

THE INTEGRATED SERVICE OF DISTRICT HEATING THROUGH BUSINESS TRANSFER. THE CASE OF BUCHAREST MUNICIPALITY

Cristian ANTON^a, Cătălin Liviu PRICOP^b, Ioan RADU^{c}*

^aThe Bucharest University of Economic Studies, Faculty of Management, Romania

^bThe Bucharest University of Economic Studies, Faculty of Management, Romania

^cThe Bucharest University of Economic Studies, Faculty of Management, Romania

ABSTRACT

The Public Service of Heat Supply (district heating) is a public service of general interest that is carried out in a centralized system and is part of the community services of public utility. The activities specific to this service mainly involve the production of heat and electrical energy, having as their main source the heat power plants belonging to Electrocentrale București S.A. and the distribution of heat energy currently realised by RADET S.A., both bodies being in insolvency at the moment. In terms of public utility services, the European Union creates a specific legal framework for services of general economic interest, focusing on the role of national authorities in managing these services. Thus, the authorities may entrust the delivery of above-mentioned services to public-owned enterprises. In this context, the foundations of the centralized heat energy system were established with the founding of Bucharest's Municipal Energy Company and of Bucharest-Ilfov Association of Intercommunity Thermo-Energy Development. Also, in the realization of the concept of SACET (Centralized Heating Energy Supply System) and in order to be able to access European funds two decisions regarding the business transfer of ELCEN/RADET towards Bucharest's Municipal Energy Company were approved.

KEYWORDS: *community services, district heating, heat energy, heat energy distribution, heat energy production, integrated service, public authorities, public utilities.*

1. INTRODUCTION

Promoting cogeneration production systems represents one of the key ways to comply with the provisions of Kyoto Protocol regarding environmental protection and the reduction of greenhouse gas emissions.

This objective can be achieved by promoting high-efficiency cogeneration plants which, compared to the production of heat and electrical energy in separate sources, have fundamental advantages, consisting of low pollutant emissions (NO_x, SO_x, dust) and low carbon emissions (CO₂). Likewise, through the use of high-efficiency cogeneration, the degree of security when it comes to energy supply increases by diversifying the sources of production and the primary energy resources used, leading to a reduction of the dependency on primary resources imports and to an increase in the energy security of a country. At the same time, these technologies are new, competitive, clean, and mature from a technological and economic point of view, with a high-efficiency in the use of fuels. This Scheme establishes a state-aid scheme under which financial support is granted to cogeneration plants in order to maintain their relevance on the electrical and heat energy market, as these plants meet the high-efficiency conditions and achieve significant fuel and emissions savings but register high production costs.

* Corresponding author. E-mail address: iradu13@gmail.com

The provisions of the Community Guidelines on state-aid for environmental protection were taken into account in the elaboration of this scheme. Under these Guidelines, the aid for cogeneration addresses the market's malfunction caused by negative outsourcing through creating individual incentives in order to achieve environmental objectives in the field of energy savings, cogeneration being the most efficient way to produce electrical and heat energy. This type of aid can be granted to achieve environmental objectives as urban heating is less polluting and more energy-efficient in the process of generating and distributing energy but more costly than individual heating.

The promotion of high-efficiency cogeneration allows the reduction of raw material and energy consumption in the process of producing electrical and heat energy while reducing pollutant emissions.

At the same time, the commitments made by Romania in the context of the accession negotiations with the European Union require the elaboration of national regulations harmonized with the *acquis communautaire* for each negotiation chapter. The *acquis* related to Chapter 14 - Energy includes Directive 2004/8/EC on the promotion of cogeneration based on the demand for useful heat energy on the internal energy market and to amend Directive 92/42/EC.

Directive 2004/8/EC defines high-efficiency cogeneration and states that its promotion, based on the demand for useful heat energy, is a community priority in the direction of achieving primary energy savings and can constitute an important component in meeting the provisions of Kyoto Protocol. Furthermore, through this directive, the European Union has recommended Member States to take measures in order to stimulate the development of efficient cogeneration installations taking into account its favorable effects on the environment; the support programs to be developed for the promotion of cogeneration should concentrate mainly on supporting cogeneration based on a demand for heat and cooling energy, which can be economically justified. Among the cogeneration support mechanisms that can be adopted by Member States at national level are: investment aid, tax exemptions or reductions, green certificates and programs for the direct support of prices.

Supporting the centralized heat supply systems of municipalities is also an objective of the European Union being foreseen the increase of their share in the overall heat energy market. We shall mention that these centralized systems are mainly powered by the heat energy produced in cogeneration plants.

Romania has a developed cogeneration production system that ensures the supply of heat energy to about 7 million citizens, but which correspond to the technical level of the 1960s-1970s, and which, in terms of the available nominal heat capacity, correspond to the macroeconomic systems used up to the 1990s. After 1990, due to the fact that Romania has undergone a period of economic decline and a reduction of energy consumption as a result of both a contraction in economic activity and of the restructuring of industry, coupled with the decision of a large number of consumers of heat energy to give up on using the centralized systems, cogeneration production systems are oversized, operating in the vast majority of time at partial loads with high fuel consumption. As a result, it is necessary to create the conditions for attracting potential investors and to gradually replace these cogeneration systems, while ensuring the continued supply of heat energy to existing consumers.

Romania's centralized heat supply systems, which are mostly supplied with heat energy produced in cogeneration, come in direct competition with other heating options present on the heat energy market, such as: individual heating with boilers based on natural gas or wood, collective heating with stair or block heater/building with boilers based on natural gas. These alternative heat supply solutions, installed in large numbers in densely populated areas, which are not equipped to withhold NO_x emissions and which eliminate combustion gases at a very low height, most of the time directly through pipes that penetrate the walls of apartments, constitute a significant source of pollution in residential areas, with serious effects on population health and environmental pollution. In Romania, the market share of the producers of electrical energy in cogeneration, realised on the ensemble of components of the wholesale electrical energy market is about 20.5%, and the electrical energy produced in hydroelectric power stations, nuclear power plants and solid-fuel

thermo-electrical power plants is prevalent. Under these circumstances, the maintenance of cogeneration power plants on the energy market, as they achieve huge fuel savings over their separate production, but have significantly higher production costs, can not be realised without support. However, the gradual reduction of support is envisaged, given the need for the stepwise introduction of the environmental costs involved by the use of fossil fuels in producing electrical energy in thermo-electrical power plants.

The use of renewable energy sources also represents a major objective within the European Union's policy, in the context of the need to gradually abandon the use of conventional fuels and in order to achieve the Member States' energy independence from external sources of energy. It is absolutely necessary to correlate the policy of developing production technologies based on renewable energy sources with the development of flexible production technologies so as to create the conditions necessary in order to increase the security of energy supply.

The support scheme for the promotion of cogeneration is a scheme implemented in the European Union and permitted under the conditions of the Community Guidelines on state-aid for environmental protection.

The National Strategy for Accelerating the Development of Public Utilities Community Services approved by Government Decision no. 246/2006 aims at "reorganizing the management of district heating plants by fully transferring them to the territorial administrative units."

In order to increase the quality of life in Bucharest, during the meeting of the General Council of Bucharest Municipality held on the 30th of June 2017 the Strategy for the supply of heat energy in a centralized system for consumers in Bucharest Municipality was adopted. This strategy outlines the arguments that, in the European context of Romania, have shaped the only viable solution for Bucharest, respectively the supply of heat energy through the centralized system.

The supply of heat energy through the centralized system requires the production of energy from efficient and high-power sources, situated at distance from populated areas, which gives the possibility of monitoring emissions and of using primary fuel with high-efficiency, by implicitly reducing the CO₂ and NO_x emissions reported to the equivalent energy produced and by diminishing pollution in residential areas.

With this orientation, Bucharest Municipality's Strategy distinctly allocates, for each component of the system, a program of investment activities intended precisely for the recalibration and retrofitting needs of both the energy resources and of the primary heat pipe system.

The centralized district heating system takes the heat energy produced in cogeneration in the high-efficiency plants located outside residential area and through the transport system – primary network – and the distribution system – secondary network, supplies heat in the form of hot water and heat to the population, to economic agents and to institutions.

In Romania, the public service of heat supply represents a public service of general interest that is carried out in a centralized system and is part of the community services of public utility.

The law governing the operation of this service is Law 325/2006 – "Law on public service for heating supply" which describes in article 2 paragraph 1 the main activities composing this service, thus: Production of heat energy; Transport of heat energy; Distribution of heat energy; Supply of heat energy.

In the same paragraph, the law stipulates that these activities are "carried out at the level of administrative-territorial units under the management and responsibility of the local public administration authorities or of the community development associations, as the case may be, in order to ensure the heating energy required for heating and for the preparation of hot water necessary for the population, for public institutions, for social cultural institutions and for economic operators.

Taking into consideration the the above-mentioned aspects, the internal legislation in the field of heat energy was correlated with European legislation, thus the following normative acts were elaborated:

- Government Decision 348/1993 on the metering of water and heat energy supplied to the population, to public institutions and to economic agents;
 - Government Decision 425/1994 on the approval of the Regulation for the supply and use of heat energy;
 - Emergency Ordinance no. 81/2003 on the modification of some regulations regarding the granting of aid for heating individual homes and for providing the necessary funds for the supply of heating energy and natural gas to the population, as well as some measures for strengthening financial discipline, approved, supplemented and modified by Law no. 525/2003;
 - Law no. 51/2006, updated, regarding the community services of public utilities;
 - Law no. 325/2006 regarding the public service for heating supply;
- High-efficiency cogeneration is regulated by the following normative acts:
- Government Decision no. 219/2007 on the promotion of cogeneration based on a demand for useful heat energy;
 - Government Decision no. 1461/2008 for approving the Procedure regarding the issuance of origin guarantees for the electrical energy produced in high-efficiency cogeneration;
 - Government Decision no. 1215/2009 on establishing the criteria and conditions necessary for the implementation of the support scheme for promoting high-efficiency cogeneration based on the demand for useful heat energy;
 - Government Decision no. 494/2014 amending Government Decision no. 1215/2009 on establishing the criteria and conditions necessary for the implementation of the support scheme for promoting high-efficiency cogeneration based on the demand for useful heat energy;
 - Government Decision no. 846/2015 for amending and completing Government Decision no. 219/2007 on the promotion of cogeneration based on a demand for useful heat energy.

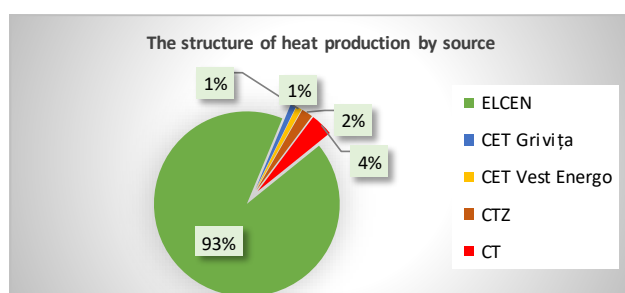
2. PRESENTATION OF THE ELECTRICAL AND HEAT ENERGY SOURCES IN BUCHAREST MUNICIPALITY

- **The production market:**

At Bucharest's level, within the activity of producing heat energy, the production of heat energy is provided by 4 CETs (District Heating Power Plants) belonging to Electrocentrale București S.A. and by CET Vest Energo, belonging to a private producer.

At the same time, there is also a District Heating Power Plant "Casa Presei" and 46 CTs (smaller District Heating Power Plants) owned and operated by RADET S.A.

Within Bucharest, the structure of the heat energy production by its source is presented as follows:



The structure of heat energy production by its source

ELCEN	92%
CET Grivița	1%
CET Vest Energo	1%
CTZ	2%
CT	4%

Figure 1. The structure of heat energy production by its source

Source: adapted from the Strategy for heating energy supply in centralized system for consumers in Bucharest Municipality, conducted by the Municipal Authority for the Regulation of Public services

ELECTROCENTRALE BUCUREȘTI S.A. (ELCEN S.A.) is a joint-stock company founded by the Government Decision no. 1524 / 18.12.2002 and registered within the Trade Registry under no.

J40/1696/2003 and CIF RO 15189596, having his head office in Splaiul Independentei no. 227, sector 6, Bucharest.

The current situation of ELCEN S.A. is as follows: the company is in collective insolvency proceeding, according to the Verdict issued on 6th of October 2016 by the Bucharest Tribunal - VII Civil Division, file no. 35304/3/2016.

Its scope of activity: the production and sale of electrical energy according to CAEN code 3511 - "Electrical energy production".

The company has 5 business points:

- Grozăvești Thermo-Electrical Power Plant;
- București-Vest Thermo-Electrical Power Plant;
- Progresu Thermo-Electrical Power Plant;
- București-Sud Thermo-Electrical Power Plant;
- Industrial Factory for Maintenance.

Currently, ELCEN S.A. is the largest producer of electrical and heat energy in high-efficiency cogeneration, accounting for 40% of Romania's heat energy produced in high-efficiency cogeneration. For Bucharest Municipality, ELCEN S.A. has delivered more than 90% of the necessary heating energy in the centralized heating system.

The deployment of the Implementation Plan of Directive 2010/75/EU, transposed into Romanian legislation by Law 278/2013, allows the operation of ELCEN's existing energy facilities until the implementation of the measures imposed by the environmental legislation, as follows:

- transition period until the 30th of June 2020 for the reduction of NOx emissions for boilers no. 2, 3 and 4 of 420 t/h which are located in București-Sud Thermo-Electrical Power Plant and for boilers no. 2, 3 and 4 of 420 t/h which are located in Progresu Thermo-Electrical Power Plant, up to an emission limit value of 100 mg/Nm³.

This measure can be achieved by upgrading the combustion installations of the respective boilers.

- derogation periods for 11 large combustion installations starting on 1st of January 2016 and until the 31st of December 2023, with a limitation of operation of 17,500 hours:
- boilers no. 1 of 420 t/h and no. 2 of 210 t/h located in Grozăvești Thermo-Electrical Power Plant; boilers no. 5 and 6 of 525 t/h and boilers for hot water no. 1, 2, 3, 4 of 100 Gcal/h situated in București Sud Thermo-Electrical Power Plant; boiler no. 2 of 525 t/h and boilers for hot water 6 and 7 of 100 Gcal/h situated in București Vest Thermo-Electrical Power Plant; and boilers for hot water no. 1, 2, 3 of 100 Gcal/h situated in Progresu Thermo-Electrical Power Plant.

Consequently, ELCEN S.A. intends to carry out investment projects in order to comply with the requirements imposed by the environmental legislation in force, by thus increasing efficiency and technical performance.

- ***The distribution market:***

The market for transport, distribution and supply of heating energy in Bucharest is a monopolized one, with RADET S.A. being the only operator providing this service in a centralized system at the level of Bucharest Municipality of Bucharest, managing the transmission and distribution network. Bucharest City Hall, as the owner of the centralized network, has a role of absorbing risks by guaranteeing the investments made in the integrated system that serves the entire territory of Bucharest Municipality, whilst ANRE (National Regulatory Authority for Energy) is the regulatory authority in the field.

The Centralized Heat Energy

Supply System - SACET - ensures exclusively through RADET S.A. 72% of the heating energy demand of Bucharest Municipality (68% being assured through the district heating system and 4% through Heat Energy Plants). The difference of 28% represents the heat energy produced with individual heat power stations for apartments, collective heat power stations for apartments blocks or fireplaces.

Out of the total heat energy distributed by RADET S.A. 88% represents the population's consumption. RADET's main customers are tenant associations (approximately 565,000 apartments representing 1,25 million inhabitants). The difference of 12% is represented by non-domestic consumption.

- ***Invoicing the consumed heat energy is done at different tariffs:***
 - ✓ tariff for household consumers fueled by urban PT – subsidized;
 - ✓ tariff for non-domestic consumers fueled by urban PT – non-subsidized;
 - ✓ tariff for non-domestic consumers fueled by their own PT directly from RTP.

RADET - Autonomous Administration for the Distribution of Heating Energy is a state-owned company whose activity is represented by the transport, production, distribution and supply of heat energy.

RADET Bucharest is the operator of the public heat energy supply system, ensuring 72% of the capital's heating energy demand. Out of the total heat energy supplied by RADET S.A. the population's consumption represents around 90%.

The current situation of RADET S.A. is as follows: the company is in collective insolvency proceeding, according to the Closing Session held on 5th of October 2016 pronounced by the Bucharest Tribunal - VII Civil Division, file no. 35304/3/2016.

The market for heating energy in Bucharest is a regulated market, governed only by the commercial relationship between RADET S.A. and producers, so that producers are dependent on distribution, having limited possibilities of selling their heating energy to other consumers.

Within the activity of producing heating energy, ELECTROCENTRALE BUCUREȘTI S.A. has RADET S.A. as its quasi-exclusive customer (90% of total deliveries), an administration which covers 90% of SACET Bucharest's heating energy needs, consisting of 95% household consumers and 5% non-household consumers (public institutions and economic agents).

There is an unequivocal connection between ELCEN S.A. and RADET S.A. as they share a mutual and exclusive rapport determined by the fact that ELCEN S.A. currently owns the main sources of heat energy of Bucharest Municipality, whilst RADET S.A. operates the transport and distribution networks, hence it implicitly holds the heat energy supply market.

With the establishment of Bucharest's Municipal Energy Company S.A. through the Decision of the General Council of Bucharest Municipality (HCGMB) no. 94 of 29th of March 2017, according to the provisions of Law no. 31/1990 regarding commercial companies and of the Government Emergency Ordinance no. 109/2011 on the Corporate Governance of Public Enterprises and on the basis of the provisions of Government Ordinance no. 71/2002 on the organizing and functioning of public services for the management of public and private domain of local interest, with subsequent amendments, and of Bucharest-Ilfov Association of Intercommunity Thermo-Energy Development through the Decision of the General Council of Bucharest Municipality (HCGMB) no. 141 of 11th of April 2017, the foundations of the concept of SACET are laid out for the first time within Bucharest Municipality, by taking over the assets and activities of RADET S.A. and ELCEN S.A.

The premises for the establishment of Bucharest's Municipal Energy Company S.A. were focused on two directions:

- the necessity for a new eligible operator in order to access European funds and for a sustainable company to operate the heat energy production service but also the distribution of heat agent by exercising efficient management under profitable conditions, without receiving compensations from the administrative-territorial authorities for the supply of this service, by thus creating the concept of SACET;
- providing an additional financial resource to feed the local budget.

The company's scope of business represents the supply of steam and air conditioning, which includes the production, collection and distribution of steam and of hot water for heating.

In achieving the concept of SACET, as well as in order to access European funds, the following actions were initiated:

a. The Decision of the General Council of Bucharest Municipality (HCGMB) no. 296 of 17th of May 2018 which approved, in principle, the business transfer of RADET Bucharest S.A and ELCEN S.A. towards Bucharest's Municipal Energy Company S.A.

The above mentioned decision states the following:

Art. 1 The business transfer of RADET S.A. towards an entity designated by the General Council of Bucharest Municipality was approved in principle.

Art. 2 The entity designated by the General Council of Bucharest Municipality for this transfer is Bucharest's Municipal Energy Company S.A.

Art. 3 The business transfer of ELCEN S.A. towards an entity designated by the General Council of Bucharest Municipality was approved in principle.

Art. 4 The entity designated by the General Council of Bucharest Municipality for this transfer is Bucharest's Municipal Energy Company S.A.

Art. 5 Bucharest's Municipal Energy Company S.A. was mandated to take the necessary steps in order to comply with the above mentioned provisions.

b. The Decision of the General Council of Bucharest Municipality (HCGMB) no. 559 of 23rd of August 2018 which approved an increase in the share capital of Bucharest's Municipal Energy Company S.A. in order to carry out the previous Decision.

The above mentioned decision states the following:

Art. 1 The participation of Bucharest Municipality, through the General Council of Bucharest Municipality, to the increase of share capital of Bucharest's Municipal Energy Company S.A. with the amount of RON 1.262.582.150

The steps of taking over the assets and activities of ELCEN S.A. and RADET S.A., as it was mentioned in the Decision of the General Council of Bucharest Municipality mentioned above, are sustained by the Decision of the Extraordinary General Meeting of Shareholders of Bucharest's Municipal Energy Company S.A. no. 12 of 13th of August 2018, which takes into consideration article 35 paragraph 2 of Law no. 273/2006 regarding public local finances, which states that "deliberative authorities may decide to participate in capital or property, on behalf of and in the interest of the local communities they represent, in establishing commercial companies or services of local and county public interest, as the case may be, according to the law."

Given that the major shareholder of Bucharest's Municipal Energy Company S.A. is the General Council of Bucharest Municipality, which is also the decision-making body of the company, the increase in share capital is made in order to achieve the provisions of the General Council of Bucharest Municipality's Decision no. 29 of 11th of May 2018, regarding the accomplishment of the SACET concept, by taking over the receivables held by ELCEN's creditors and also by taking over the investments made by ELCEN S.A.

Therefore, the shareholders of Bucharest's Municipal Energy Company S.A. have approved on the 13th of August 2018, through Decision no. 12, the increase in share capital by issuing 126.258.215 shares, worth RON 10 each, resulting a total value of RON 1.262.582.150.

Through this increase of share capital, the prerequisites for the purchase of ELCEN's receivables are made by concluding the assignment agreements with both ANAF and the other creditors, and the purchase of the following ELCEN S.A. receivables is intended:

- a) Guaranteed receivables held against ELCEN S.A. by the General Directorate for the Administration of Large Taxpayers, amounting to RON 480.655.845,61;
- b) Budgetary receivables held by several budgetary creditors against ELCEN S.A., amounting to RON 512.163.719,45;
- c) Guaranteed receivables held by banks against ELCEN S.A. in the amount of RON 84.810.796,53;
- d) Employees' salary claims against ELCEN S.A., amounting to RON 1.077.778.143,59;
- a) The value of investments made during the period of observation, in the amount of RON 121.856.000;

b) Stocks in the amount of RON 62.948.000, thus Bucharest's Municipal Energy Company S.A. will become the major creditor in the insolvency procedure of ELCEN S.A.

The role of SGEI (Services of General Economic Interest) in both national and European economy

The European Union has amongst its main objectives the promotion of a balanced and sustainable economic and social progress, notably through the creation of an area without internal borders, by strengthening economic and social cohesion and by establishing an economic and monetary union.

1. The Treaty of Lisbon creates a legal framework specific for Services of General Economic Interest - SGEI, with the objective of providing a legal classification for these services at European level.
2. These Services of General Economic Interest include commercial and non-commercial services which are subject to certain public service obligations, in particular because of the general interest they serve.
3. SGEIs constitute a sub-category and mainly include commercial services. These services equally answer to public service obligations and may therefore be exempted from certain European rules, in particular from competition rules.

Thus, article 106 of the Treaty on the Functioning of the European Union states that those companies entrusted with SGEI are subject to the provisions of European law only to the extent to which these rules do not obstruct the specific tasks that they have to fulfill.

The Treaty of Lisbon adds to the founding treaties a Protocol regarding the services of general interest. This protocol, having the same legal value as treaties, brings clarifications on the protection of SGEIs at European level. The protocol recognised the following:

- ✓ the role and the discretionary power of national authorities in managing SGEIs;
- ✓ the diversity of SGEIs, especially due to geographic areas and different cultures;
- ✓ the high level of quality, as well as the equal treatment of users and universal access to SGEI.

The Treaty of Lisbon creates a new legal basis that allows institutions to adopt regulations on the management of SGEI. Thus, article 14 of the Treaty on the functioning of the European Union states that both the Parliament and the Council may lay down certain principles and conditions on providing and financing of SGEI. This legal basis allows the European Union to conciliate in good conditions the general interest and compliance with competition rules in the management of SGEIs. The guarantee of universal access, continuity, high quality and affordability are key elements of a consumer policy in the SGEI sector.

SGEI plays an increasingly important role in the general European context, as they are a part of the values shared between Member States and constitute an essential element of the European model of society. They condition an increase in the quality of life for all citizens and reduce social and economic exclusion. Due to their share in economy of 26.7% GDP at European level and their importance in the production of other goods and services, SGEIs are factors of competitiveness and cohesion, especially when it comes to attracting investments in less favored regions.

The provision of SGEI in an efficient and non-discriminatory manner represents a prerequisite for the smooth functioning of the internal market and for continuing economic integration.

SGEI is a pillar of European citizenship, a right which European citizens can enjoy and at the same time a basis for dialogue between citizens and public authorities in the context of good governance.

SIEG puts the role played by public authorities in a new perspective, as the responsibility for the smooth operation of these services has always been their responsibility. At national level, they retain their direct prerogatives for SGEI for the internal market (by transposing the Directives), and for all major network industries there are direct community rules and regulations.

Traditionally, SGEIs have been offered by the public authorities. At this time, public authorities may entrust the provision of SGEIs to public, private or mixed enterprises. Switching from self-

provision to third-party provision has made the organization, the costs and the funding for these services more transparent.

It is worth mentioning that the investment made by the General Council of Bucharest Municipality through the increase in share capital of Bucharest's Municipal Energy Company S.A. will comply with the provisions of article 107 paragraph 1 of TFUE – **Treaty on the Functioning of the European Union**, which must be applied in accordance with the principle of treating equally both the public and the private sectors. The jurisprudence of the European Commission establishes the principle of carrying out a diligent private investor test, whereby the potential public investor demonstrates investment behavior comparable to that of a private investor.

The assignment of these receivables is possible due to negotiations held with the National Agency for Fiscal Administration (ANAF) which, by amending the Code of Fiscal Procedure under the provisions of OUG 88/2018 (Government Emergency Ordinance), allowed this legal operation. In this regard, article 264 ^ 1 states the following:

"(1) The budgetary creditor may assign the budgetary receivables owed by those debtors who are in insolvency proceedings if the following conditions are met cumulatively:

a) the assignment price is at least equal to the value of the budgetary receivables, by thus ensuring a full recovery of the budgetary receivables entered in the final statement of receivables;

b) the payment of the assignment price and the recovery of the budgetary receivables shall be made within a period of maximum 3 years from the date of the conclusion of the assignment contract;

c) the assignee justifies a public interest in the assignment of the receivable;

(2) The assignee of the budgetary receivable will retrieve, as a result of the transfer of receivable, all the rights of the budgetary creditor."

Simultaneously, in accordance with article 133, letter e, of the Insolvency and Insolvency Prevention Procedures Law, ELCEN S.A. will make the payment of its assets and of its activity in the account of Bucharest's Municipal Energy Company S.A.'s receivables, in order to settle them.

We mention that a prior measure of this approach represents the consequential change of ELCEN's Reorganization Plan, having all the premises that this change will only be made through a majority vote of its creditor, Bucharest's Municipal Energy Company S.A.

Once the concept of SACET has been realized, the municipality is considering making investments in the transport and production networks, investments aiming at increasing the consumption of the heat energy distributed within Bucharest Municipality, which finds itself in a continuous decline as it can be observed in the graph below. The municipality is also considering the delegation of the heat energy service, as well as of the transport and distribution service of heat energy by concluding the delegation contracts in compliance with the provisions of Law 51/2006.

- a) At this date the delegation contract for the production service of heating energy is concluded, in compliance with the conditions stipulated in Law no. 51/2006, regarding which the Competition Council has declared that its opinion is not necessary;
- b) The contract for the delegation of transport and distribution services of heat energy is to be concluded until 1st of March 2019 in compliance with the provisions of Law 51/2006 and the Competition Council's opinion.

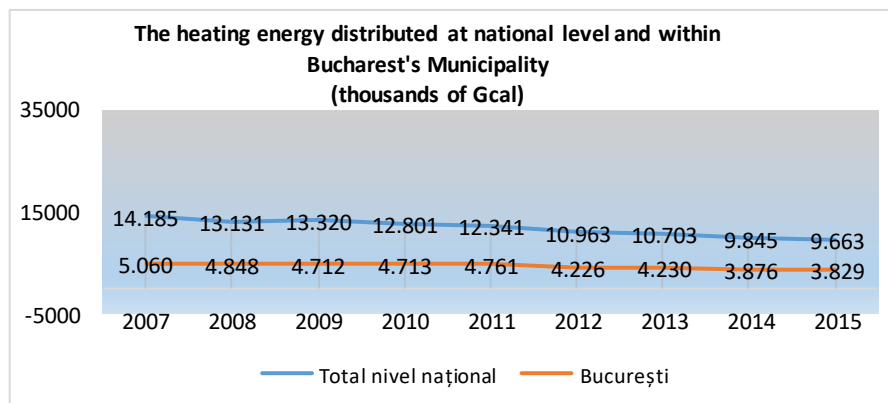


Figure 2. The heating energy distributed at national level and within Bucharest's Municipality

Source: adapted from the Strategy for heating energy supply in centralized system for consumers in Bucharest Municipality, conducted by the Municipal Authority for the Regulation of Public services

Nevertheless, the delegation of service supply does not invalidate or diminish the responsibility of the authorities in terms of insuring and/or guaranteeing the services and of reaching objectives of general interest. Through regulatory instruments, public authorities have the capacity to formulate policies at national, regional or local level in the areas of general interest services and to ensure their implementation.

The attributions and responsibilities of the local public administration in the field of supplying heating energy to municipalities are regulated by the Law on public service for heating supply no. 325/2006.

According to this legislative act, the local public administration authority has exclusive competence in everything that concerns the establishment, organization, coordination, monitoring and control of the functioning of public utilities services, as well as the creation, development, modernization, administration and exploitation of the public or private property goods which belong to the administrative-territorial units related to the public utility systems.

By implementing the concept of SACET, a priority investment program is also envisaged and it will be realised based on the following considerations:

- The immediate valorisation of the financial resources which could possibly be obtained through the High Infrastructure Operational Program - POIM, a program in which the city of Bucharest has participated with the predefined project "The major district heating project of Bucharest";
- The priority realization of the transport and distribution networks's rehabilitation investments with the highest operating deficiencies so that the beneficial effects of these investments can be immediately updated in the safe operation of the system;
- Optimizing the functioning of the centralized heat energy supply system by making those investments capable of reducing losses within the system, of reducing operating costs by optimizing the circulation of heating energy at a system level and by using the best available techniques when it comes to the transport, distribution and producing heat energy;
- The rehabilitation of about 250 km of network trail for the transport of heat energy between 2018 and 2022;
- The final rehabilitation of the transport network for heating energy between 2023 and 2024;
- The modernization of the District Heating Power Plant "Casa Presei" by upgrading it into a high-efficiency cogeneration plant between 2018 and 2020.

At the same time, it is envisaged to develop new zonal sources of cogeneration appropriately sized, which will supply the consumer areas located at great distances from the existing sources of ELCEN S.A.

There are proposals to place high-efficiency cogeneration sources in Colentina and Aviației areas, which will be able to take over the consumption of these areas. This measure will avoid the transport of heating energy from existing sources to these areas over long distances and at relatively high costs.

- Achieving the energy valorification of household waste within Bucharest Municipality, which is the subject of a priority project included in POIM 2013 - 2020 (High Infrastructure Operational Program) and which will benefit from a non-reimbursable financial allocation under the program.

- Realising the immediate work required in order to comply with the environmental restrictions for a part of the equipments already existing in ELCEN's plants (combustion installations - low NOx), including for the completion of peak capacity investment (hot water boilers) already started in previous years.

The modernization / rehabilitation of the centralized heating energy supply system could be financed from several financing sources such as loans granted by international financial institutions (EIB, EBRD, WB, etc.), from non-reimbursable funding sources available through the High Infrastructure Operational Program (POIM), according to the programmatic documents for 2014-2020, as well as from financing sources allocated from the local budget of Bucharest City Hall for investments related to public patrimony. Thereby, for the rehabilitation of the heating energy's transport system within Bucharest Municipality, the allocation of a non-refundable amount of about EUR 187 million (including the performance reserve) is foreseen through POIM. In order to finance the thermal rehabilitation program for housing, funding sources are available through the Regional Operational Program. Another possible source of funding the proposed investments could be the European Fund for Strategic Investment (EFSI), a source of funding available through the European Investment Bank and dedicated to strategic investment projects, as they were proposed by the Member States through the Juncker Plan.

3. CONCLUSIONS

The realization of the business transfer in the form proposed by the local public administration authorities, taking into account the Decisions of the General Council of Bucharest Municipality for establishing Bucharest's Municipality Energy Company S.A., for approving in principle the actions necessary for the realization of the centralized heating energy supply system (SACET) in the context of the reorganization of RADET S.A. and of ELCEN S.A., both being approved in principle to be transferred to Bucharest's Municipal Energy Company S.A., as well as the Decision through which the company's share capital was increased in order to settle the receivables, have all created the preconditions for the unification of the two entities under the umbrella of a single company, respectively Bucharest's Municipal Energy Company S.A.

At the same time, by finalizing this transfer of activities and assets, an integrated heating energy system will be realised aiming to increase the performance of the public service in terms of energy and economic efficiency.

Once the centralized heating energy supply system (SACET) will be set up, the Bucharest-Ilfov Association of Intercommunity Thermo-Energy Development will exercise monitoring and control functions over it. In this regard, the association is delegated by public administration authorities under Law 51/2006 regarding the community services of public utilities. Through this system of monitoring and control it is aimed to create an efficient management system, so that the newly established company is eligible to access European funds for the modernization of the district heating energy service, which is a particularly important aspect in the current national and European context.

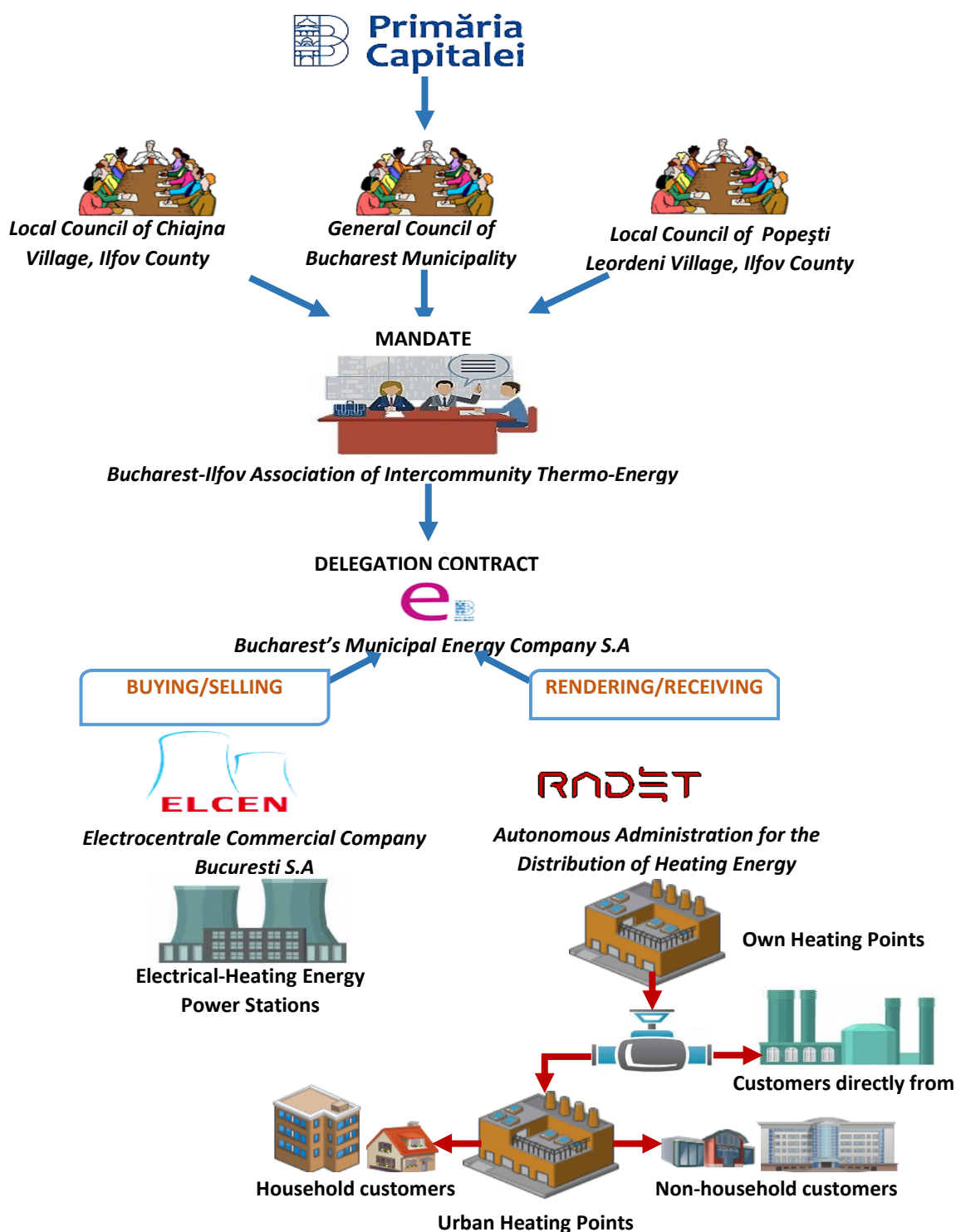


Figure 3. The current institutional and legislative framework for the functioning of the Centralized Heating Energy Supply System – SACET in Bucharest-Ilfov

Source: adapted from the Strategy for heating energy supply in centralized system for consumers in Bucharest Municipality, conducted by the Municipal Authority for the Regulation of Public services

REFERENCES

- Directiva 2004/8/CE privind promovarea cogenerării pe baza cererii de energie termică utilă, abrogată prin Directiva 2012/27/UE a Parlamentului European și a Consiliului din 25 octombrie 2012 privind eficiența energetică.
- Legea nr. 325/2006 privind serviciul public de alimentare cu energie termică, Emitent: Parlamentul, Publicat în: Monitorul Oficial nr. 651 din 27 iulie 2006, actualizată.
- Legea 31/1990 privind societățile, Emitent: Parlamentul, Publicat în: Monitorul Oficial nr. 651 din 27 iulie 2006, republicată și actualizată.
- Legea 51/2006 privind serviciile comunitare de utilități publice, Emitent: Parlamentul, Publicat în: Monitorul Oficial nr. 121 din 5 martie 2006, actualizată.
- Legea nr. 273/2006 privind finanțele publice locale, Emitent: Parlamentul, Publicat în: Monitorul Oficial nr. 618 din 18 iulie 2006, actualizată.
- Legea nr. 525/2003 privind aprobarea Ordonanței de urgență a Guvernului nr. 81/2003 pentru modificarea unor reglementări privind acordarea de ajutoare pentru încălzirea locuinței și asigurarea fondurilor necesare în vederea furnizării energiei termice și gazelor naturale pentru populație, precum și unele măsuri pentru întărirea disciplinei financiare, Emitent: Parlamentul, Publicat în: Monitorul Oficial nr. 897 din 15.12.2003, actualizată.
- Legea 325/2006 a serviciului public de alimentare cu energie termică, Emitent: Parlamentul, Publicat în: Monitorul Oficial nr. 651 din 27.07.2006, actualizată.
- H.G. nr. 246/2006 pentru aprobarea Strategiei naționale privind accelerarea dezvoltării serviciilor comunitare de utilități publice, Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 295 din 03 aprilie 2006.
- H.G. nr. 348/1993 privind contorizarea apei și a energiei termice la populație, instituții publice și agenți economici; Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 190 din 10 august 1993, actualizată.
- H.G. nr. 425/1994 privind aprobarea Regulamentului pentru furnizarea și utilizarea energiei termice; Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 238 din 26 august 2006.
- H.G. nr. 219/2007 privind promovarea cogenerării bazate pe cererea de energie termică utilă Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 200 din 23 martie 2007.
- H.G. nr. 494/2014 pentru modificarea HG nr.1215/2009 privind stabilirea criteriilor și a condițiilor necesare implementării schemei de sprijin pentru promovarea cogenerării de înaltă eficiență pe baza cererii de energie termică utilă Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 489 din 01 iulie 2014.
- H.G. nr. 846/2015 pentru modificarea și completarea H.G. nr. 219/2007 privind promovarea cogenerării bazate pe cererea de energie termică utilă Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 776 din 19 octombrie 2015.
- H.G. nr. 1215/2009 privind stabilirea criteriilor și a condițiilor necesare implementării schemei de sprijin pentru promovarea cogenerării de înaltă eficiență pe baza cererii de energie termică utilă Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 748 din 03 noiembrie 2009.
- H.G. nr. 1461/2008 aprobarea Procedurii privind emiterea garanțiilor de origine pentru energia electrică produsă în cogenerare de eficiență înaltă Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 813 din 04 decembrie 2008.
- OUG nr. 109/2011 privind guvernarea corporativă a întreprinderilor publice, Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 883 din 14 noiembrie 2011.
- OUG nr. 88 din 27 septembrie 2018 pentru modificarea și completarea unor acte normative în domeniul insolvenței și a altor acte normative.
- OUG 88/2018 pentru modificarea și completarea unor acte normative în domeniul insolvenței și a altor acte normative, Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 840 din 02 octombrie 2018.

- O.U.G. 71/2002 privind organizarea și funcționarea serviciilor publice de administrare a domeniului public și privat de interes local, Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 648 din 31 august 2002.
- O.U.G. nr. 81/2003 pentru modificarea unor reglementări privind acordarea de ajutoare pentru încălzirea locuinței și asigurarea fondurilor necesare în vederea furnizării energiei termice și gazelor naturale pentru populație, precum și unele măsuri pentru întărirea disciplinei financiare, Emitent: Guvernul, Publicat în: Monitorul Oficial nr. 685 din 29 septembrie 2003 actualizată;
Încheierea Tribunalului București, secția a VII-a civilă, , dosar 35304/3/2016.
- Hotărârea Consiliului General al Municipiului București nr. 94/29.03.2017 – aprobare constituire Compania Municipală Energetica București SA.
- Hotărârea Consiliului General al Municipiului București nr.141/11.04.2017 - privind constituirea Asociației de Dezvoltare Intercomunitară Termoenergetică București-Ilfov.
- Hotărârea Consiliului General al Municipiului București nr. 296 din data de 17.05.2018 prin care s-a aprobat de principiu transferul afacerii RADET București si Elcen S.A. către Compania Municipala Energetica București S.A.