Project Number: RO9805.01

Title: Further integration of Romania into the Internal Market: Improvement of the competitive environment for the provision of services by public utilities.

Sub-programme: Further integration of Romania into the Internal Market

Objectives:

The wider objectives of the programme are as follows:

- To improve the competitive environment for the provision of public utility services
- To support the reform and restructuring of the energy sector
- To support the privatisation of Régies Autonomes operating public utilities, with emphasis on the energy sector, and port infrastructure
- To support the adoption of the acquis communautaire in the energy field

The immediate objectives of the programme are as follows:

- To develop an adequate legal and regulatory framework for the operation of public utility services by the private sector, as well as the administrative capacity to implement it, and to facilitate the transformation of Régies Autonomes into commercially driven companies,
- To support the operation of an independent and transparent energy regulatory framework, the elaboration and enactment of the secondary legislation necessary for the regulation of the restructured gas and electricity industries, and organise the conditions for the creation and operation of a power generation market.
- To support the companies created from the former public utility Régies Autonomes in the energy sector to prepare for privatisation.
- To support the transformation of the operation of port and storage infrastructure centred around Constanța.

Description

1. Development of the framework for the operation of public utility services

The new Romanian Government is seeking to speed up the transformation and privatisation of a number of Régies Autonomes in the public utility field at the national level (RENEL, ROMGAZ). In addition the Government is concerned to urgently address the restructuring and operation of remaining Régies and public utilities, notably at the regional and local level (including RADET). The Government, concerned Ministries and Institutions, Local Authorities, and the Régies Autonomes themselves are confronting issues, options and practical problems for which there is little expertise or experience in Romania. Key legislation such as the Law on Concessions and the Law on Public Property (‘Patrimony’) are currently being considered by the Parliament and are expected to be passed in the coming months. However, there is little understanding (especially at the local level) of the implications of these Laws, and how they will be implemented, particularly when local administrations are expected to play a leading role in the ensuing provision of public utility services.

The project aims at establishing the conceptual/policy framework for restructuring and/or privatisation of the Régies Autonomes (the extreme slowness of reform in the sectors of the economy managed by these Régies - e.g. telecoms, gas, electricity, railways) has been a major aspect of the failure to restructure the economy), including the list of those Régies that are to be privatised and those which are
to remain public utilities; also, at setting up a specialised task force, which will facilitate the transformation and privatisation processes of Régies Autonomes across Government, and of the structure and operations of public utility services, which will remain in public ownership.

The taskforce will assist both national and local authorities in the following areas and in relation to the following tasks:

(i) Provision of policy advice – the taskforce will provide policy advice to the Government and to Ministries (including, a/o. the Ministry of Privatisation, the Ministry of Industry and Trade, the Competition Office and Council, the Council for Reform, the Ministry of Transport, the Ministry of Justice, the State Ownership Fund) concerning a number of issues such as: competition policies, market regulation, public procurement, privatisation/concessions. This advice is required both for national and for regional public utilities.

(ii) Determination of regies autonomes of an industrial nature (involved in the production and trading of goods and services which should be privatised), regies autonomes operating public utility services, regies autonomes with regulatory functions, regies operating fiscal monopolies, review of the various legal status of such (regies, national companies, etc.), recommendations as to the status, operation and control of regies and national companies, and as to streamlining of legislation, regulation and corporate governance.

(iii) Implementation of legislation – the taskforce will assist national and local authorities concerning the practical implementation of legislation (the Concession Law and the Public Property ‘Patrimony’ Law) and the development of the necessary secondary legislation.

(iv) Training and experience sharing – The task force will provide practical training and experience sharing on issues such as public procurement; contracting concessions; and operating concessions.

(v) Support for restructuring – the project may also provide assistance to selected local Régies Autonomes to support their transformation to commercial enterprises, and those elements of the Régies Autonomes which are foreseen to remain as public utility services.

Both national and local authorities or public utility services will benefit from the support of the assistance the taskforce.

2. Regulatory Authority in Energy

The reform of the electricity sector will be brought about through the conversion of RENEL from an R.A. (part of the Ministry of Industry and Trade) to a share-holding company. The vertically integrated monopoly will be broken up into separate generation, transmission, and distribution entities (as identified in the National Programme for the Adoption of the Acquis). It is foreseen that the market for generation will be opened to independent operators and external investors (with the exception of nuclear power, which will be ‘ring-fenced’). Transmission is envisaged to remain in State control and will function as the neutral common carrier. Distribution will be based on regional distribution companies. These will be set up from the present county based distribution entities of RENEL, although consolidation of the present 42 county based distribution units to perhaps 15 regional distributors will be required.

This restructuring will be brought about through the Electricity and Heat Law which is planned to be enacted by June/ July (1998).

The Electricity and Heat Law will require the establishment of an independent regulatory agency to oversee the operation of the new structure and market. The creation and efficient functioning of such an agency is a prerequisite for the operation of the restructured electricity sector, and for meeting the acquis concerning the single market in electricity.

The setting up of an independent regulator who can deliver a stable, transparent and non-discriminatory regulatory framework is a major task in order to reform the electricity sector and meet
the requirements of a competitive electricity market. Assistance to the Regulatory Agency should concentrate on four areas of responsibility:

• Pricing

• Monitoring of the power pool and the competitive operation of the market

• Licensing and authorisations

• Planning of production and distribution capacity, including the fuel mix.

Specific activities proposed are as follows:

i. Drafting the technical code for electricity networks

ii. Drafting the commercial code for electricity networks

iii. Drafting and introduction of regulations to allow direct contracting for electricity – including the definition of eligible consumers.

iv. Creation and operation of the power generation market

v. Regulations for the development of independent power producers

vi. Harmonisation of standards with relevant directives

vii. Establishment of price setting procedures (in line with the internal gas and electricity directives) for electricity and heat

3. Preparation for the privatisation of Régies Autonomes

In addition to the restructuring in the energy sector, the preparation for the privatisation of RENEL, ROMGAZ, PETROM and RADET are priority actions for the introduction of market based public utility services in Romania. Assistance is required in this preparation, particularly for the energy sector companies, in order to help them to operate in a new market based environment. In addition help is required for the actual process of preparation for privatisation. This relates to the study of the options for privatisation; the asset valuation of the companies (and companies in this case includes the individual companies created through the break up of the present integrated utilities); and assistance in the preparation of the tenders for the privatisation. Activities proposed include:

i) Support for the companies created from the former Régies Autonomes to operate in a restructured market based environment. Assistance would include the operation and management of the new markets for generation and gas, and assistance in the development of the new contractual relationships which will be required with consumers, other parts of the restructured industry, and with regulators

ii) Direct support for the preparation for privatisation

• Feasibility study of the privatisation – this study would include examination of the options for privatisation (e.g. foreign strategic investor, institutional investors, public share offering); the advantages and disadvantages of these options; and would make recommendations for each of the companies to be privatised.

• Asset register and valuations of the companies would be undertaken according to international accounting standards.

• Assistance in preparing the Tenders for the privatisation of the companies.

4. Reform of the operation of a port infrastructure (Constanta & Danube hinterland)
The Government has launched the restructuring of Régies Autonomes into commercial companies. In the transport sector the process is only beginning and most issues urgently need to be resolved with regard to the transformation of the transport Régies, the development of a suitable framework for the operation of public infrastructure by the private sector, and the effective implementation of the restructuring required. The perspective of much needed international infrastructure financing (from IFIs and from the European Union) increases the pressure for more rapid reform of this sector. Activities proposed include:

i) To develop a proper framework for the operation and management of public property transport infrastructure, and their use by commercial companies through concessions or other relevant schemes

- Review of existing & planned legislation/ Development of additional legislation
- Development of rules and procedures for the management, classifying or declassifying of specific infrastructures
- Mapping out of bodies in charge of managing public property
- Concessions regulation and contracts

ii) To apply the framework for the restructuring of Régies Autonomes of Danube river ports and the South Constanta Free Zone Administration

- Definition of concessions contracts/relations between State and commercial companies
- Specific regulations re. concessions and rents within the context of the Grain Project

iii) To support the World Bank PMU within the Ministry of Transport for the related management of the Grain Project

- Provision of legal, financial and technical support for concession tender, negotiations and award
- Same for the procurement of civil works and supervision under World Bank project

Institutional framework

1. Development of the framework for the operation of public utility services

The Lead Counterpart for the project is the Ministry of Privatisation in co-ordination with the Council for Reform. The Council for Reform has the responsibility for harmonising the regulatory framework, and the Ministry of Privatisation for implementing the transformation of national Régies through the State Ownership Fund. The Ministry of Justice is responsible for preparing key laws such as the Energy law, the Concession Law and the Public Patrimony Law. Each sector Ministry, or the municipalities where the case may be, have line responsibility for the preparation of the strategy and planning of this transformation. The Ministry of Privatisation and the Council for reform will help co-ordinate the interest of the various Government and institutional players.

2. Regulatory Authority in Energy

The two key institutions involved are the Ministry of Industry and Trade, which is responsible for overseeing the restructuring of the energy sector, and the direct beneficiary of this institution building project, the independent electricity and heat regulatory authority. The Regulatory Authority will be a new institution organised in the framework of the Energy Law. It will regulate the energy utility companies – generating companies, the national grid company, the electricity distribution companies, and district heating companies. The Regulatory Authority will be established as established as a professional and independent body.

3. Preparation for the privatisation of Régies Autonomes
The Ministry of Industry and Trade is responsible for the oversight of the restructuring of the National Régies Autonomes in the energy sector, together with the Ministry of Privatisation. The present Régies Autonomes (Renel and ROMGAZ) will be converted into commercial companies broken down by activity (e.g. generation/production, transmission, distribution). The District Heating Régies of the City of Bucharest (RADET) is under the responsibility of the Municipality of Bucharest; however, it is intimately linked to Renel which provides nearly all its energy requirements. The State Ownership Fund/Ministry of Privatisation will implement the privatisation.

4. Reform of the operation of a port infrastructure (Constanta & Danube hinterland)

Key issues which must be addressed relate to the institutional background and the roles of the different institutions involved. Specifically this sub-project should address the questions of responsibility for managing public transport assets, and for the letting of concessions for the operation of public transport infrastructure. The issue of the regulation of such concessions must also be addressed.

The Ministry of Transport will be the lead implementation authority for this sub-project, but the full involvement of the concerned Régies Autonomes is a condition for success.

Budget

The proposed budget breakdown for this Project is as follows: MECU

<table>
<thead>
<tr>
<th>Sub-Project</th>
<th>Investment</th>
<th>Institution building</th>
<th>Total Phare</th>
<th>Recipient</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. General framework of public utilities</td>
<td>1.0</td>
<td>1.0</td>
<td>1.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Regulatory Authority in Energy</td>
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<td>1.6</td>
<td>0.8</td>
<td>2.4</td>
<td></td>
</tr>
<tr>
<td>3. Preparation for the privatisation of RA’s</td>
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<td>2.0</td>
<td>2.0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Operation of port infrastructure (*)</td>
<td>1.5</td>
<td>1.5</td>
<td>0.5</td>
<td>2.0</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>6.1</td>
<td>6.1</td>
<td>1.3</td>
<td>7.4</td>
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</tbody>
</table>

(*) Overall project cost estimated at 85 MECU

Implementation Arrangements

The Central Finance and Contracting Unit will be the Implementing Agency and, thus, responsible, for tendering, contracting, payments and financial reporting. The Implementing Authorities responsible for sub-projects are as follows:

The Ministry of Privatisation jointly with the Council for Reform will be the responsible IA for sub-project 1. (Definition of the general framework for operation of public utility services). A special Steering Committee co-chaired by the Ministry of Privatisation and the Council for Reform will be set-up for the management of the project. The Steering Committee will comprise the competent Ministries or authorities, including the Ministry of Justice, the Ministry of Industry and Trade, the Ministry of Transport, the State Ownership Fund, the Ministry of Finance, the Competition Council and Competition Office, and other authorities concerned on an ad hoc basis; the Task Force will be hosted by the Council for Reform or the Ministry of Privatisation. This sub-project will be organised on a single contract with specialised expertise. Each Government authority concerned will second at least one senior Government expert to the Task Force.

The Ministry of Industry and Trade will be the responsible IA for sub-projects 2 (Regulatory Authority
in Energy) and, jointly with the Ministry of Privatisation, for sub-project 3. (Preparation for the privatisation of Régies Autonomes). The Ministry of Transport will be the responsible IA for sub-project 4 (Reform of the operation of a key transport infrastructure (Constanta & Danube hinterland)). Each sub-projects will be organised as separate contract.

**Implementation schedule**

<table>
<thead>
<tr>
<th>Start of tendering</th>
<th>Start of project activity</th>
<th>Completion</th>
</tr>
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</table>

**Equal opportunity:**

Equal opportunity for men and women to participate in all projects will be ensured. Indicators will be elaborated to assess the extent of women’s participation in projects.

**Conditionality and sequencing**

1. **Development of the framework for the operation of public utility services**

The start of this sub-project will be subject to the set-up of the Steering Committee. It will start consultations immediately with a view to check consistency of the main draft laws prepared by the Government affecting this area, i.e. Concession Law and of the Public Patrimony Law. Further project activity will be subject to the passage of these laws by end 1998.

2. **Regulatory Authority in Energy**

The start of this project is contingent on the passage of the Electricity and Heat Law and on the creation of the Energy Regulatory Agency by end 1998. Technical Assistance under Project RO 0504-01.01 is assisting the start up of the Agency. This project is also contingent on the successful establishment and staffing of the Agency.

The sequencing of the work tasks of the project can be concurrent for several tasks. However the drafting and introduction of the technical and commercial codes for the electricity and heat networks is the first priority, since the operation of the restructured industry is contingent on these codes.

3. **Preparation for the privatisation of Régies Autonomes**

The start of this sub-project is contingent on the following conditions:

- Energy Regulatory Agency put in place,
- Government decision on the structure of energy sector and sequencing of privatisation taken,

The project is also contingent on the political will for privatisation, which should materialise in the nomination of the key persons responsible for the implementation of the new structures, both at government and company level.

The sequencing of the work tasks of the project can be concurrent for the first two tasks – feasibility study and asset valuations; to be followed by the preparation of tender dossiers for the privatisation.

4. **Reform of the operation of a port infrastructure (Constanta & Danube hinterland)**

As in the case of sub-project 1, an important conditionality for this sub-project is the passage of the Concession Law, which is currently anticipated to be passed through Parliament by the late summer. Part of the project will provide support to the World Bank grain project. As such, it is conditioned by the conclusion of the proposed loan agreement.