

# ***SOME ASPECTS REGARDING THE PERFORMING OF THE AUDIT OF THE ELECTRICITY DISTRIBUTION NETWORKS IN ROMANIA***

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## ***Abstract:***

*The performing of the electricity distribution networks as well as their financing from public and private funds was a condition and contractual clause at the moment of the privatization of the electricity distribution system in Romania. Compliance with these conditions has been poorly monitored and regulated by the state, favoring the performing of investments by the commercial operators held to perform, from the financing sources of the final consumers - abusing the monopoly position they enjoy.*

***Key words:*** ENEL, privatization agreement, distribution networks, financed from local budgets, recognition of investments

***JEL classification:*** H26, G22, M40, M41

Starting from the fact that the electricity distribution networks should be included in the list that includes the elements of the nature of the public patrimony of a country (although they are not<sup>1</sup>), we will proceed to the observation and analysis of the route they have had after their construction by the communist regime, but also the investment path they currently have according to current system practices.

After the electricity networks, as they are currently defined<sup>2</sup>, were built throughout history until the takeover by privatization of the company ELECTRICA SA,

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<sup>1</sup> Vezi prevederile Legii nr. 213/1998 – unde la Anexa 1 LISTA cuprinzând unele bunuri care alcătuiesc domeniul public al statului și al unităților administrativ-teritoriale la pct. 14. Sunt cuprinse doar rețelele de transport a energiei electrice;

<sup>2</sup> LEGE nr. 123 din 10 iulie 2012 a energiei electrice și a gazelor naturale – pct. 63. rețeaua electrică - ansamblul de linii, inclusiv elementele de susținere și de protecție a acestora, stațiile electrice și alte echipamente electroenergetice conectate între ele prin care se transmite energie electrică de la o capacitate energetică de producere a energiei electrice la un utilizator; rețeaua electrică poate fi rețea de transport sau rețea de distribuție; 64. rețea electrică de distribuție - rețeaua electrică cu tensiunea de linie nominală până la 110 kV inclusiv; 65. **rețea electrică de interes public** - rețeaua electrică la care sunt racordați cel puțin 2 utilizatori; 66. rețea electrică de transport - rețeaua electrică de interes național și strategic cu tensiunea de linie nominală mai mare de 110 kv;

they entered the administration of the companies that purchased the majority packages<sup>3</sup> of the companies put to privatization. We present a short history, just to identify the moments of history in the matter:

- In 2002, the Government Decision 1377/2002 was signed, which decided to privatize two subsidiaries of Electrica: Electrica Banat and Electrica Dobrogea.

- In 2005, the Italian company ENEL awarded the privatization of Electrica Banat and Electrica Dobrogea. ENEL paid for the two electricity supply and distribution companies the amount of 112 million euros for 51% of the shares of the two state-owned companies.

ENEL announced in 2005 that it would invest 1 billion euros<sup>4</sup> in Electrica Banat and Electrica Dobrogea.

- In 2004, GD no. 531 by which it was decided to privatize "Electrica Moldova" - S.A. and "Electrica Oltenia was signed". In 2005, the German company EON bought the majority stake of Electrica Moldova with 100 million euros, and CEZ - Czech Republic bought with 151 million euros the majority stake of Electrica Oltenia.

- In 2005, the GD was signed ordering the privatization of Electrica Muntenia Sud. In 2007, the procedures were completed and Electrica Muntenia Sud was bought by the Italian company ENEL. The Italian company paid 395 million euros for 67.5% of the shares and undertook investments of 425 million euros.

In the five privatization agreements, EON, CEZ and ENEL undertook to make substantial investments in Electrica's subsidiaries. The "parent" company Electrica was obliged to watch over the way in which the buyers of the majority packages for the five subsidiaries respect their commitments from the privatization agreements. Through these CEZ agreements, EON and ENEL undertook to invest a large part of the money in the subsidiaries purchased.

A report of the Romanian Court of Accounts, finalized in July 2012 at SC ELECTRICA SA, discovered dozens of irregularities committed by the companies that bought the Electrica subsidiaries. The Court of Auditors' report shows that investors did not invest, or did not clearly prove, that they kept their contractual promises. Being territorially located in the Banat region, we will refer in the following only to the effects of these privatizations observed in this area of the country.

Thus, contrary to the contractual commitments, SC Enel Electrica Banat SA, although it undertook to invest the amount subscribed to the sale action of 46 million euros in the development and expansion of the distribution networks, did not do so. The Court of Accounts of Romania, after having difficulty obtaining the data through the state's participation as a minority shareholder, it recorded the following:

"Compared to those presented, the Buyer does not comply, as a majority shareholder, to the obligation to determine the company to use the price of the newly issued shares, in the amount of 46.6 million euros in order to finance the investments necessary

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<sup>3</sup> Hotărârea de Guvern 1377/2002 - Se aprobă Strategia de privatizare a societăților comerciale filiale de distribuție și furnizare a energiei electrice "Electrica Dobrogea" - S.A. și "Electrica Banat" - S.A., respectiv privatizarea prin negociere a pachetului de 51% din acțiunile fiecărei societăți comerciale către un investitor strategic selectat pe bază de oferte.

<sup>4</sup> <https://www.gandul.ro/stiri/lovitura-de-doua-miliarde-de-euro-a-baietilor-destepti-din-energie-de-ce-a-crescut-factura-la-curent-a-romanilor-raport-al-curtii-de-conturi-11669807>

for the development of distribution activities and the electricity supply, with direct influence of the calculation of electricity distribution tariffs ”.

In other words, the Romanian state exempted the Italian investors from the direct transfer of this amount as payment for the sale of the company, but "forced" them to make investments of this money from their own sources. These investments, however, were made from the money received from consumers, thus increasing distribution and supply tariffs. So, they made the investments on the money of all Romanian consumers - and not through capitalizations from the investors' own sources.

For this fact, the Romanian State claimed damages under the agreement, of 800 million euros, losing the action opened at the Court of Arbitration in Paris, a court chosen by the same contract. It was the first major action by the State in trying to recover some of the damage caused by the Italian distribution operator's mode of operation, it is interesting to follow the enormous pressure that investors exerted on the state through the apocalyptic declarations of that time, such as: "they leave Romania, it will be a disaster, they will sell to the Chinese" , no longer giving importance to the exit.

Since then, the state has tried to recover some of the damage, thus starting to issue a series of legal norms, by ANRE order, one of them being Order 59/2013, which repeals the previous order, approved by GD 90/2008, on connecting users to electricity networks.

From the privatization until after the entry into force of the ANRE Order 59/2013, the distribution operator SC Enel Distribuție Banat SA increased its assets by thousands of kilometers of electricity networks, the way being simple: during the real estate development period, authorizations were issued construction equipment on the conveyor belt, most with favorable site approvals, after which, at the expiration of the temporary connection approvals, after the tabulation, neither Enel, mainly nor the town halls, in the subsidiary, could find the necessary funds to complete the low voltage distribution networks, so that, without electricity, consumers - individuals, for the most part, they were actually forced to make network expansions (or power upstream, even by purchasing transformers with larger and newer capacities of tens of thousands of euros) by associating where there were several, which they actually donated before execution (although donations, only some took the authentic form, most being simply given to the Italian distribution operator). As an investor-end customer, the donors were compensated by other Romanian consumers as the street developed, but not more than 5 years (the procedure is included in any technical connection notice) - although the general limitation period given by the civil code is 3 years. Therefore, without investing anything and performing the energy distribution network according to the latest standards, the investors realize revenues from the connection after the expiration of the term of 5 years. We could say that, although confidential for the Romanian State - which still has a minor participation but not a real benefit - but perhaps relevant for an external public audit, it would be necessary to analyze how these assets were highlighted from the point of view of financial accounting view in the financial statements of ENEL Distribuție SA, it is known that these assets should be recorded in the donation accounts, having as a subsidiary the character of "investment grants", recognized as income.

As we have exemplified a method practiced in the performing of distribution networks from the taxpayers' money, we also exemplify here the way of making the investments in the distribution networks of the regional operator Banat from the money of the local communities.

From another Report of the Court of Accounts - Timiș Chamber of Accounts - concluded at one of the audited entities - territorial administrative unit, it is specified that:

*"From the audit of specific elements selected from the category of investment operations performed, the external public auditor found the existence of a special way of working of the audited entity in the contractual relationship with SC ENEL DISTRIBUȚIE BANAT SA.*

*The external public auditor finds that within the agreement concluded by the audited entity with SC ENEL DISTRIBUȚIE BANAT SA the entity pays in the period 2013-2014 the amount of 115,770.95 lei established by agreement and paid in advance for the works (extension of low voltage networks for subsequent supply of PUZ homes ), there are payments made even without the implementation of those provided in the agreement and therefore the completion of the works until the date of the audit. At the same time, it is found that SC ENEL DISTRIBUȚIE BANAT SA is not the real provider of the contracted works, it subcontracting the performance of the works to a third economic operator. The difference in value given by the revenues that ENEL has from the local community and the payments that it makes to the subcontracting operators are not fully reimbursed to the local budget, thus creating damages to the audited entity. The value of such damages estimated by the external public auditors is 8,961,49 lei - amount to be recovered by the audited entity. We find in this way the favorable way of financing ENEL's own activity to the detriment of the local budget of the city, fulfilling the quality of debtor supplier of the local budget and at the same time of client (therefore debtor) towards the real providers of the public works of electricity infrastructure with which it does not practice the same payment system that it contractually imposes on the audited territorial administrative unit.*

*Analyzing the cause of these payments made in advance, the external public auditor found the illegality of the provision in the Connection Agreement "point 11. Payment methods", by which the operator Enel Distribuție imposes a payment schedule regardless of the public nature of the contractual partner. Thus, according to Law no. 273/2006, art. 54 stipulates that for certain categories of expenses, advance payments of up to 30% may be made, under the conditions of the legal provisions - only if this possibility of granting the advance is clearly stipulated in the agreement. Amounts representing advance payments thus made (under the conditions of the contractual provisions) and unjustified by goods delivered, works performed and services rendered, until their receipt and / or until the end of the financial year, they will be recovered by the public institutions that granted the advances and will be returned to the budget from which they were advanced - ie to the local budget of the audited city.*

*We specify that according to the contractual provisions, the possibility of granting advances by the audited entity was not specified - therefore the payments advanced by the audited entity are outside the legal framework. Illegal payments of 115,770.95 lei were paid by the entity according to the contractual conditions, being forced both contractually and by the position of force of the operator Enel Distribuție which occupies on the market of this type of services of extension of the electric network a monopoly position.*

*Considering the above, the external public auditor applied the provisions of Law no. 273/2006, art. 54, calculating the accessories of the amounts illegally advanced and / or not recovered at the date of the audit in the amount of 22,742.89 lei. "*

*From the experience gained in this field of external public audit, we state without generalization that there are not a few cases in which, after concluding such harmful financing for territorial administrative units, they were forced to transfer the investment to the distribution operator, without compensation, under the condition of not supplying electricity to some networks that do not belong to it.*

We note that the operator SC ENEL DISTRIBUȚIE BANAT SA uses a favorable way of financing its activity to the detriment of local budgets, which attract such funds for investments in low voltage distribution networks involving financing instruments in the field of public debt, whereas it requests and receives in advance the connection fee without executing the work, and in relation to the executor of the work (who was a subcontractor, it being known that ENEL no longer executes network works, but working strictly with a list of accredited operators) does not practice the same payment system that it contractually imposes on administrative-territorial units, achieving both profit and a positive cash flow - unexpected to be achieved on the free market, thus becoming even source of funding for other purposes. All these being possible only due to the monopoly position that the investor acquired by purchasing the majority stake from the Romanian state.

We conclude by the fact that although things seem to be going slowly by order of ANRE, by which for works to extend the electricity distribution networks made from public sources, a calculation is made to compensate the local entity by the network operator, historically speaking – the damage has been made, and there are future consequences.

### References:

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