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## Electricity Trading in the CESEC Region

*Licensing Requirements and Market-Distorting Fees*

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European Federation  
of Energy Traders  
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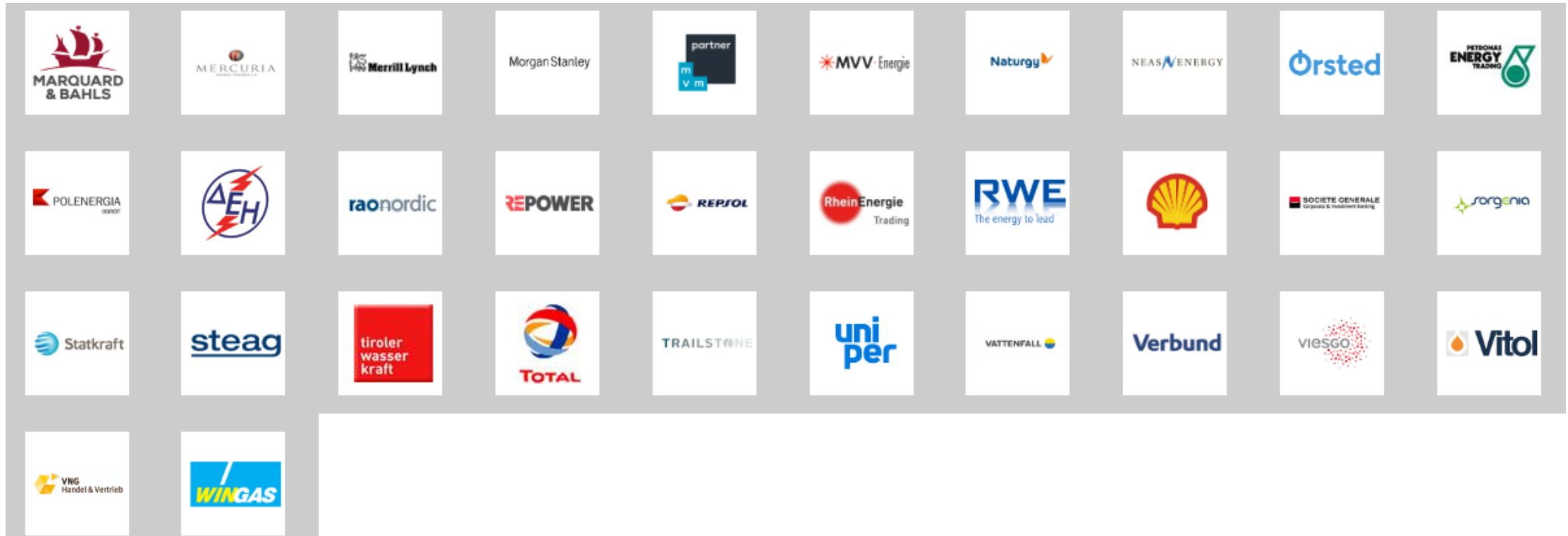
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# Electricity Trading in CESEC in 2019

## Electricity Trading in CESEC in 2019 – Power Exchange Establishment

To **foster cross-border trade, increased competition and improved liquidity, as well as transparent price formation**, and thereby reap the full benefits of European energy market integration, the establishment of Power Exchanges in the CESEC region is a crucial next step

In 2019, **several CESEC countries are planning or already proceeding with the establishment of (at least) Day-Ahead Power Exchanges:**

Country	Go-Live Expected
<i>Greece</i>	Q2-Q3/2019
<i>Ukraine</i>	Q3/2019
<i>Macedonia</i>	2019/2020
<i>Montenegro</i>	2019/2020
<i>Albania</i>	2020

For PXs to flourish and achieve their intended aims and objectives, they **need to attract a sufficient number of market participants, both local and foreign, to provide the necessary liquidity**

In order to facilitate direct participation of foreign (EU) trading companies, a number of preconditions must be fulfilled:

- **Simplification and harmonisation of licensing requirements** (preferably abolishment)
- **Predictability and stability of regulatory fees** (preferably adapting NRA financing sources)
- **Reforms beyond energy legislation** (implementation of VAT reverse charge mechanism)

# Licensing Requirements for Traders



## Possibilities for Participation in CESEC Electricity Wholesale Markets

- In CESEC countries (EU MS and EC CP), there exist three main approaches of requirements for a foreign company to be active on a given electricity wholesale market:
- **‘HARD’ LICENSING – INCLUDING REQUIREMENT FOR LOCAL LEGAL ENTITY**
  - Where licenses are only issued to local independent legal entities, therefore requiring establishment of a subsidiary
  - Significant financial and organizational efforts required to establish a local legal entity, significant documentation required to obtain a license, and duration of procedures are a barrier to entry
  - The case in most Energy Community Contracting Parties
- **‘SOFT’ LICENSING – WITHOUT REQUIREMENT FOR LOCAL LEGAL ENTITY**
  - Where licenses may be issued to foreign companies without the need to establish an independent local legal entity (branch is sufficient), or foreign companies’ existing licenses may be used as basis for activities (‘mutual recognition’)
  - Significant documentation required to obtain a license and duration of procedures are a barrier to entry
  - The case in some EU Member States
- **NO LICENSING – DIRECT PARTICIPATION OF (FOREIGN) COMPANY**
  - No specific license is needed for a foreign (or local!) company to directly participate in a given energy market
  - Only limited administrative requirements for local registration/presence
  - Simplest for all involved and most effective in facilitating participation and liquidity
  - The case in most EU Member States
- **IMPORTANTLY:**
  - ‘Mutual recognition’ is usually not enough, as practice shows it may only mean additional proof of suitability within local licensing procedures; also, potential issues with ‘mutual recognition’ of licenses if origin country has no licensing requirements
  - Direct participation of foreign companies requires parallel non-energy legislation reforms, e.g. VAT reverse charge mechanism implementation

**EFET** → Abolishment of licensing requirements altogether is the optimal solution!

## Licensing Requirements as Administrative Barriers

- The **existence and necessity of licensing requirements has been claimed to be justified by a number of objectives**, including verification of technical and financial capability of a company and monitoring and enforcement
- However, **licenses are not necessary to achieve these objectives** and **licensing requirements are generally disproportionate and not fit-for-purpose**, as financial fitness and technical capability is tested continuously (TSO agreements and (mutual) partner credit risk evaluations) while NRA powers permit monitoring and enforcement (e.g. via REMIT) – as is the case in numerous (EU) countries where licenses are not required (Germany, France, Austria, Slovenia)

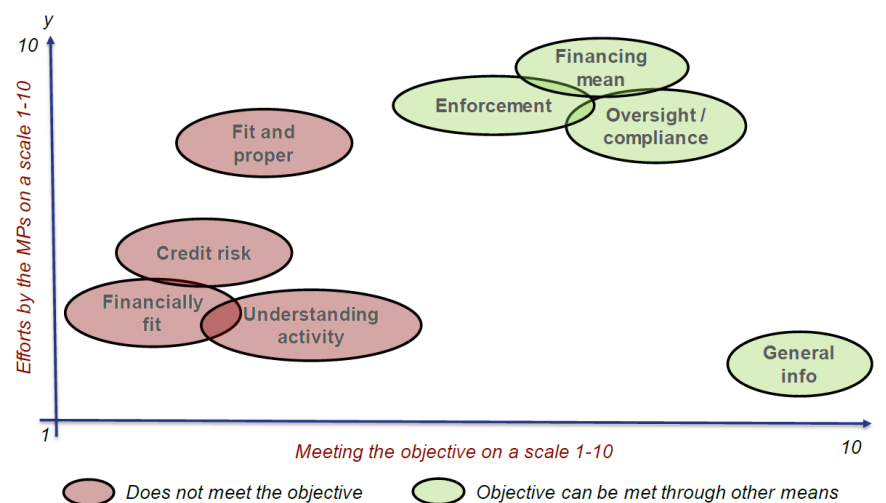


Figure 2: Effectiveness of wholesale licensing regime

# Market-Distorting Fees for Traders

## Types of Market-Distorting Fees Charged to Traders in CESEC Countries

- Currently existing market-distorting fees charged to electricity trading companies in CESEC countries take one of two main forms:
- **Licensing/Regulatory Fees (distortive when excessive and not in line with Art. 35 of DIR2009/72/EC)**
  - Generally take the form of % of turnover charges for revenue created within a given country
  - Paid to the NRA as a source of financing and ensuring NRA independence (Art. 35, DIR2009/72/EC)
  - When excessive, distort electricity markets by sending wrong market signals, artificially increasing prices
  - Applied in several CESEC countries (AL, BG, HU, IT, MKD, RO, ...) with varying degrees of transparency and stability  
→ **most extreme example is the Romanian ANRE Fee**
- **Discriminatory Grid Fees (distortive when application extended to cross-border trade)**
  - Generally take the form of EUR/MWh charges for electricity transmitted through a given TSO's network
  - Paid to the respective TSO in order to finance grid expansion, maintenance, etc., and legitimate when application is limited to *internal* flows – violation of EU principles and discriminatory effects arise when applied to cross-border trade flows
  - When applied to cross-border flows, distort electricity markets by representing a unidirectional 'minimum spread' and discriminating between domestic and cross-border electricity trade
  - Generally abolished due to clear violation of EU principles (ECJ Case 305/17), and incompatibility with Market Coupling → **last such example remaining is the Bulgarian Export Fee**

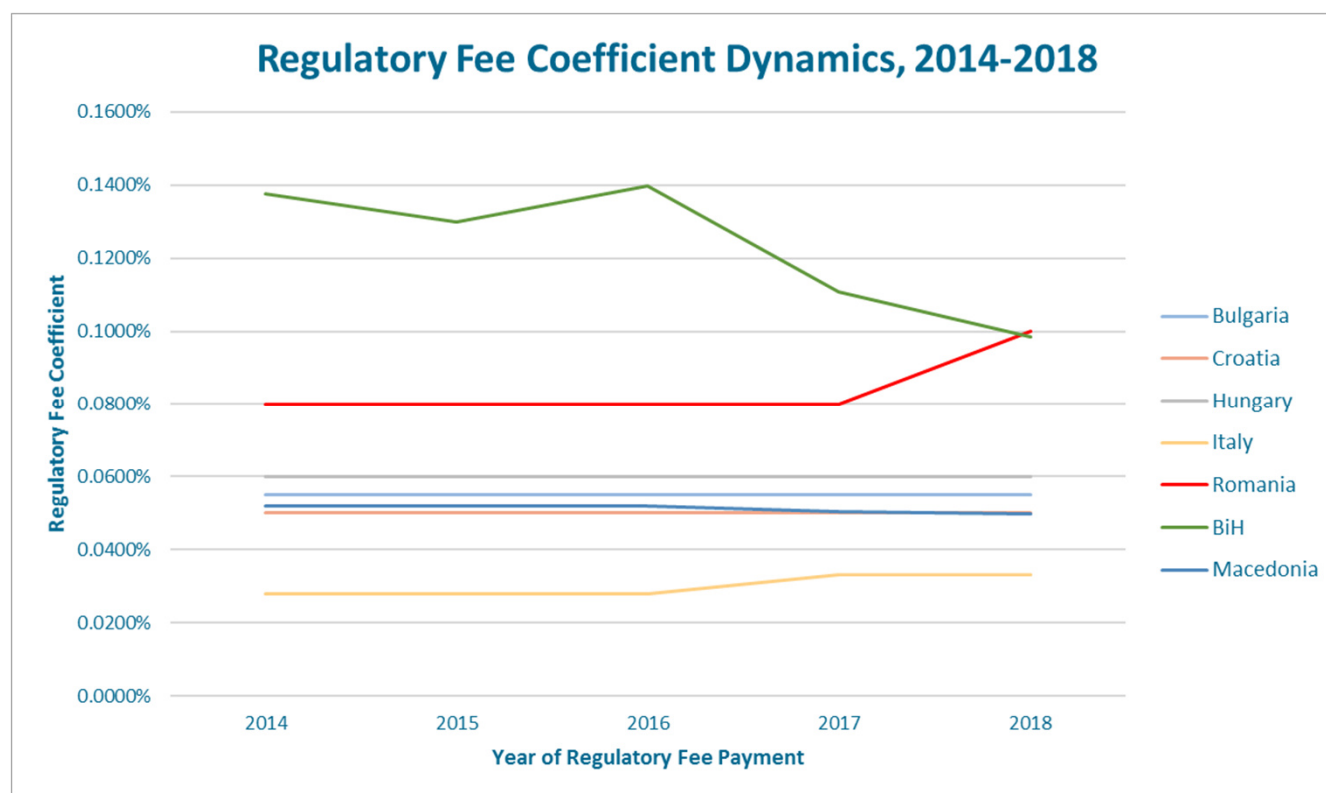
# Market-Distorting Fees for Traders: *License/Regulatory Fees*

## Types of Regulatory Fees

- Depending on the country, **regulatory fees are called licensing fees, supervision fees, ..., but are invariably a payment to the NRA intended to finance the activities of that NRA**, and can be:
  - A **fixed** amount per year
  - A **variable** amount per year (often in terms of % of a company's turnover)
  - A **combination** of the above, e.g.:
    - A variable amount that may not be below a certain minimum, regardless of turnover
    - A variable amount in addition to a fixed minimum
  - Example: in Country A, the regulatory fee to be paid for the NRA's activities in year Y is % of a company's turnover in Y-1
- The **turnover may refer to turnover from energy activities only – or the entire turnover of a company (!)**
- The value of the regulatory fee (% of turnover to be paid) can be defined by legislation or secondary acts (e.g. NRA acts), and can vary from year to year (e.g. given changes in NRA budgetary requirements) → **of paramount importance are transparency in calculation and application and stability and predictability in value**

Country	Legal Basis	Aim	Calculation Basis	Set by	Coefficient (2018)
Bulgaria	Energy Act 2003, as amended	EWRC financing	all income	NRA	0.0550%
Croatia	Law on Regulation of Energy Activities of 25 November 2012	HERA financing	income per licensed activity	NRA	0.0500%
Hungary	Electricity Act LXXXVI 2007, as amended	MEKH	income per licensed activity	LAW	0.0600%
Italy	Law No. 481 of 14 November 1995, as amended	ARERA financing	all income	NRA	0.0330%
Romania	Law 160/2012 on the Organisation and Functioning of ANRE	ANRE financing	income per licensed activity	NRA	0.1000%
Albania	Law No. 43/2015 on Power Sector	ERE financing	income per licensed activity	NRA	undefined
BiH	Law on Electrical Energy in BiH of 28 August 2013	FERK financing	income per licensed activity	NRA	0.0985%
Macedonia	Energy Act 2018	ERC financing	all income	LAW/NRA	0.0497%

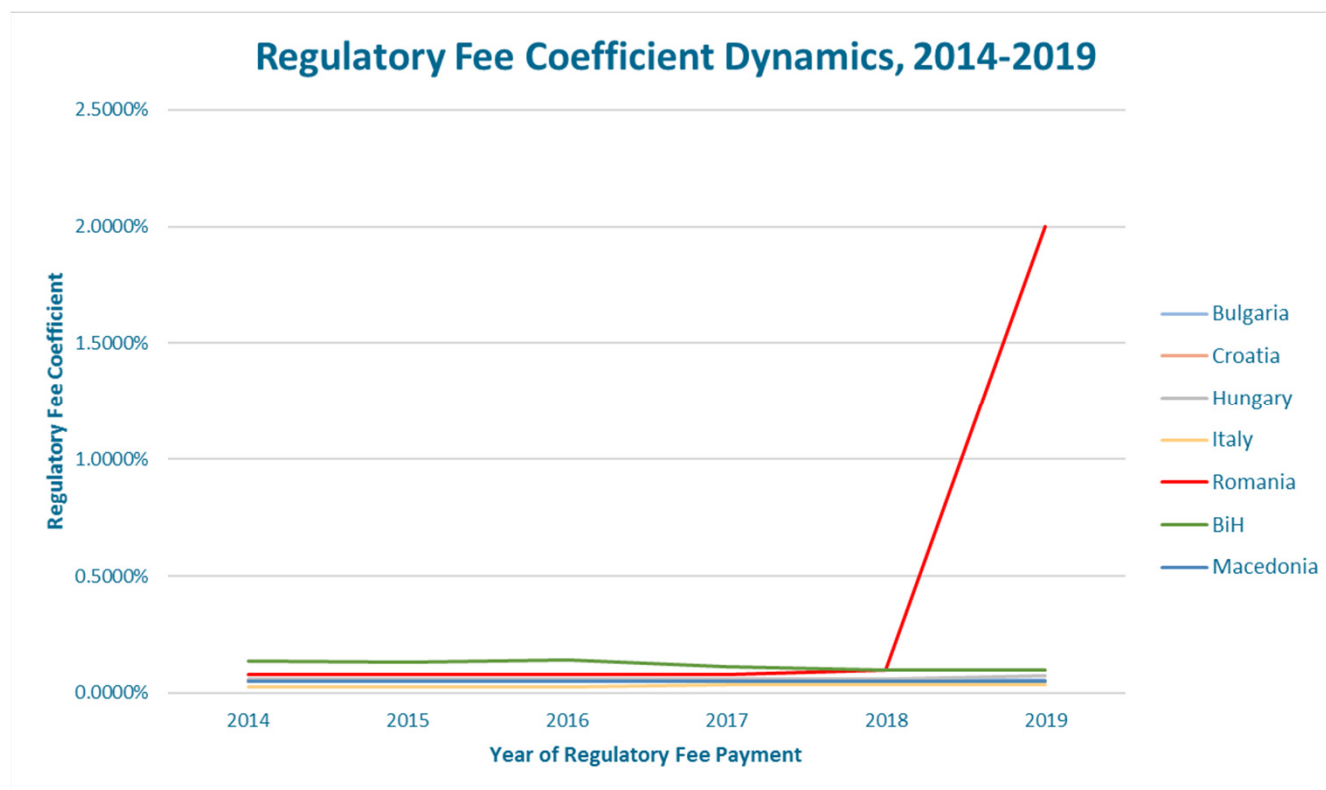
## Dynamics of the Variable Component of License/Regulatory Fees in CESEC, 2014-2018



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Existence and application of excessive turnover-based fees on electricity wholesale trading acts as a disincentive to liquidity, sends wrong market signals, distorts energy markets and acts as a barrier to cross-border trade!

## The Importance of Stability and Predictability: The Variable Component of Regulatory Fee in CESEC, 2014-2019





## Romania: Legal Basis for the ANRE Fee, as amended by GEO 114/2018

- On 21.12.2018, the Romanian Government enacted **Government Emergency Ordinance 114/2018** (published in Official Gazette on 29.12.2018), which removes ANRE's prerogative to set the regulatory fee for electricity (amongst others) and fixes it at 2% of turnover, by amending Article 2 of Law 160/2012 in the following way:

0.1% → 2%  
a 2000% increase!

### Article 2: ANRE funding

- The financing of the current and capital expenses of ANRE shall be ensured entirely from its own revenues.
- ANRE's own revenues are derived from fees charged for the granting of licenses, permits and attestations, **annual contributions levied on regulated economic operators in the electric and thermal energy and natural gas sector**, as well as from funds granted by international bodies.
- The level of the tariffs and contributions provided for in para. (2) shall be established annually by *order of the ANRE President, except for the contribution of the holders of licenses in the field of electric power, electric and thermal energy in cogeneration, natural gas*, according to the law and shall be published in the Official Gazette of Romania, Part I.  
*3<sup>1</sup>. The monetary contribution from the license holders in the field of electricity, electricity and heat in cogeneration for the electric power and natural gas component equals 2% of the turnover achieved by them from the activities covered by the licenses granted by ANRE, turnover calculated according to ANRE regulations approved by order of ANRE president with the approval of the National Commission for Strategy and Forecasting.*
- The **annual revenue and expenses budget shall be approved by ANRE** and the budget execution shall be carried out according to the internal control and audit procedures.
- Each year, the approved budget and the execution of the budget shall be published on ANRE's website.
- The President of ANRE is the main authorizing officer.
- The **annual surplus resulting from the execution of the revenue and expenses budget shall be carried over as a source of financing for the following year**. The deficit is covered from sources of the following year, including bank and treasury loans.
- ANRE's activity is verified by the Romanian Court of Accounts solely with regard to the economic and financial operation performed by ANRE, which are reflected in the revenue and expenses budget and in the yearly financial statements.

## Romania: GEO 114/2018 and Violations of Romanian and EU Legislation

- GEO 114/2018 represents an unjustified and unprecedented violation, both in form and in scope, of the independence of ANRE, and requires urgent intervention at EU level as it:
  - Violates Directive 2009/72/EC and its Article 35 on *the Designation and independence of regulatory authorities*, as it directly intervenes in the prerogatives of ANRE to define the sources of its revenues in line with its actual budgetary needs, thereby eroding ANRE's independence and autonomy;
  - Violates the principles of legislative non-retroactivity, since the excessive 2% turnover fee is *de facto* applicable retroactively:
    - to already realised receivables in 2018, i.e. turnover in the absence of such excessive fee expectations and at a fee level of 0.1%, for the 2019 ANRE Fee
    - to expected receivables in 2019, which are largely based on long-term contracts already concluded in 2018 (i.e., in absence of such excessive fee expectations and at a fee level of 0.1%), for the 2020 ANRE Fee
  - Violates Romanian provisions and criteria for when a Government Emergency Order is justifiable, given that no emergency situation existed nor at any time arose which could have possibly required urgent action of the sort executed, and that emergency orders should have a temporary effect
- The use of emergency measures to enact an increase of such magnitude (2000%) leave no doubt as to its ultimate purpose – for funds collected to be redirected towards the state budget, i.e. turning ANRE into an instrument of fiscal policy, in clear violation of EU legislation!
- Note CEER's finding from the report "Safeguarding the independence of regulators" (2016):

Regarding NRAs' budget, there is a need to safeguard NRA's **budgetary autonomy at all stages and in all types of processes**. For instance, just as it should not be the government that sets the regulator's annual budget, the executive should not have the possibility to determine the regulatory fee or set a cap on the regulator. Also, where the NRA's budget is adopted as part of a state budget act or as a dedicated NRA budget act and therefore requires parliamentary approval, it should be the NRA that prepares the respective text and defends it before parliament. Where there are contradictory provisions in the law, the regulator could **point them out to the legislator and/or the European Commission**.

## Romania: GEO 114/2018 and its Consequences

### ▪ Short-Term Impacts

- Spot Market: higher prices and disrupted flows
  - uncertainty and factoring in of ANRE Fee increase leads to app. 10 EUR/MWh spread between RO and neighbouring markets, with RO spot highest in EU; despite this, CBTCs are significantly underutilised
- Forward Market: complete collapse in liquidity
  - in the **period 20.12.2018 – 20.01.2019, only 0.2 TWh traded across Romanian platforms** (contrast to 20.12.2016 – 20.01.2017, a period with similar fundamentals, in which 2.1 TWh was traded) → **a 90% drop!**

### ▪ Long-Term Impacts

- **Significant price increases on wholesale and retail level**, as every step in the value chain factors in the higher fee into their prices → every sale incurs a 2% fee, so end-customers' price will increase by at least 5-8%!
- **Uncertainty regarding how many companies will be able to pay the increased fee at all** → wave of defaults and bankruptcies looming; according to some media reports\*, fewer than 40% of Romanian electricity suppliers can afford payment!
- **Further worsening of market liquidity within Romania and further contagion of distortive effects to the region due to deterioration of cross-border trade and flows** → rolling back energy market integration!

**URGENT INTERVENTION AT EU LEVEL TO ABOLISH GEO 114/2018 IS REQUIRED!**

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\*Source: Ziarul Financiar, "[Cum dispare o piață: peste 60% din furnizorii de energie, amenințați cu „extincția” de noua ordonanță](#)", 09.01.2018  
(ENG: "How a Market Disappears: Over 60% of Energy Suppliers Threatened by 'Extinction' via New Ordinance")

# Market-Distorting Fees for Traders: *Discriminatory Fees*

## Discriminatory Fees on Exports and Imports

- Discriminatory fees related to transmission grid charges were in the past applied in several EU Member States, in particular to exports of electricity, but have in general been abolished (e.g. Romania due to Market Coupling)
- Grid fees (transmission, access, etc.) are paid to the respective TSO in order to finance grid expansion, maintenance, etc., and are legitimate when application is limited to *internal* flows – violation of EU principles and discriminatory effects arise when applied to cross-border trade flows
- The application of such fees to cross-border trade remain only in:
  - **Bulgaria:**
    - application of Transmission and Access Fees to exports ('Bulgarian Export Fee')
    - 5% import fee for contribution to the national "Electricity System Security Fund"
  - **Greece:**
    - application of System Losses to imports
    - application of Uplift Account 3 to exports
- Such fees:
  - discriminate between cross-border and domestic energy trade in violation of EU fundamental principles
  - have a significantly distortive effect on wholesale electricity markets, reduce competition and impede liquidity

## Bulgaria: The Last Remaining 'Export Fee' in the EU

- In Bulgaria, ESO (TSO) charges a number of grid-related fees, among them:
  - The Transmission Fee (TF)
  - The Access Fee (AF)
- These fees are set for each respective regulatory period (lasting one year, from July Y to June Y+1), by EWRC (NRA) following a proposal by ESO
- The current regulatory period covers the timespan from 01 July 2018 to 30 June 2019, wherein the fees are:
  - TF: 8.45 BGN/MWh
  - AF: 1.39 BGN/MWh
  - Total: 9.84 BGN/MWh (about 5 EUR/MWh)
- The above fees are charged to all withdrawals from the Bulgarian electricity grid, including exports on the basis of scheduled cross-border exchange quantities, leading to discrimination between cross-border and domestic trade, exporters and domestic traders, as well as domestic and foreign end-customers:
  - inside Bulgaria, electricity traders do not pay TF and AF, as this is paid by end-customers for consumed quantities as a regulated charge on invoices
  - by contrast, exporters pay TF and AF, which they inevitably factor into the price of electricity sold abroad and which is eventually paid by end-customers abroad (who already pay their own TSO fees!)

## Bulgaria: The Last Remaining 'Export Fee' in the EU

- Importantly, on **06.12.2018**, the ECJ ruled in case **C-305/17** ("*FENS spol. s r.o. v Slovak Republic – Úrad pre reguláciu sieťových odvetví*" – the Slovak export fee) **that such export fees constitute a charge having equivalent effect to a customs duty**, in violation of the principle of the free movement of goods, **and are prohibited by the Treaty on the Functioning of the European Union**
- Like the Slovakian fee in C-305/17, the **Bulgarian Export Fee** is:
  - **Levied at different market stages for domestic and cross-border transactions** (i.e. end-consumption and export)
  - **Levied by reason of the fact that the electricity concerned crosses a frontier** (i.e. applied to cross-border schedules)
  - **Consequently a charge having equivalent effect to a customs duty and prohibited by Article 30 TFEU**
- The Bulgarian Export Fee is therefore **a clear violation of Article 30 TFEU and the fundamental principle of the free movement of goods**

## **Bulgaria: The Last Remaining 'Export Fee' in the EU**

- In addition to its violation of Art. 30 TFEU, the Bulgarian Export Fee manifests itself in the following practical consequences:
  - Preventing formation of the Internal Energy Market
  - Distortion of competition and discrimination
  - Reduction of cross-border trade and liquidity
  - Cross-border value transfers between consumers
  - Prevention of Market Coupling
- In view of the above distortions and **in particular due to its clear non-compliance with fundamental principles of the EU, especially Art. 30 TFEU,**

**EFET emphasises that application of the Bulgarian Export Fee  
shall not continue beyond expiry**

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**of the current EWRC Regulatory Period on 30.06.2019!**



# Conclusions and Key Messages

## Conclusions and Key Messages

**In view of upcoming Power Exchange establishment in several CESEC countries, EFET emphasises that:**

### Licensing Requirements

- are excessively burdensome, in particular when in form of ‘hard’ requirements such as local legal entity establishment
- do not achieve their intended effects and
- should be abolished for wholesale trading or at the very least simplified and harmonised

### License/Regulatory Fees

- represent an unnecessary financial barrier and send wrong market and price signals
- artificially increase electricity prices and act as a disincentive to liquidity
- if nonetheless applied, they must be:
  - transparently defined and stable over time
  - must reflect actual NRA budgetary needs
  - be protected against political interventions to ensure NRA independence

### Discriminatory Fees

- represent a significant obstacle to cross-border trade and create market distortions, including artificial price increases
- represent a discriminatory, unjustified unidirectional ‘minimum spread’ and prevent implementation of Market Coupling
- constitute a charge having equivalent effect to a customs duty, in violation of the principle of the free movement of goods, and are prohibited by the Treaty on the Functioning of the European Union

**Clear messages at EU-level regarding acceptable practices is crucial to prevent ongoing and future market distortions and ensure comprehensive, timely removal of non-compliant measures, in particular Romania’s 2000% ANRE Fee increase and Bulgaria’s Export Fee!**

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**Thank you for your attention!**

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