable 8</td>
<td>Final report to EBRD</td>
<td>Due by end of February 2021</td>
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<td>The Final Project Report will consist of all activities carried out under the Project, including technical assistance provided to the Ministry during consultation of the draft legislation (per Section 4.5)</td>
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The Working Group will issue observations/comments on the deliverables within 10 working days from submission. The deadlines for each stage will be revisited and agreed during the Inception Meeting.

The Consultant will present work reports every two weeks to the EBRD, indicating the time spent on the Project and its progress and activities. All written deliverables shall be both in English and in Romanian. Deliverables shall be provided in electronic form. No deliverable shall be considered as final before being approved by the Operation Leaders as being of an acceptable quality.

**5.2. Timing**

It is envisaged that the contract will be launched by the end of July and will run for at least eight (8) months. The Consultant will be procured and mobilised as soon as the funding approvals are obtained.

**6. Implementation Arrangements**

6.1. All work on this Project has to be approved by EBRD before being considered final.
6.2. This Project will be led and managed by the EBRD SIG (EMEA Team) and the Legal Transition Team (LTT).
6.3. The Project will be carried out under the supervision of the Operation Leaders (the “EBRD OLs”). The Consultant shall report to the EBRD OLs on all aspects of the assignment.
6.4. The Consultant will be responsible for overall achievement of Project’s objectives.
6.5. The Consultant is expected to work closely with the EBRD, especially at various stages of policy dialogue with the ministries and government, and consult and inform the EBRD prior to meetings with government counterparts related to the Project.
6.6. The Ministry will appoint a contact person for the implementation of this Project. The Ministry will also convene a working group with relevant national authorities that will participate in the review of the Project’s deliverables.

6.7. The Ministry will cover the costs of venues and associated costs relating to the public and inter-ministerial consultation meetings on the draft legislation. The Consultant will prepare materials for distributions, presentations and other relevant materials.