



REGULATORY STUDIES – LOT 2

ACTIVITY 5: DEVELOPMENT OF BEST CONTRACTUAL PRACTICES

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Contact: Marie d'ARIFAT
ARTELIA V&T - ICEA Departement
50 avenue Daumesnil
75579 Paris Cedex 12– France
Tel. : +33 (0)1 48 74 04 04
Fax: +33 (0)1 48 74 04 35
icea.paris@arteliagroup.com



Planning Energy
for a Sustainable World

Contact: Neil PINTO
PPA Energy
1 Frederick Sanger Road
Guildford GU2 7YD, UK
Tel: +44 1483 544944
Fax: +44 1483 544955
marketing@ppaenergy.co.uk

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1 - INTRODUCTION

1.1 - Terms of reference

In accordance with the Terms of Reference, activity 5 is aimed at developing the contractual best practices.

In fact, ERERA's objective is to harmonise bilateral contracts that govern the cross-border electricity market. Therefore, it needs to have:

- contractual best practices;
- guidelines on how to harmonise key contracts in that domain.

In accordance with the Terms of Reference, the scope of work to be carried out in activity 5 is as follows:

- Review all enabling laws of ERERA, the ECOWAS Energy Protocol, the West African Power Pool (WAPP) Act, and other ECOWAS Acts, decisions or policies relating to the power sector within the ECOWAS region;
- Conduct a sectorial analysis of the regional energy market, especially the activities of the national regulatory bodies and utilities in the ECOWAS region;
- Conduct a comparative study of other existing regional markets, and make an inventory of the contractual best practices to be shared;
- Consider any need for amendments to the enabling law of the ERERA, and make necessary suggestions;
- Conduct a study to identify all existing bilateral contracts that govern electricity cross-border exchanges and their key Terms and Conditions, particularly the contracts between SOGEM and SENELEC, SOGEM and EDM SA, SOGEM and SOMELEC, CIE and SONABEL, VRA and CIE, VRA and CEB, CIE and CEB, VRA and SONABEL, GRIDCO and SONABEL, GRIDCO and CEB; PHCN and CEB, PHCN and NIGELEC.
- Advise ERERA on the development of contractual best practices in order to convert the bilateral contracts into wholesale contracts;
- Identify the critical issues about power exchange agreements, and prepare a guideline for the harmonization of key contracts on cross-border electricity exchanges;
- Conduct research for the drafting of the reference legal framework in order to implement wholesale energy contracts or other contractual arrangements, including the Use of Network Agreements, Power Purchase Agreements, and Concession Agreements;
- Prepare harmonized model contracts for the ECOWAS region; and
- Conduct workshop(s) involving all the regional market stakeholders to build consensus.

As a result of the above points, considering the objective of the study, the content of the Terms of Reference and ERERA's scope of work, the scope of this report is strictly limited to cross-border electricity exchange contracts.

Thus, purely internal contracts shall not be considered, except, if it needs to be, for some aspects that are linked to or that could be connected to cross-border contracts.

1.2 - Sources of information

Works in activity 5 have been carried out within the framework and on the basis of the following sources of information:

- existing ERERA reports;
- documents from ERERA;
- documents available with the Consultant;
- documents and information provided during the circular mission;
- research carried out in each of the ECOWAS member States for which data was available online.

1.3 - ECOWAS member States concerned

Considering the absence of sufficient, reliable and/or updated data, four ECOWAS member States were not contacted within the framework of activity 5 or were informed on an ad hoc basis.

They are Cape Verde, Guinea Bissau, Liberia and Sierra Leone.

2 - SECTOR ANALYSIS OF THE REGIONAL ELECTRICITY MARKET

In accordance with the Terms of Reference, a sectorial analysis of the regional electricity market is needed, in particular for the activities of the national regulatory bodies and utilities in the ECOWAS Zone, based on existing ERERA reports.

Considering the absence of reliable and/or updated data, Cape Verde, Guinea Bissau, Liberia and Sierra Leone will not be involved.

In this context, the regulatory framework analysis in each State involved in this study shall be followed by:

- A comparative table of regulatory bodies in the Member States;
- A synthesis of the major actors in these States (including producers and transport network operators);
- A synthesis of the main applicable regulations.

The analysis of the regulatory framework of the electricity sector in each State shall be based on the organisation of this framework and on its functioning.

Finally, it should be noted that in this analysis, the expression "regulatory bodies" is defined as separate entities from market players, created to supervise economic sectors with at least the following three characteristics:

- economic sectors that were ruled as monopolies and linked to a public utility;
- sectors open to total or partial competition;
- sectors requiring a necessary facility, for which third parties shall have guaranteed access.

So this analysis does not take into consideration the presence or absence of the term "regulation" in the denomination of the entity and tackles the entities that fit the above description.

2.1 - Benin

The electricity market in Benin is not open to competition and applies the principle of the single buyer.

2.1.1 - Organisation of the regulatory framework

The organisation of the regulatory framework of the electricity sector in Benin is built up around three structures:

- Two national structures: the General Directorate for Energy and the Beninese Agency for Rural Electrification and Energy Control (ABERME);
- One international structure: the Communauté électrique du Bénin.

A regulatory authority shall be added to these two structures as provided for by the law n°2006-16 of 27 March 2007 to regulate the electricity sector.

Indeed, Article 10 of Law n°2006-16 of 27 March 2007 above mentions the existence of a regulatory body among stakeholders in the electricity sector.

2.1.1.1 - The Communauté électrique du Bénin

The Communauté électrique du Bénin (CEB) was created by an International Agreement on the Beninese and Togolese Electricity Code, signed on 23 December 2003, thus modifying the Daho-Togolese International Electricity Agreement of 27 July 1968 to agree on the interconnection portion with Togo.

According to Article 4 of the modified Agreement, CEB shall be an International Public Body whose goals, organisation and powers shall be determined in accordance with Article 4 of the said Agreement in the Beninese-Togolese Electricity Code.

CEB is under the authority of an Inter-State Council made up of ministers of both countries.

In accordance with Article 26 of the said Agreement, CEB has the most complete legal backing known to corporate bodies through the legislations of both countries. It is known to belong to both countries, for their interest and that of third parties, but it also benefits from immunities and privileges of international institutions within the territory of both countries following conditions determined by an agreement from the Headquarters.

2.1.1.2 - The Minister of Energy

The General Directorate for Energy falls under the Ministry of Energy, Petroleum and Mine Research, Water and Development of Renewable Energy and is under the authority of the Minister.

It is managed by an Executive Director, who can be assisted by a Deputy Executive Director.

In accordance with Article 40 of Decree n°2007-580 of 28 December 2007 to institute, organise and determine the functions of the Ministry of Mines, Water and Energy¹, the General Directorate for Energy shall essentially be made up of:

- A division in charge of studies, statistics, planning and regulations;
- A division in charge of electricity;
- A division in charge of new and renewable energies;
- A division in charge of monitoring internal electricity facilities.

The electricity division is mainly in charge of issues related to the market opening and price regulation.

¹ The Ministry shall henceforth be known as the Ministry of Energy, Petroleum and Mine Research, Water and Development of Renewable Energy.

2.1.1.3 - The Beninese Rural Electrification and Energy Control Agency (ABERME)

In accordance with Article 3 of Law n°2006-16 of 27 March 2007, the Rural Electrification Agency is a public institution in charge of preparing and implementing electrification programmes in areas referred to by the Ministry of Energy as rural areas.

ABERME falls under the Ministry of Energy and is headed by an Executive Director.

2.1.1.4 - The Electricity Regulatory Authority

The Electricity Regulatory Authority was instituted by Law n°2006-16 of 27 March 2007.

According to Article 3 of this Law, it is a corporate body with financial autonomy set up in accordance with the general policy of the sector in order to monitor pricing issues, problems of the quality of services provided and the respect of agreements between the different operators in the electricity sector.

A decree to create, institute, organise and determine the functions of the Electricity Regulatory Authority was adopted on May 13, 2009 (Decree n° 2009-182). However, the regulatory authority is not functional till date.

2.1.2 - Functioning of the regulatory framework

Article 2 of Law n°2006-16 of 27 March 2007 states that "[...] *the following shall not be considered in the enforcement of this law:*

- *Activities in the electricity sector, equipment, infrastructure and electrical installations in the Republic of Benin belonging to, or used by any institution of bilateral or multilateral cooperation created in accordance with international agreements signed by the Republic of Benin before this law came into force".*

This article is consistent with Article 1 of the International Agreement as to the Beninese-Togolese Code, which places production, transportation, distribution, importation and exportation of electrical energy under the provisions of the Beninese-Togolese Code and national codes but more importance is attached to the Beninese-Togolese Code in case of contradiction.

It is therefore necessary to differentiate the CEB functioning and goals from those of purely national bodies.

2.1.2.1 - Functioning of the CEB

Pursuant to the Beninese-Togolese International Agreement, especially Article 5, the CEB is the single producer of hydroelectricity, transportation and importation of electricity in each of both countries, as well as for the installation of hydroelectric equipment.

Moreover, the CEB has some missions in matters of regulation. Thus, the CEB is responsible for planning and carrying out production work and transportation in both countries in partnership with the Ministries.

Likewise, the CEB is involved in the contracting process of independent producers as a guarantee for competitive prices (including supply to distributors) and for planning of IPP sales to distribution companies.

Thus, thanks to its competences, the CEB acts currently and independently from all national bodies. Nonetheless, there are still some interplays, especially as the CEB is placed under the authority of the Supreme Council made up of ministers of both countries, and also under the supervision of the highest authority, which is partly made up of 10 representatives from both countries.

2.1.2.2 - Functioning of national institutions

It is worth mentioning that the Beninese-Togolese Electricity Code already specifies the responsibilities and obligations of national institutions separating the Ministry from the regulatory authorities.

Thus, according to the terms of Article 7 of the Code, the Ministries of Energy have the following responsibilities:

- drawing up the sector policy;
- approving tariffs;
- managing the Beninese-Togolese Code;
- contributing to planning;
- issuing permits, concessions and other permits;

The regulatory authorities, on their part, are in charge of:

- regulating production, transportation and distribution;
- giving their point of view on master plans;
- giving their point of view on tariff regulations;
- ensuring compliance with technical norms and regulations;
- ensuring that operators respect their obligations. They, therefore, have to know all the contracts signed between the CEB and IPPs on the one hand, and between the CEB and distribution companies on the other hand;
- carrying out conciliation and arbitration missions within the sector.

Pursuant to this article, Law n°2006-16 of 27 March 2007 specifies that it is the State that defines the electricity sector policy and that ensures the development of the sector all over the country through the Ministry of Energy, which draws up and periodically reviews the general organisation policy of the electricity sector.

Within this framework, the State has the following specific competences:

- plan, monitor and develop the sector as well as coordinate the actions of its various actors;
- follow up, animate, coordinate and evaluate the investment and finance policy of the electricity public utility service;
- set norms and applicable technical specifications to electrical installations;
- coordinate and/or provide the necessary assistance in managing and developing rural electrification through adequate administrative, technical and financial planning;
- take the regulative actions in setting tariffs after consulting the regulatory authority.

Pursuant to this law, Decree n°2007-580 of 28 December 2007, especially Article 42, describes the General Directorate for Energy obligations. Thus, in partnership with all other qualified national structures, it is in charge of suggesting the government policy in the energy sector and of ensuring that it is effectively implemented.

More specifically, the Directorate General for energy has the following competences:

- draft and suggest all regulations related to activities in the energy sector and ensure their strict enforcement;
- apply environmental norms in the energy sector;
- initiate both public and private plans to promote the energy sector;
- initiate and draw up the energy policy in Benin and implementation programmes in partnership with all qualified national structures;
- Encourage all forms of energy: hydrocarbons, electricity, as well as new and renewable energies;
- Carry out preliminary studies on the development of the energy sector so as to contribute to drawing up or improving the national energy sector;
- Introduce an Energy Information System (EIS);
- Provide technical expertise on projects in the energy sector;
- Follow up all companies in the energy sector;
- Monitor the reliability of energy resources, the security of transport and distribution means of all energy forms and the security of storage facilities for petroleum products.

This list is, therefore, an indication that the General Directorate for Energy enjoys the widest scope in its sphere of influence, which is different from the sphere of influence of the Benino-Togolese Agreement.

Within this framework, the regulatory provisions of enforcement are certainly not yet known but the competence of the Directorate General for Energy should be reviewed or reconsidered when the regulatory authority is introduced.

Following the provisions of Law n° 2006-16 of 27 March 2007, the regulatory authority should already have the following competences:

- Look out for tariff issues. More specifically, the authority shall have an advisory opinion on the tariff regulation adopted by the Ministry and it shall also approve or institute the accepted selling prices and connection tariffs;
- Ensure the quality of services provided;
- Ensure the compliance with the contractual agreements between the different operators;
- Monitor the choices of contractors and the implementation of concession conventions;
- Issue authorisations for self-production;
- Approve the draft of the supply contract for public utilities' needs ;
- Monitor the market for uncompetitive practices.

It is therefore clear that the regulatory authority has only technical competence (tariffs, quality, selling prices), administrative competence (permits for self-production, monitoring of

contractors, monitoring the market, approving draft sales contracts) and, finally, competence in settling disputes.

Considering the points above, it is obvious that it is the Directorate General for energy that is mainly in charge of the opening phase of the market and price control. The regulatory authority, for its part, will have a separate role from that of the Directorate General for Energy once the market opens.

2.2 - Burkina Faso

2.2.1 - Organisation of the regulatory framework

The organisation of the regulatory framework of the electricity sector in Burkina Faso focuses on the components mentioned in Article 10 of Law n°053 -2012/AN of 17 December 2012 regulating the electricity sub-sector.

There are the following actors:

- The government;
- The regulatory authority of the electricity sub-sector;
- The national electricity corporation of Burkina-Faso;
- The electrification development fund;
- Individuals or corporate bodies whom the electricity public utility service is delegated to;
- Individuals or corporate bodies holders of permits, concessions, authorisations or that are subjected to the obligation of declaration;
- Local authorities.

It is, therefore, possible to distinguish, on the one hand, the two main entities, the Ministry of Energy and the Regulatory Authority of the Electricity sub-sector (ARSE) and the different entities that complete the institutional framework, on the other.

2.2.1.1 - The Ministry of Mines, Quarries and Energy

It is worth noting first hand that in accordance with Article 4 of Law n°053-2012/AN of 17 December 2012 "*The production, transportation, distribution, importation, exportation and sale of electricity are part of the competences of the electricity public utility service.*

The electricity public utility service is provided by the State or by local authorities, or on their behalf, by third parties, pursuant to the contracts signed with the State or any other entity appointed by the State".

The Ministry of Energy is therefore very influential and has extensive competencies. In its organisational chart, there is a General Directorate for Energy, which controls the sector and has 4 divisions:

- The Electrical Energy Division (DEE);
- The Division for Renewable and Traditional Energy (DERET);
- The Hydrocarbons Division (DH);

- The Division for the Promotion of Energy Conservation (DPEE).

Moreover, within the framework of the reform of the energy sector, launched in 2000, an Energy Sector Development Policy Paper (LPDE) was adopted. Within this context, a team in charge of carrying out the reform of the energy sector (UER) was created in order to support the General Directorate for Energy and SONABEL, whose specific objectives in reforming the electricity sector include:

- Increasing electricity supply to the population;
- Reorganizing public finances by eliminating direct and indirect subventions;
- Improving technical, commercial performance and the management of SONABEL;
- Looking for long lasting solutions to counter the acute shortage of electricity production potential, especially at the Ouagadougou Regional Consumption centre;
- Creating possibilities to reduce the cost of electricity by implementing a low cost investment programme lasting several years;
- Encouraging extensive participation of the private sector in developing the sector by introducing an adequate institutional, legal and regulatory framework.

2.2.1.2 - The regulatory authority of the electricity sub-sector (ARSE)

As from the law of 12 May 2005, a Regulatory Organ in the electricity sector was confirmed by Law n°53-2012/AN of 17 December 2012.

In accordance with Article 14 of the aforementioned law, ARSE is an independent administrative authority endowed with legal personality with financial autonomy. It is funded by the electricity sub-sector resources and other funding sources such as special funding from the State.

Decree n°2008-369/PRES/PM/MCE/MEF/MCPEA of 24-June-2008 specifies the institution, organisation and functioning of ARSE.

ARSE is therefore made up of a regulatory board, a general secretariat and operational divisions. The main organ is the Regulatory Board, since it is the legislative authority with a Chairperson and four commissioners respectively appointed, by the Head of State and by decree of the Council of Ministers for a five-year term of office, renewable once.

2.2.1.3 - Other institutional entities in the electricity sector

There are:

- **The Ministry of Finance**
- **The Ministry of Trade**
- **An asset management company in the electricity sub-sector**

This is a State-owned company that was created by a decree of the Council of Ministers; its capital is entirely managed by the State. Its main duty is to monitor State assets in the electricity sector (public corporations, etc.).

- **Electricity Development Fund (EDF)**

This is an organisation attached to the Ministry of Energy, which is endowed with legal personality and has financial and management autonomy. It was created by Decree n°2003- 089/PRES/PM/MCE of 19 February 2003 and given authority as per its

objectives by Law n°16-2005/AN of 12-May-2005, Law n°27-2007/AN of 20 November 2007 and Law n°53-2012/AN of 17 December 2012.

2.2.2 - Functioning of the regulatory framework

As far as the functioning of the regulatory framework is concerned, going through the competences of the entities mentioned below, it is important to distinguish the competences of the Ministries, on one hand, and those of ARSE on the other hand.

2.2.2.1 - The competence of the Ministries

Those involved are mainly the Ministry of Energy, the Ministry of Finance and the Ministry of Trade.

The Ministry of Energy is in charge of energy policies, strategic electrification planning, regulation and monitoring of electrical infrastructure. Consequently, it has the duty of issuing concessions and authorisations as well as signing lease contracts and all other contracts in accordance with regulatory provisions.

More specifically, the competences of the General Directorate for Energy are:

- to conceive, draw up, coordinate and apply the government policy in the energy sector;
- to draw up energy plans for the country;
- to draw up energy reports and energy control programmes;
- to coordinate activities linked to energy problems within the framework of national development plans;
- to collect, centralise, use and summarise every piece of information and all existing files connected to the Noubiel project and to come up with a database;
- to collect and summarise all pieces of information concerning ongoing or already completed studies and projects in the area, on the same river or its tributaries;
- to prepare terms of reference for feasibility studies aimed at restructuring the project to include aspects of the project which have nothing to do with energy, as well as the environment;
- to contribute to targeting potential partners and to gathering the funds needed to carry out feasibility studies for the project;
- to look for new sites for hydroelectricity plants and prepare technical data that will be submitted to the donor agencies.

Finally, and most especially, within the General Directorate for Energy, the Electricity Division is in charge of:

- collecting electricity data in collaboration with actors in the sub-sector;
- contributing to setting up electrification policies in the country in collaboration with the ministries concerned;
- contributing to drawing up all interconnection policies;
- suggesting administrative, financial and technical measures that will provide the national territory with electricity;

- centralising the results of the different electrification works and every other document that services and organs, companies and private individuals are likely to acquire within the scope of their activities;
- updating the technical data of all on-going electricity projects within the country;
- monitoring the electric energy production, transportation and distribution network;
- contributing to fixing and regulating electricity tariffs in collaboration with the qualified services and ministries concerned.

As concerns the competence of the Ministry of Finance and the Ministry of Trade, they have two important roles:

- Supervising public corporations and State-owned companies working in the electricity sub-sector, jointly carried out by the Ministry of Finance and the Ministry of Trade;
- Joint adoption of regulatory instruments to fix electricity prices in the first segment (that is, the area managed by SONABEL on the date of signature of the lease contract between the State and SONABEL, as well as all new areas managed by SONABEL in accordance with the terms of amendments of the aforementioned lease contract) by the Ministry of Finance and the Ministry of Energy.

2.2.2.2 - The competence of ARSE

ARSE is very competent considering the competences assigned to it by Law n°053-2012/AN of 17 December 2012 and Decree n°2008-369/PRES/PM/MCE/MEF/MCPEA of 24-Jun-2008.

Generally speaking, ARSE manages the production, exploitation, transportation, distribution, sale, exportation and importation of electricity all over the national territory.

Within that context, the competences of ARSE can be classified into 4 categories:

- **Monitoring and protection:**
 - Ensuring the enforcement of legislative and regulatory instruments governing the electricity sub-sector in an objective, transparent and indiscriminate manner;
 - Protecting the interests of consumers and operators by taking measures that can guarantee healthy and fair competition in the sub-sector, in accordance with legal and regulatory provisions in force;
 - Ensuring the compliance with obligations of information for general interest of the electricity sub-sector while respecting the right for competition.
- **Promotion and development:**
 - Encourage effective development of the sub-sector while ensuring economic and financial stability, as well as the economic conditions needed for it to thrive;
- **Consultation and decision-making:**
 - Give ideas in conformity with electricity prices of the Ministry of Energy, the Ministry of Finance and the Ministry of Trade so as to ensure financial equilibrium in the sub-sector;

- Monitor with a decision-making power the enforcement of electricity prices by the parties involved;
- Take necessary measures to ensure the continuity, quality and security of the electricity public service;
- Implementation:
 - Lay down consultation mechanisms for users/consumers and operators following methods determined by a decree of the Council of Ministers;

It would be convenient to add the settlement of differences as one of its competences.

In order to effectively carry out these competences, ARSE has been assigned extensive powers of investigation, monitoring and sanctions.

Thus, from the points above it is clear that ARSE has a complementary role vis-à-vis the Ministry of Energy, especially in ensuring the compliance with regulatory instruments adopted by the Ministry, with advisory competences and the ability to implement measures in the electricity sector.

However, it should be noted that ARSE has not yet practically carried out any of its prerogatives due to the lack of sufficient financial and human resources.

2.2.2.3 - The competence of the Electricity Development Fund

EDF is not to be left out since it has extensive competences and powers that largely surpass the terms of its status.

Thus, in accordance with Law n°53-2012/AN of 17 December 2012 concerning rural electrification, EDF has the following obligations:

- Encourage an equal distribution of electricity all over the national territory by developing rural electrification;
- Contribute to implementing the national electrification plan of rural areas;
- Support the implementation of pilot rural electrification projects, which contribute to the increase of electricity supply in the country;
- Provide electricity to rural areas, serving as guarantee and contributing through subventions in investment or assistance to studies;

It also:

- Monitors the prices that have been fixed in the second segment;
- Prepares an annual report for the regulatory body on the activities of the second segment.

In the same way, after consulting the local authorities, the State signs a programme contract with the Electricity Development Fund to establish a relationship and lay down funding and implementation methods as well as conditions for the implementation of investment in the second segment.

Moreover, in the absence of financial or execution commitments for operators on investment within a given area, it is the responsibility of the State, local authorities and/or the Electricity Development Fund to provide the funds needed to carry out the investment.

EDF also has monitoring powers, especially as concerns the cost of investment and the reality of their execution or openness to competition in terms of production and distribution of electricity in the second segment.

Finally, EDF is a consultant in matters of proposed tariffs by operators in the 2nd segment (that is, the segment of the electricity sub-sector made up of all areas that are not found in the first segment, which is managed by any company that has obtained a concession or an authorisation in accordance with the instruments in force).

2.3 - Côte d'Ivoire

2.3.1 - Organisation of the regulatory framework

It should be immediately specified that an energy code is being prepared. It appears on the website of the Ministry of Mines, Petroleum and Energy that *"the energy draft law has been drawn up and forwarded to the various supervised companies (ANARE, SOPIE, SOGEPE) for observation. The observations made by SOPIE and ANARE have been taken into consideration in this document"*.

The bill to introduce this code is supposed to have been forwarded to the Council of Ministers. However, the code has not been adopted till date and its draft version is not available.

Reference can then be made to Law n°85-583 of 29 July 1985, which is still in force, to produce, transport and distribute electricity..

Yet, this law does not make provisions for the organisation and functioning of State corporations that contribute to the electricity sector in Côte d'Ivoire.

These institutions are the Ministry of Mines, Petroleum and Energy on the one hand, and the national Electricity Regulatory Board, for which should be made reference to the decrees governing them in order to know their organisation and functioning.

2.3.1.1 - The Ministry of Mines, Petroleum and Energy

The Division of Energy within the Ministry of Mines, Petroleum and Energy is in charge of the electricity sector.

The Division was created by decree n°98-633 of 11 November 1998 to organise the Ministry of Mines and Energy before it became the General Directorate for Electricity following Decree n° 2008-155 of 28 April 2008 to organise the Ministry of Mines and Energy, and then, finally, the General Directorate for Energy following Decree n°2009-399 of 17 December 2009, to reorganise the Ministry of Mines and Energy.

At the moment, it is Decree n°2011-394 of 16 November 2011 that spells out the organisation of the Ministry of Mines, Petroleum and Energy.

The General Directorate for Energy is made up of:

- The Rural Electrification Division;
- The Division of new and renewable energies;
- The Division for the follow-up and regulation of Energy;
- The Bureau for Energy Control.

Finally, it is worth noting that the Ministry of Energy, through the General Directorate for Energy, and the Ministry of the Economy and Finance jointly supervise the technical, economic and financial components of ANARE.

2.3.1.2 - The National Regulatory Board of the Electricity Sector (ANARE)

ANARE was created by Decree n°98-726 of 16 December 1998 as a State-owned corporation governed, among others, by the regulation applying to business corporations.

ANARE is administered by a Board of Directors made up of 3 to 12 members appointed by decree, which continuously, governs and monitors its activities.

Within this framework, the Board of Directors has the following competences:

- It determines the general policy and the functioning of ANARE;
- It draws up the draft budget for the next budgetary year and periodically checks to ensure that the current budget is balanced;
- It balances the accounts and prepares reports before forwarding them for approval to the Ministry of the Economy and Finance;
- It authorises the General Directorate to sign the programme contract between the State and ANARE and ensures that it is properly executed;

The General Directorate of ANARE is managed by an Executive Director, appointed by the Board of Directors. It is especially in charge of implementing the deliberations of the Board of Directors through ANARE.

The resources of ANARE are made up essentially of the revenues from fees and taxes collected from operators in the sector, the proceeds from the transfer of its services and parafiscal taxes authorised by the budget act.

Concerning the supervision of ANARE, Article 16 of Decree n°98-726 of 16 December 1998 clearly states that "*The Company shall be placed under the technical supervision of the Ministry of Energy and the economic and financial supervision of the Ministry of the Economy and Finance*".

Moreover, Article 15 of the aforementioned 1998 decree states that a three-year programme contract shall be signed between the State and the corporation in order to fix:

- The company's programme of activities in relation to the State policy in the electricity sector;
- The conditions and methods to ensure balance between resources and means in the company;
- If need be, the amount of money paid as annual subvention by the State.

2.3.2 - Functioning of the regulatory framework

In Côte d'Ivoire, a number of State-owned corporations have been created, supervised by the Ministry of Energy, the Ministry of the Economy and Finance and ANARE.

Thus, in accordance with Article 5 of the 1985 law to carry out its transportation, distribution, importation and exportation obligations in the electricity sector and its competences in the production of electricity, Côte d'Ivoire has been authorised to carry out this service for a specific length of time that could be renewed or extended to an industrial or commercial organ, which it will appoint, and which will ensure the attributions as per the law.

The Ivorian Electricity Corporation, created on 24-Aug-1990 as a business corporation is in charge of transportation, exportation, importation, distribution and sale of electricity throughout the Ivorian territory.

Moreover, the following companies were created within the same framework:

- The Company in charge of managing State Property in the Electricity Sector (SOGPE), created by Decree n°98-727 of 16 December 1998 as a State-owned company with its main objective being to manage the State public and private assets in the electricity sector;
- The Ivorian Electricity Operation Company (SOPIE) created by Decree n°98-728 of 16 December 1998, its main objective being to follow up flows of electricity, to match supply with demand, and to monitor the work of the state as the awarding body.

These two companies were dissolved by Decrees n°2011-470 and n°2011-471 of 21 December 2011 in order to usher in the creation of a State-owned company called "Energies de Côte d'Ivoire" in charge of following up electricity flows as well as monitoring the work of the State as the awarding body.

2.3.2.1 - Contribution of the Ministry of Energy

The Ministry of Energy has the following competences to carry out:

- Ensuring security of hydrocarbons, minerals and energy supply ;
- Seeing to the rational and sustainable use of energy and mineral resources;
- Ensuring the implementation of an institutional and legal framework in order to improve competitiveness and competition in view of developing the mines, petroleum and energy sectors;
- Ensuring the implementation and following up of a programme to supply the national territory with electricity;
- Regulating, monitoring and channelling production, transportation and distribution of conventional energy, as well as new and renewable energies;
- Implementing and following up the government policy in saving energy and encouraging the use of renewable energy in collaboration with the Ministry of the Environment and the Ministry of Water and Forests;
- Encouraging the implementation of a policy on the energy conservation at the national level, especially in public utilities.

Within this framework, the Ministry of Energy has the right to make decisions, to take sanctions, to fix tariffs and to issue permits and authorisations in the sector.

2.3.2.2 - Contribution of ANARE

In accordance with Decree n°98-726 of 16 December 1998, the competences of ANARE are limited to the following aspects:

- Follow-up the compliance with regulations and conventions signed by operators in the sector;
- Manage conflicts between operators in the electricity sector or with the State;
- Protect the interests of consumers.

Within this framework, it takes all the necessary measures to defend the interests of users by ensuring that public utilities respect their obligations and by solving the complaints of consumers.

Likewise, it could issue concessions or authorisations and send out regulatory instruments relating to electricity.

Moreover, it monitors and approves electricity importation and/or exportation contracts on behalf of the State.

Finally, ANARE could tender proposals to the State to recommend each operator and the tariff which at least guarantees financial equilibrium in the sector.

Thus, from the above points, it is certain that ANARE is not an independent regulator for the State but it is more a kind of a support organ to the ministry.

However, considering its competences and powers, ANARE is an important actor in opening the market, regulating tariffs, as well as the importation and exportation of electricity.

2.4 - Gambia

2.4.1 - Organisation of the regulatory framework

In 2005 the electricity sector was greatly modified with the adoption of the electricity Act .

In accordance to this law, the monopoly of the State has been suppressed, which benefited NAWEC (National Water and Electricity Company) by opening the market to private operators.

However, NAWEC still operates the transportation and distribution network.

Concerning the institutional framework, two main actors are involved in the organisation of the electricity sector. They are the Department of State for Petroleum, Energy and Mineral Resources (DoSPEMR), and the Public Utilities Regulatory Authority (PURA), on the other.

2.4.1.1 - The Department of State for Petroleum, Energy and Mineral Resources

The Secretary of State at the Department of State for Petroleum, Energy and Mineral Resources is in charge of the electricity sector.

2.4.1.2 - The Public Utilities Regulatory Authority (PURA)

The regulator was instituted by the 2001 act to regulate many public utilities, one of which is electricity (Public Utilities Authority Act of 2001 (The PURA Act)).

The PURA Council is composed of a Chairman and four members. The Chairman is nominated by the Head of State at the recommendation of the Secretary of State. It is managed by an Executive Director.

2.4.2 - Functioning of the regulatory framework

2.4.2.1 - Contribution of the Department of State

In accordance with the 2005 act, the Department of State, through the Secretary of State for Energy is specifically in charge of:

- Implementing policies that favour short, medium and long-term investments;
- Encouraging the restructuring and privatisation policy for State companies and introducing competition in the electricity market;
- Promoting efficient measures for production, transportation, distribution and use of electricity;
- Monitoring and recommending energy policies, taking into consideration its impact on the environment;
- Putting in place policies that would promote the creation of contacts with operators in the electricity sector in foreign countries, and, instituting transits, importation and exportation of electricity;
- Improving the security of electricity.

2.4.2.2 - Contribution of PURA

The Secretary of State is in charge of instituting a general framework for the electricity sector, but the regulatory authority has greater competences and powers. However, issuing of authorisations for all activities in the electricity sector remains the duty of the Secretary of State.

Thus, the Regulatory Authority has the following competences:

- Introduce guidelines for tariffs and taxes;
- Monitor these tariffs and taxes;
- Protect the interest of consumers and public utilities;
- Supervise and ensure the respect of performance norms by public utilities;
- Initiate and carry out enquires on the norms of the services provided by public utilities;
- Encourage competition between companies in the public sector;
- Carry out studies relating to the economy and efficiency in the supply of public utilities regulated for the consumers;
- Give pieces of advice to already controlled public utilities;
- Recommend and manage a system of issuing permits to public utilities, in accordance with this law;

- Prepare or order the preparation of all important documents (including draft bills) that are needed to give the Authority the power to control public utilities.

2.5 - Ghana

2.5.1 - Organisation of the regulatory framework

Three institutions are involved in the electricity sector regulatory framework in Ghana. They are the Ministry of Energy, on the one hand, and the two regulatory organs, on the other: the Public Utilities Regulatory Commission and the Energy Commission.

2.5.1.1 - The Ministry of Energy

The Electricity Division at the Ministry of Energy is in charge of supervising the electricity sector.

The Division chooses, introduces, monitors and evaluates energy policies and adheres to the national energy policy, following its amendment in 2009.

2.5.1.2 - The Energy Commission

It is an institution with legal autonomy created by the Energy Commission Act of 1997, which intervenes in the guidelines and orientations instituted by the Minister of Energy.

The Energy Commission is managed by a council made up of:

- A Chairman;
- A representative of the National Development Planning Commission,
- An Executive Secretary;
- 4 persons based on their skills in the various fields of the Commission.

The members of the council are appointed by the President of the Republic.

2.5.1.3 - The Public Utilities Regulatory Commission

The Public Utilities Regulatory Commission was instituted by Public utilities regulatory commission Act, 1997 (Act 538) as amended by the Electricity Regulations Act of 5 June 2008.

The Energy Commission has legal autonomy and it is composed of:

- A Chairman;
- A representative of the Trades Union Congress;
- A representative of the Association of Ghana Industries;
- A representative of domestic consumers;
- An Executive Secretary
- 4 persons based on their competence.

The members of PURC are appointed by the President of the Republic.

Finally, in accordance to its status PURC is independent form the Ministry .

2.5.2 - Functioning of the regulatory framework

The division of labour is very clearly defined between the three institutional organs with the Ministry and the Energy Commission, on the one hand, and PURC as an independent regulator., on the other PURC

2.5.2.1 - Contribution of the Ministry of Energy

The Ministry of Energy is in charge of the energy sector in general. It ensures that instruments are applied in the sector and monitors operators, including VRA in particular.

The Ministry depends on the Energy Commission, which it supervises.

2.5.2.2 - Contribution of the Energy Commission

The Energy Commission is in charge of managing the use of energy resources and regulating the activities of the energy sector.

More specifically, the Energy Commission issues permits to operators of the electricity sector, monitors the management of these permits, ensures the enforcement of the rules and the compliance with performance standards in partnership with PURC.

Finally, the Energy Commission prepares network codes and indicative plans for the development of the energy sector with regard to production, distribution and sale of electricity.

Thus, the Energy Commission gets involved with the Ministry, which it advises and ensures the respect of regulations on the one hand, and with PURC for the enforcement of rules and the respect of performance standards, on the other.

Concerning the market opening to competition, the Energy Commission has introduced an "establish an Electricity Market Oversight Panel", in accordance with the provisions of the law on electricity regulations, in order to supervise the wholesale market and advise the Energy Commission.

This panel is mostly made up of members of the Energy Commission, PURC, the transmission network operator, consumers, distributors, suppliers and experts.

2.5.2.3 - Contribution of PURC

PURC has the following missions:

- Approve electricity tariffs;
- Settle differences;
- Encourage competition in the sector;
- Ensure the enforcement of rules and regulations, the follow-up and application of performance standards, as well as the protection of consumers' interests;
- Draw up tariff guidelines;
- Approve applied tariffs;
- Carry out studies on the economic efficiency of public utilities.

Finally, it is worth noting that in accordance with the 2008 electricity regulations act, a copy of the bilateral contracts on the wholesale market was forwarded to PURC and the Energy Commission.

Thus, as the Energy Commission confirmed it, there is a distribution of roles between the energy Commission and PURC in the sense that the former provides technical expertise and planning, while the latter is more inclined towards tariffs and finances.

The instruments, therefore, do not clearly explain cases of cooperation/coordination between both organs (except for the respect of rules and performance standards). However, it is important to see if there is a real coordination, which is necessary for a smooth functioning of activities in both organs and the ministry.

In any case, the three institutions are involved, each in their areas of influence on the issues of market opening and tariff regulation, even if PURC remains the frontline actor.

2.6 - Guinea

2.6.1 - Organisation of the regulatory framework

The State has instituted a new regulatory framework in accordance with Law n° L/93/039/CTRN of 13 September 1993, relating to production, transportation and distribution of electricity.

2.6.1.1 - The Ministry of Energy and Water

The National Energy Division at the Ministry of Energy and Water is in charge of the electricity sector.

Decree n° d/2008/040/PRG/SGG to institute and organize ministries, general secretariats and the Prime Minister's Office also states that three services shall be linked to the ministry. They are:

- The National Coordination Unit of the Organisation to Valorise River Senegal;
- The National Focal Institution of the Organisation to Valorise River Gambia;
- The National Focal Institution of the Niger Basin Authority.

The same decree states that there exist some public electricity companies:

- The Guinean Agency for Rural Electrification;
- The Guinean Agency for the Regulation of Water and Electricity Public Utilities.

It is worth mentioning that, as far as we know, the Agency for the Regulation of Water and Electricity Public Utilities has not yet been set up.

2.6.1.2 - The National Energy Council

In accordance with the aforementioned Decree n° D/20 08/040/PRG/SGG, the National Energy Council is an advisory body that is attached to the Ministry of Energy.

2.6.2 - Functioning of the regulatory framework

2.6.2.1 - The Ministry of Energy and Water

The Ministry of Energy and Water is actually the main and only institutional organ in the electricity sector.

Thus, its main duty is to design, draw up, implement and evaluate the Government policy in the water and energy sectors.

Within this framework, the Ministry is specifically in charge of:

- designing, drawing up laws and regulating the water and energy sectors, as well as following them up and monitoring them;
- drawing up an inventory and evaluating water and energy resources;
- drawing up and implementing development strategies for national water and energy resources as well as following them up and monitoring them;
- encouraging research and the use of new technologies in the domain of renewable energies;
- implementing research programmes in its area of competence;
- ensuring the enforcement of environmental laws and regulations in the energy and water sectors all over the national territory;
- stimulating, coordinating and following up the development programmes and projects within the framework of the sub-regional and regional cooperation for a sustainable management of water resources through the organisation of rivers;
- designing, drawing up and following up laws and regulations in the water sector and promoting the refining of petroleum products.

2.6.2.2 - The National Electricity Council

The National Electricity Council is attached to the Ministry of energy and acts as an advisory body to the Minister on issues relating to major aspects of energy policy, most especially:

- Issues on energy policy;
- The drafting of all rules governing the electricity sector;
- The drafting of principles to determine tariffs;
- The drafting of regulations relating to contracts and conventions binding the State, operators and consumers in the sector, especially programme contracts and subscription contracts.

2.7 - Mali

2.7.1 - Organisation of the regulatory framework

The regulatory framework of the electricity sector is organized in a bipartite manner between the Ministry of Energy and Water and the Electricity and Water Regulatory Commission.

To these two entities should be added the Malian Agency for the Development of Household Energy and Rural Electrification.

More generally, Ordinance N°00-019/P-RM of 15 March 2000 on the organization of the electricity sector as amended by Law No. 05-019 of 30 May 2005 sets out the various functions of stakeholders of the electricity sector regardless of whether they are institutional or not, and states as such that:

- the State shall define the electricity sector policy and ensure the development of the sector throughout the country;
- the project management of the electricity public service shall be carried out by the State;
- in the context of a public service delegation of the contracting authority, operators shall ensure the function of implementation and / or management and maintenance of electricity installations;
- the Regulatory Commission shall ensure the enforcement of the tariff policy and regulate the public electricity service. Attributions, organization and functioning of the Regulatory Commission shall be subject to specific legislation;
- the self-generators shall generate electricity for their own use.

2.7.1.1 - Ministry of Energy and Water

The National Directorate of Energy which is in charge of the electricity sector is set up within the Ministry of Energy and Water.

This Directorate was established by Ordinance No. 99-013/P-RM of 1 April 1999, as ratified by Law No. 99-022 of 11 June 1999. Its organization and operating procedures are established by Decree No. 99-186/P-RM of 5 July 1999 and Decree No. 99-253/P-RM of 15 September 1999.

2.7.1.2 - Electricity and Water Regulatory Commission (CREE)

This Commission was established pursuant to Ordinance No. 00-021/P-RM of 15 March 2000 establishing and organizing the Electricity and Water Regulatory Commission and Decree No. 00 - 185/P-RM of 14 April 2000 laying down detailed rules for the enforcement of Ordinance No. 00-021/P-RM of 15 March 2000 on the establishment and organization of the Electricity and Water Regulatory Commission.

While stating that the commission is established with the Prime Minister, the ordinance of 2000 affirms that CREE is an independent entity with legal personality and financial autonomy and reiterates that the decisions taken within the framework of the missions and powers stipulated in Articles 4 to 6 of the ordinance are not subject to any technical supervision by the competent ministers.

CREE is made up of five members who are university post-graduate degree holders, as follows:

- an electrical engineer;

- a hydraulic engineer;
- a lawyer;
- an economist specialized in pricing;
- a financial expert.

The members are recruited through public tenders and appointed by decree of the Council of Ministers on the joint proposal of the Minister in charge of electrical energy and the Minister in charge of potable water.

It is clear that the nature of the composition of CREE gives to it a mainly technical and not political character.

2.7.1.3 - The Malian Agency for the Development of Household Energy and Rural Electrification (AMADER)

It is an administrative public institution with legal personality and financial autonomy created by Law No. 03-006 of 21 May 2003 and with Decree No. 03-226/P-Rm of 30 May 2003 establishing the organization and operating procedures of AMADER.

AMADER is charged with managing the Household Energy Project and Access to Basic Services in Rural Areas (PEDASB).

2.7.2 - Functioning of the regulatory framework

The regulatory framework described hereinabove concerning primarily the Ministry and CREE, are mainly governed by:

- Ordinance No. 00-019/P-RM of 15 March 2000 on the organization of the electricity sector as amended by Law No. 05-019 of 30 May 2005;
- Decree No. 00-184/P-RM of 14 April 2000 laying down detailed rules for the enforcement of Ordinance No. 00-019 / P-RM of 15 March 2000 on the organization of the electricity sector;
- Ordinance No. 00-021/P-RM of 15 March 2000 on the establishment and organization of the electricity and water regulatory commission;
- Decree No. 00-185/P-RM of 14 April 2000 laying down detailed rules for the enforcement of Ordinance No. 00-021/P-RM of 15 March 2000 on the establishment and organization of the electricity and water regulatory commission.

2.7.2.1 - The role of the Ministry of Energy and Water

Pursuant to Ordinance No. 00-019/P-RM of 15 March 2000 on the organization of the electricity sector, the State, through the Ministry of Energy and Water, shall inter alia:

- ensure the planning, monitoring and development of the sector, as well as the coordination of the various actors of the sector;
- follow up, facilitate, coordinate and evaluate the investment and financing policy of the public service of electricity;
- set, through regulation, standards and technical specifications for electricity installations;

- coordinate and/or provide, from administrative, technical and financial viewpoints, the necessary assistance for the management and development of rural electrification.

The Ministry is also responsible, in consultation with CREE, for granting licenses and concessions as well as administrative authorizations necessary to carry out activities of generation, transmission, distribution and sale of energy across the Malian territory. Its jurisdiction also covers any import and export activity which is subject to prior authorization of the Minister.

2.7.2.2 - The role of the Regulatory Commission

As part of its regulatory role, the Electricity and Water Regulatory Commission have broad powers.

Thus, its overall mission is to:

- support the development of the public service of electricity and water;
- defend the interests of users and the quality of the public service;
- promote and organize competition between operators.

More specifically, CREE has jurisdiction over:

- assistance to the design of the sector development policy (consultation and recommendation);
- control of tenders and grant of concessions and management delegations (consultation through assent);
- approval and control of tariffs (approval of tariff grids submitted by operators and power of amendment);
- control and monitoring of conventions (obligations of the contracting authority and operators, of the tariff policy, the quality of service provided to users and principles of competition);
- monitoring of transactions between operators in the electricity sector (prior communication of proposed transactions for the purchase of power and energy between operators and power of recommendation);
- monitoring of import and/or export contracts of electricity (notice and control);
- arbitration of disputes between operators and between operators and contracting authorities (processing claims free of charge and intervention as honest broker in any dispute arising between operators);
- defense of users' interests (taking all acts necessary to protect and defend the interests of users of the public services of electricity and water).

It is clear from the foregoing that CREE has large powers covering technical, legal and economic issues and enjoys a fairly important independence in terms of management and financial resources.

As regards its powers, CREE considered in its 2004 annual report that it was essential to:

- state in Ordinance No. 00-021/P-RM of 15 March 2000 the conditions under which the Commission may impose effective implementation of its decisions (penalty, law enforcement requisition, etc.).
- supplement Decree No. 00-185/P-RM of 14 April 2000 laying down detailed rules for the enforcement of the Ordinance mentioned hereinabove by extending the powers of

CREE to any kind of tariff problems without being limited to the tariff grid first, and then, by the possibility of providing solutions to the disputes in terms of conventions' monitoring, in addition to controlling the actions of the operators.

So far, these claims have not been taken into account.

2.8 - Niger

2.8.1 - Organization of the regulatory framework

The regulatory framework for the electricity sector in Niger is mainly governed by Law No. 2003-004 of 31 January 2003 on the electricity Code, by its Enforcement Decree No. 2004-266/PNR/MME of 14 September 2004 governing the generation, transmission, distribution and import and export of electrical energy as well as by Ordinance No. 99-044 of 26 October 1999 on the establishment, organization and functioning of the Multi-sector Regulatory Authority (MRA) as amended by Law No. 2005-31 of 1 December 2005.

This organization is centered on the Ministry of Energy and Petroleum and ARM.

It should also be noted that there exists the National multi-sectorial energy center set up by Decree No. 78/MME/DERED of 18 August 2005.

2.8.1.1 - The Ministry of Energy and Petroleum

The Ministry of Energy and Petroleum (referred to in the text as the Ministry of Mines and Energy) is in charge of the electricity sector, through the Directorate of Electricity and the Directorate of Renewable Energy and Household Energies (Decree No. 2005/92/PRN/MM/E of 22 April 2005 on the organization of the Ministry of Mines and Energy).

In addition to the Ministry of Energy, various advisory bodies attached to it intervene in this area, in particular:

- National Solar Energy Centre (CNES);
- National Electricity Committee (CNE);
- Nigerian Energy Council.

Finally, the Ministry of Energy is part of the National Multi-sectorial Energy Centre, which is the coordinating body that brings together several ministries.

2.8.1.2 - Multi-sectoral Regulatory Authority (ARM)

Pursuant to Ordinance No. 99-044 of 26 October 1999 on the establishment, organization and functioning of the Multi-sectorial Regulatory Authority (MRA) as amended by Law No. 2005-31 of 1 December 2005 and Ordinance No. 2010-83 of 16 December 2010, ARM is an independent legal body with financial and management autonomy.

The Regulatory Authority is headed by the National Regulatory Council. Each sector is regulated by a Sector Director.

The National Regulatory Council is made up of seven members:

- A representative of the President of the Republic;
- A representative of the Prime Minister;

- A representative of each ministry;
- A representative of consumer organizations.

2.8.2 - Functioning of the regulatory framework

In its Section II entitled "institutional provisions", Law No. 2003-04 of 31 January 2003 addresses, on the one hand, the role of the state and, on the other hand, the role of ARM.

2.8.2.1 - The Ministry of Energy and Petroleum

Pursuant to Decree No. 2005-092/PRN/MM/E of 18 February 2005 determining the powers of the Minister of Mines and Energy, the Ministry shall be responsible for the development and implementation of the national mines and energy policy in accordance with the guidelines laid down by the Government.

As such, the Ministry is in charge of:

- the development and implementation of strategies and programs for the development of mineral and energy resources;
- the development, implementation and enforcement of the legislation;
- the promotion of the energy potential among investors;
- the exercise of the technical supervision of public institutions, state companies and public private partnerships.

2.8.2.2 - Multi-sector Regulatory Authority (ARM)

Pursuant to Ordinance No. 99-044 of 26 October 1999 as amended by Law No. 2005-31 of 1 December 2005, ARM is responsible for the regulation of several sectors (water, energy, telecommunications and transmission) and Ordinance No. 2010-83 of 16 December 2010.

In this context and in general, it:

- ensures the enforcement of laws and regulations in an objective, clear and non-discriminatory manner;
- protects the interests of users and operators and takes all necessary measures to ensure the exercise of a sound and fair competition;
- promotes an efficient development of the sector;
- implements mechanisms of consultations with users and operators;
- collects financial resources in view of fueling the universal access and service funds.

Pursuant to Law No. 2003-04 of 31 January 2003, ARM is specifically charged with participating in the promotion and development of the electric energy supply; ensuring the economic and financial equilibrium of the sector; ensuring free and fair competition in terms of generation, transmission and distribution of electrical energy; preparing and conducting tenders for the granting of an agreement or license; submitting delegation agreements and requests for authorizations for signature to the competent authority, following consultation; submitting tariff proposals of stakeholders to the ministry, following consultation and ensuring compliance with their enforcement; enforcing, by the parties, the conditions of execution of delegation agreements; safeguarding the interests of consumers; resolving disputes between operators, and participating in the renegotiation of agreements and licenses.

2.9 - Nigeria

2.9.1 - Organization of the regulatory framework

The electricity sector in Nigeria has been deeply reformed by the Electric Power Sector Reform Act, which came into force on 11 March 2005.

This law has indeed opened the market to competition and created an independent regulatory body: Nigerian Electricity Regulatory Commission (NERC).

Furthermore, NERC federal institutional framework is characterized by the presence of two administrative entities, namely:

- The Ministry of Electricity;
- The Energy Commission.

2.9.1.1 - The Ministry of Electricity

Within the Ministry of Electricity the department of electricity is in charge of technical issues, just as the investment and development department of the sector.

2.9.1.2 - The Energy Commission

The Energy Commission was established by Act No. 62 of 1979, as amended by the Energy Commission of Nigeria Act (Cap 109 LFN 1990), as a government agency.

The Commission is made up of the Chairman and representatives of ministries in charge of mining, energy and steel, petroleum resources, science and technology, defense, agriculture, water resources and rural development, external affairs, finances and economic development.

In addition, a general manager heads the Commission and its secretariat.

The Energy Commission has in particular the following departments:

- Energy Information System Department;
- Energy Management, Training and Manpower Development Department;
- Energy Planning and Analysis Department;
- Nuclear Sciences and Technologies Department;
- Renewable Energy Department.

2.9.1.3 - Nigerian Electricity Regulatory Commission (NERC)

NERC is composed of seven commissioners, including a chairman and a vice-chairman. All commissioners are appointed by the President of the Republic and confirmed by the Senate.

NERC is structured around six departments in charge of:

- Engineering, Standards & Safety;
- Finance & Management Services;
- Government & Consumer;
- Legal, Licensing & Enforcement;

- Market, Competition & Rates;
- Renewable Energy, Research & Development.

2.9.2 - Functioning of the regulatory framework

2.9.2.1 - The Ministry of Electricity

The Ministry of Electricity assumes responsibility for the development of legislations in the electricity sector.

The federated States' Governments ensure respect of electrification plans in the construction of power plants in coordination with the Federal Government. They also play the role of ensuring the decentralized regulation of local dispatching operations within their borders.

2.9.2.2 - The Energy Commission

The Energy Commission is in charge of the energy regulation and planning at the national level.

In this context, the Energy Commission carries out the overall planning of the energy sector and implementation of policies; promotes the diversification of energy resources through the optimal use of development and all energy resources, including the introduction of new energy resources.

Thus, the Energy Commission prepares periodic master plans for the balanced and coordinated development of energy.

Similarly, the Commission inspectors monitor and coordinate the performance of operators in order to ensure consistency with the National Energy Policy (NEP).

Finally, the Commission advises the Government on the funding of energy research, development, generation and distribution.

2.9.2.3 - NERC

NERC as a regulatory body handles issues such as:

- the optimal use of electricity resources;
- the pricing and quality of service;
- the granting of licenses and permits;
- the promotion of competition and participation of the private sector;
- the approval of market rules;
- the monitoring of the sector operations.

Thus, if the Ministry and the Commission of Energy manage the issues relating to regulation and general energy policy, NERC is responsible for aspects relating to the operation of the electricity market, as open to competition.

2.10 - Senegal

2.10.1 - Organization of the regulatory framework

The main institutions involved in the electricity sector in Senegal are:

- The Ministry of Energy;
- The National Energy Council;
- The Electricity Sector Regulatory Commission.

2.10.1.1 - The Ministry of Energy

In accordance with Law No. 98-29 of 14 April 1998 relating to the electricity sector as amended by Law No. 2002-01 of 26 December 2001, the Ministry in charge of energy is one of the two authorities in the energy sector.

Under Decree No. 2009-34 of 26 January 2009 on the organization and functioning of the Ministry of Energy as supplemented by Decree No. 2012-1223 of 5 November 2012, it is stated that the Minister is responsible for the implementation of the policy defined by the Head of State concerning the exploration and exploitation of energy sources and that he is responsible for the energy supply policy and, as such, has authority on the semi-public sector companies whose business is the import, export and marketing of hydrocarbons.

The Ministry of Energy is made up of:

- the Directorate of Electricity. This in itself includes the Department of Electricity and Integration of Sub-regional projects and the Department of Rural Electrification and Renewable Energy
- the Directorate of Economy and Energy Management.
- Moreover, specifically in the field of electricity, two entities are attached to the Ministry, namely:
 - The Senegalese Rural Electrification Agency;
 - The Electricity Sector Regulatory Commission.

2.10.1.2 - The Electricity Sector Regulatory Commission

Pursuant to Article 4 of Law No. 98-29 of 14 April 1998, as amended, an Electricity Sector Regulatory Commission was established as an independent authority responsible for regulating the activities of generation, transmission, distribution and sale of electric energy.

The organization and functioning of the Electricity Sector Regulation Commission are set forth by Decree No. 98-333 of 21 April 1998, according to which the Commission is made up of a Chairman and two other members appointed by decree because of their moral integrity, their intellectual honesty, their neutrality and impartiality as well as their qualification in the legal, technical and economic expertise in the electricity sector.

2.10.1.3 - The National Energy Council

The National Energy Council was established by Decree No. 211-91 of 24 January 2011 to support from an institutional perspective the "Takkaal" plan on the restructuring and revitalization of the energy sector for the 2011-2015 period.

The Council is chaired by the President of the Republic and is made up of ministers, CEOs and representatives from various social economic entities.

2.10.2 - Functioning of the regulatory framework

2.10.2.1 - The role of the Ministry of Energy

Article 3 of the 1998 Law referred to hereinabove describes the role of the Minister of Energy:

- he develops and suggests to the President of the Republic the overall policy and applicable standards of the electricity sector;
- he is responsible for licensing, concessions and authorizations.

In this context, the Ministry notably has the power to:

- develop and propose applicable standards;
- set in collaboration with the Minister for Town Planning the technical requirements to meet for the safety and convenience of people and buildings;
- oversee the development and approval of electrification master plans and investment programs involving SENELEC and the Senegalese Rural Electrification Agency (ASER);
- define contractual obligations as far as investment of operators that are holders of concessions / licenses are concerned;
- set the level of tariffs on the recommendations of CRSE;
- authorize any company planning to import or export electricity outside the country.

2.10.2.2 - The role of the Electricity Sector Regulatory Commission

Pursuant to Article 4 of the Law of 1998 referred to hereinabove, the role of the Electricity Sector Regulatory Commission is quite broad.

Thus, the Commission is responsible for:

- promoting the rational development of electricity supply;
- ensuring the economic financial balance of the electricity sector and the preservation of economic conditions necessary for its viability;
- ensuring the preservation of the interests of consumers and the protection of their rights with regard to price, supply and quality of electric power;
- promoting competition and participation of the private sector in the generation, transmission, distribution and sale of electric power;
- ensuring conditions for financial viability of companies of the electricity sector.

In this context, the Commission has in particular the following powers:

- it may be contacted for opinions on issues that have an impact on the development of the sector policy;
- it ensures compliance with technical standards by concessionaires;
- it is informed annually by SENELEC on the five-year estimate of needs to increase generation capacity;

- it approves the corresponding investment plan and programme and publishes it by all appropriate means;
- it is consulted for joint investments with other countries leading to the import / export of electricity;
- it controls the contractual obligations of operators in terms of investment;
- it launches tenders in view of receiving proposals from SENELEC and other companies wishing to carry out an electricity generation activity;
- it processes applications for license or concession (except in the case of an independent generator from a selective process);
- it determines the structure and composition of tariffs applied to companies that hold a license or concession;
- it approves contract prices between SENELEC and independent generators.

2.10.2.3 - The role of the National Energy Council

Pursuant to Decree No. 211-91 of 24 January 2011, the National Energy Council is responsible for:

- coordinating, supervising, monitoring and evaluating the implementation of the plan and actors;
- fixing orientations, ensuring arbitration, redirecting measures, financing and all the resources necessary to implement the emergency plan;
- more generally, taking all decisions necessary for the monitoring and effective implementation of the plan in order to achieve a sustainable recovery of the energy sector.

In this context, a Letter of development policy in the energy sector was developed in 2012 and validated on October 31, 2012.

If the division of responsibilities and powers was quite clear between the Ministry and CRSE, CNE institution runs the risk of bringing about difficulties. Thus, the instruments do not specify the relationship that should be established between CNE and CRSE, and how the decisions made by CNE should take into account the position and decisions of CRSE, etc...

2.11 - Togo

2.11.1 - Organization of the regulatory framework

Pursuant to Law No. 2000-012 of 18 July 2000 on the electricity sector, the organization of the institutional framework is based on the following three structures:

- two national structures: the Ministry of Energy and Mines and the Electricity Sector Regulatory Authority (ARSE);
- an international structure: the Benin Electricity Community (CEB).

Regarding CEB, reference should be made to paragraph 2.1.1.3 of this note.

The electricity sector is mainly governed by the following rules:

- the International Agreement on the Benin-Togo Electricity Code signed on 23 December 2003 and amending the Daho-Togo Electricity International Agreement of 27 July 1968. Togo ratified the new code on 26 June 2006.
- Law No. 2000-012 relating to the electricity sector, promulgated on 18 July 2000.
- Decree of 8 November 2000 2000-90/PR on the organization and functioning of the Electricity Sector Regulatory Authority.

2.11.1.1 - The Ministry of Energy and Mines

Pursuant to Decree No. 2005-93/PR of 4 October 2005 on the powers and organization of the Ministry of Mines, Energy and Water, the Directorate General of Energy, is in charge of the electricity sector.

This Directorate includes:

- The directorate of energy planning;
- The directorate of electricity and energy equipment.

2.11.1.2 - The Electricity Sector Regulatory Authority (ARSE)

Provided for by Law No. 2000-012 of 18 July 2000 referred to hereinabove to assist the Minister in charge of energy in the management of the sector activities, the organization and operation of ARSE is governed by Decree No. 2000-090 / PR of 8 November 2000.

ARSE is a public institution with an independent legal body and financial autonomy.

ARSE is administered by a steering committee whose members are appointed by decree in the Council of Ministers, namely:

- an engineer nominated by the Minister for Energy;
- an economist nominated by the Minister of Commerce;
- a lawyer nominated by the Minister for Justice.

The Committee elects its Chairperson.

In addition, a general manager is responsible for implementing all the procedures of analysis, regulation, control, punishment, and dispute settlement.

2.11.2 - Functioning of the regulatory framework

Regarding CEB, reference should be made to developments concerning Benin.

2.11.2.1 - The role of the Ministry of Energy

In accordance with the responsibilities conferred by the Benin-Togo International Agreement, the Ministry of Energy has the following powers:

- it formulates and periodically reviews the overall policy of organization of the electricity sector, especially with regard to the following aspects: the tariff policy on the activities of electricity supply, electrification policy, energy resource policy; policy on the procurement and storage of fuels used for power generation, particularly in order to ensure the continuity and regularity of electricity supply; research and development policy and policy on environmental protection and development of renewable energy sources;

- it takes, following the recommendation of ARSE, any regulatory measure leading to the implementation of the legal framework established by this law and, in particular, makes and amends, if any, tariff regulations, in accordance with the guiding principles of the general organization policy of the electricity sector;
- it suggests or approves any new project on the generation of electrical energy by implementing electrical power less than 20 MVA;
- it signs on behalf of the State and following the recommendation of ARSE any concession agreement in the electricity sector.

2.11.2.2 - The role of the ARSE

Pursuant to Law No. 2000-012 of 18 July 2000 referred to hereinabove and Decree No. 2000-090/PR of 8 November 2000, the main missions of ARSE are as follows:

- the proposal to the Minister of Energy of draft standards and formulas to control the activities regulated or concerning the electricity sector;
- the procedure to carry out necessary audits and investigation and the implementation of its powers;
- the participation in project appraisal and supervision of national tenders and for the conclusion of international contracts and agreements;
- the formation of an arbitration chamber for conciliation or arbitration of disputes in case of differences between stakeholders.

In addition, pursuant to the Benin-Togo Code, ARSE handles issues involving CEB but in collaboration with its counterpart from Benin.

2.12 - General conclusion and summary tables

2.12.1 - General Conclusion

It is clear from the analysis of the regulatory framework and regulations in force in the ECOWAS member States mentioned hereinabove that the authorities in charge of the energy sector (may they be ministerial authorities, regulators or others) virtually have no jurisdiction over contracts, as much for internal contracts as for import / export contracts.

It should be noted that these conclusions are drawn from the laws and regulations in force when preparing the report. However, it is possible that the practice does not comply with these provisions for several reasons: the regulator is not yet operational; the legislation is not yet adopted, etc...

Some authorities, however, have certain powers that relate to contracts. These privileges vary according to the country and the type of contract, namely:

- **Obligation to inform**

Some authorities must indeed be informed of certain types of contracts signed internally.

This is the case of Benin where the ministry must be informed of contracts between CEB and IPP and between CEB and distribution companies.

This is also the case of Ghana where PURC has to be notified with a copy of bilateral contracts and wholesale contracts, a copy of which remains with PURC.

• **Advisory Prerogative**

In some cases, there is an advisory jurisdiction with regard to the electricity import / export contracts.

This is the case of CREE in Benin.

• **Control Prerogative**

Some authorities have a prerogative to control. This is also the case of CREE in Benin.

• **Approval Prerogative**

Two entities have the power to approve contracts, namely the regulator of Benin (when the latter was put in place) as regards contracts of sale and CREE in Mali with regard to the electricity import / export contracts.

Thus, the powers are quite limited, they are not provided for in every country and are not harmonized in the countries where they are already provided for.

In addition, very few authorities intervene in import / export contracts.

Finally, there is no competent authority to suggest or approve a model contract or a standard contract or to provide the legal framework to these contracts.

However, in a fully liberalized market, such a prerogative for sales, import / export and exchange contracts is not essential insofar as the rules of the market and the harmonized legal framework make it possible to avoid any control contracts or any need to approve models.

However, in a market that is not open or partially open to competition, public authority is required. Indeed, given the position of the operators historically facing new stakeholders (e.g. IPP), contracts should be designed, negotiated and concluded in a balanced way and not imposed.

Moreover, even for fully liberalized markets, it is necessary to maintain public authorities' intervention with regard to contracts or access rules to cross-border interconnections (access to transmission infrastructure).

Indeed, cross-border interconnections, which are a chokepoint for export or import of electricity, are managed by operators essentially under the status of monopoly. In addition, these operators are in an overwhelming majority, a vertically integrated company that is also involved in the generation and import / export of electricity. The principle of non-discrimination, which should govern the decisions of the operator managing the interconnection, arises at this stage.

In any event, in the context of an emerging regional market, which however includes countries

with very different situations in terms of geographic location, legal and institutional framework, electrical capacities of interconnections, etc., it is necessary that as regards cross-border contracts, a power of control, approval or even of proposal of models be provided for.

Given the powers of national authorities and especially given the cross-border nature of the contracts in question, this power of control, approval or even of proposal should be entrusted to a cross-border authority, namely ECOWAS and more specifically ARREC.

2.12.2 - Comparative table of regulatory bodies

	Designation	Status/form	Multi/Mono-sectorial	Competence	Independence	Funding
BURKINA FASO	Electricity Sub-Sector Regulatory Authority (ARSE)	Independent administrative authority with legal personality and financial autonomy	Electricity	Quite extensive responsibilities and powers not yet exercised	<ul style="list-style-type: none"> - Appointment of council members by decree of the President of the Republic in the Council of Ministers - Five-year term renewable once 	Funding by resources from the electricity sector and by other sources such as the state's specific funding
COTE D'IVOIRE	National Electricity Sector Regulatory Authority (ANARE)	State Company	Electricity	Fairly limited responsibilities and powers	<ul style="list-style-type: none"> - Board of Directors appointed by decree - Authority of the Ministry of Energy and Ministry of Economy and Finance 	<p>Funding by the product fees and charges levied on operators in the sector, the proceeds from the sale of its works and services and parafiscal authorized by the finance law</p> <p>The state holds the company capital</p>

	Designation	Status/form	Multi/Mono-sectorial	Competence	Independence	Funding
GAMBIA	Gambia Public Utilities Regulatory Authority (PURA)	Corporate body	Multi-sectoral	Broad powers and responsibilities	<ul style="list-style-type: none"> - Council appointed by decree - Quite limited case of revocation - Three-year term renewable once 	Funding by the state (budget decided by the National Assembly) and the product fees and charges levied
GHANA	Public Utilities Regulatory Commission (PURC)	Corporate body	Multi-sectorial	Tariff and economic responsibilities	<ul style="list-style-type: none"> - Council appointed by the President of the Republic - Five-year term, renewable once - Quite limited case of revocation 	Funding by the state and by the product fees and charges levied
	Energy Commission		Energy	Technical responsibilities and planning		
MALI	Electricity and Water Regulatory Commission (CREE)	Independent administrative authority with legal personality and financial autonomy	Multi-sector	Broad powers and responsibilities	<ul style="list-style-type: none"> - Members appointed by decree on call for applications - Quite limited case of revocation 	Funding primarily through fees levied on operators and by the state subsidies, decentralized local authorities and public or private, national or international organizations

	Designation	Status/form	Multi/Mono-sectorial	Competence	Independence	Funding
NIGER	Multi-sectoral Regulatory Authority (ARM)	An independent legal body with financial autonomy and management	Multi-sectorial	Broad powers and responsibilities	<ul style="list-style-type: none"> - Four-year term non-renewable - Members appointed by decree in Council of Ministers and Chairman appointed by decree among them 	Funding by the state budget and by the product fees and charges levied
NIGERIA	Nigerian Electricity Regulatory Commission (NERC)	Corporate body	Electricity	Aspects relating to the functioning of the market and opening up to competition	Council appointed by the President of the Republic and confirmed by the Senate	Funding by the state budget and by the product fees and charges levied
	Energy Commission	Government Agency	Energy	Aspects relating to regulation, planning and general policy	consisting of representatives of ministries	Funding by the State and proceeds from fees and charges levied
SENEGAL	Electricity Sector Regulatory Commission (CRSE)	Independent Administrative Authority	Electricity	Broad responsibilities and powers	<ul style="list-style-type: none"> - Council appointed by Decree - Five-year term, renewable once - Incompatibility with an elected national office or interest or in the sector 	Funding through product fees, file processing fees and by state credits

	Designation	Status/form	Multi/Mono-sectorial	Competence	Independence	Funding
TOGO	Electricity Sector Regulatory Authority (ARSE)	Public institution with an independent legal body and financial autonomy	Multi-sectorial	Broad responsibilities and powers	<ul style="list-style-type: none"> - Executive Committee appointed by the President of the Republic - Incompatibility with elected offices or ministerial or governmental posts on interest in the sector - Quite vague case of revocation 	Funding primarily by fees levied on operators

2.12.3 - Summary table of major entities and market players

	Regulator	Administration	Generator(s)	Manager of the transmission network
BENIN	Electricity Regulatory Authority 2	Minister for Energy, Petroleum and Mineral Research, Water and Development of ENR (General Directorate of Energy) Beninese Agency for Rural Electrification and Energy Management	Benin Electric Company (CEB) Beninese Electrical Energy Company 2 Independent generators	Benin Electric Company (CEB) Beninese Electrical Energy Company (SBEE)
BURKINA FASO	Electricity Sub-sector Regulatory Authority (ARSE)	Ministry of Mines, Quarries and Energy http://www.mines.gov.bf/	National Electricity Company of Burkina http://www.sonabel.bf/ Sogem http://www.sogem-omvs.org/pres2.htm 2 Independent generators	National Electricity Company of Burkina http://www.sonabel.bf/
COTE D'IVOIRE	National Electricity Sector Regulatory Authority http://www.anare.ci	Ministry of Mines, Petroleum and Energy http://www.energie.gouv.ci/	Ivorian Electricity Company (CIE) http://www.cie.ci/ Azito thermal power plant http://www.azitoenergie.com/ CIPREL Cinergy	Ivorian Electricity Company (CIE) http://www.cie.ci/

² Though the regulatory body is provided for by the instrument, it is not yet functional. A notice of solicitation of expression of interest for the recruitment of a consultant charged with the study on the regulation of the electricity sub-sector in Benin was published in 2012.

	Regulator	Administration	Generator(s)	Manager of the transmission network
GAMBIE	Gambia Public Utilities Regulatory Authority (PURA) http://www.pura.gm	Energy Ministry	National Water & Electricity Company http://www.accessgambia.com/information/nawec-water-electricity.html	National Water & Electricity Company http://www.accessgambia.com/information/nawec-water-electricity.html
GHANA	Public Utilities Regulatory Commission http://www.purc.com.gh/ Energy Commission http://new.energycom.gov.gh/	Ministry of energy http://www.energymin.gov.gh/	Volta River Authority (VRA) http://www.vra.com/ Electricity Company of Ghana (ECG) http://www.ecgonline.info/ecgweb/ Bui Power Authority http://www.buipowerauthority.com/	National Grid Company (transport) http://www.gridcogh.com/site/
GUINEA		Ministry of Natural Resources and Energy National Council of Electric Energy (CNEE)	Electricity of Guinea (EDG) http://www.edgguinee-gn.org/	Electricity of Guinea (EDG) http://www.edgguinee-gn.org/
MALI	Electricity and Water Regulatory Commission (CREE) http://www.primature.gov.ml/index.php?option=com_content&view=article&id=4838&Itemid=100280	Ministry of Energy and Water	Electricity of Mali (EDM) http://www.primature.gov.ml/index.php?option=com_content&view=category&layout=blog&id=25&Itemid=100098 SOPAM-Energy Albatros-Energy http://www.albatrosenergy.com/ VICA Company	Electricity of Mali (EDM) http://www.primature.gov.ml/index.php?option=com_content&view=category&layout=blog&id=25&Itemid=100098

	Regulator	Administration	Generator(s)	Manager of the transmission network
NIGER	Multi-sectoral Regulatory Authority (ARM) www.armniger.org/		Nigerian Electricity Company (NIGELEC) Nigerian Coal Corporation of AnuAraren (SONICHAR)	National Multi-sectoral Energy Committee (CNME)
NIGERIA	Nigerian Electricity Regulatory Commission (NERC) http://www.nercng.org	Ministry of power http://www.power.gov.ng/ Energy Commission (policy planning) http://www.energy.gov.ng/	Power Holding Company of Nigeria (PHCN) ³ www.phcnonline.com/	Transmission Company of Nigeria (TCN) http://www.tcnng.org/
SENEGAL	<i>Electricity Sector Regulatory Commission</i> http://www.crse.sn/	Ministry of Energy and Mines (Directorate of Energy) National Energy Council	National Electricity Company http://www.senelec.sn/ Sogem http://www.sogem-omvs.org/pres2.htm	National Electricity Company http://www.senelec.sn/
TOGO	Electricity Sector Regulatory Authority (ARSE) http://www.arse.tg/beta/	Ministry of Energy	Electric Company of Benin (CEB) Electric Company of Togo (CEET) (Transport) http://www.ceet.tg/fr/index.php ContourGlobal http://www.contourglobal.com/portfo/lio/?id=10	Electric Company of Benin (CEB)

³ PHCN took over from the National Electric Power Authority (NEPA) (ex integrated monopoly)

2.12.4 - Summary table of key laws and regulations

BENIN	<ul style="list-style-type: none"> • International Agreement on the Benin-Togo Electricity Code signed on 23 December 2003, amending the International Daho-Togo electricity agreement of 27 July 1968 on interconnection with Togo • Law No. 2006-16 on the electricity Code • Decree No. 2004-151 on the responsibilities, organization and functioning of the Ministry of Mines, Energy and Hydraulics • Decree No. 2007-580 on the responsibilities, organization and functioning of the Ministry of Mines, Energy and Water • Decree No. 2007-539 of 2 November 2007 fixing applicable procedures and standards and conditions for exercising the inspection and technical control of electricity supply units • Decree No. 2007-655 of 31 December 2007 on the establishment of procedures for notification and authorization of electricity auto-generation units • Decree No. 2008-815 of 31 December 2008 on the definition of procedures for granting concessions for electrical energy supply • Decree No. 2008-719 of 22 December 2008 setting up and fixing management procedures for rural electrification fund • Decree No. 2009-182 of 13 May 2009 on the creation, attribution, organization and functioning of the Electricity Regulatory Authority
BURKINA FASO	<ul style="list-style-type: none"> • Act No. 053-2012/AN of 17 December 2012 on the general regulation of the electricity sub-sector in Burkina Faso • Decree No. 2008-369/PRES/PM/MCE/MEF/MCPEA of 24 June 2008 establishing the ARSE • Decree No. 370/PRES/PM/MCE/MEF/MCPEA/MATD of 24 June 2008 on conditions for granting licenses and authorizations, signing concession or lease contracts and mandatory declaration of units in the electricity sub-sector in Burkina Faso
COTE D'IVOIRE	<ul style="list-style-type: none"> • Law No. 85-583 of 29 July 1985 organizing the generation, transmission and distribution of electricity in Côte d'Ivoire • Decree No. 90-1389 of 25 October 1990 appointing the national public service concession holder in charge of generation, transmission, distribution, export and import of electricity • Decree No. 90-1390 of 25 October 1990 approving the concession agreement of the national public service in charge of the generation, transmission, distribution, export and import of electricity • Decree No. 94-407 of 03 August 1994 approving the Convention for the construction, operation and transfer of ownership of an electricity thermal power generation plant (CIPREL) • Decree No. 98-397 of 15 July 1998 authorizing the independent generation of electricity by the CINERGY company • Decree No. 98-398 of 15 July 1998 approving the concession agreement for the development of a natural gas power plant in

	<p>AZITO and for the leasehold contract at the AZITO site notwithstanding Decree No. 92-08 of 08 January 1992 on public procurement code</p> <ul style="list-style-type: none"> • Decree 98-725 of 16 December 1998 on the restructuring of the electricity sector • Decree 98-726 of 16 December 1998 establishing the state-owned company, called National Electricity sector Regulatory Authority (ANARE) • Decree No. 2005-520 of 27 October 2005 approving amendment No. 5 to the concession agreement of the national public service in charge of generation, transmission, distribution, export and import of electricity • Decree No. 2010-200 of 15 July 2010 on the establishment of rules for the management of funds flow in the electricity sector • Decree 2011-394 of 16 November 2011 on the organization of the Ministry of Mines, Petroleum and Energy • Decree No. 2011-470 of 21 December 2011 on the anticipated dissolution of the state-owned company called Electricity Sector Asset Management Company (SOGPEPE) • Decree No. 2011-471 of 21 December 2011 on the anticipated dissolution of the state-owned company called Ivorian Electricity Operation Company • Decree No. 2011-472 of 21 December 2011 establishing a state-owned company called Côte d'Ivoire Energy Company. • Decree No. 2012-550 of 13 June 2012 approving amendment 3 to the concession agreement for the development of a natural gas power plant in AZITO • Interministerial Order No. 98 of 24 December 2001 on the reorganization of control of electricity generation, transmission, distribution, import and export works and laying down procedures for sharing control costs • Interministerial Order No. 569/MMPE/MPMEF of 20 December 2012 amending electricity rates
GAMBIA	<ul style="list-style-type: none"> • The Public Utilities Regulatory Act, 2001 • The Electricity Act, 2005
GHANA	<ul style="list-style-type: none"> • Volta River Development Act, 1961 (Act No. 46), 26 April 1961 (amended in 1962, 1968, 1972 and 1987) • Public Utilities Regulatory Commission Act (No. 538), 16 Oct. 1997 • Energy Commission Act (Act 541), 31 December 1997 • Electricity transmission (technical, operational and standards of performance) rules, 2008 - L.I. 1937 • Electricity Regulations 2008 LI 1934 • National Petroleum Authority Act (No. 691), 14 June 2005 • Electrical Wiring Regulations, 2011 • Electricity Supply and Distribution (Technical and Operational) Rules, 2005

	<ul style="list-style-type: none"> • Electricity Supply and Distribution (Standards of Performance) Regulations, 2008
GUINEA	<ul style="list-style-type: none"> • Law No./93/039/CTRN of 13 September 1993 • Decree No. of 5 May 1997 D/69/PRG/SGG organizing the Ministry of Natural Resources and Energy
MALI	<ul style="list-style-type: none"> • Order No. 00-019/p-rm of 15 March 2000 on the organization of the electricity sector • Order No. 00-021/p-rm of 15 March 2000 on the establishment and organization of the Electricity and Water Regulation Committee • Law No. 03-006 of 21 May 2003 establishing the Malian Agency for Household Energy and Rural Electrification (AMADER) • Law No. 05-019 of 30 May 2005 amending Order No. 00-019/p-rm of 15 March 2000 on the organization of the electricity sector • Decree of 14 April 2000 00-184/p-rm laying down detailed rules for the enforcement of Ordinance No. 00-019/p-rm 15 March 2000 • Decree of 14 April 2000 00-185/p-rm laying down detailed rules for the enforcement of Order No. 00-021/p-rm • Decree No. 03-226/P-Rm 30 May 2003 establishing the organization and working methods of AMADER

3 - LEGAL FRAMEWORK AND COMPETENCES OF ERERA & SUGGESTIONS FOR AMENDMENTS

Prior to the analysis of desired or required amendments to the regulations governing ERERA and eventually making meaningful suggestions, it is necessary to present ERERA's legal framework and current area of competence.

3.1 - Legal framework and competences of ERERA

3.1.1 - Current legal framework

3.1.1.1 - Background and creation of ERERA

In accordance with Articles 3.2 (a), 26, 31, 55 and especially 28 of the ECOWAS Treaty, Member States shall work to promote cooperation, integration and development of the energy sector.

This commitment resulted in 1982 by the adoption of an ECOWAS⁴ energy policy by the Summit of Heads of State and Government.

In this context and given the need to develop regional energy projects, a Protocol on Energy was adopted in January 2003⁵, thus establishing a reference framework for the economic and financial, technical and legal domains.

More specifically, the protocol aims at:

- Guaranteeing and ensuring a free flow of energy, equipment and energy products between the Member States;
- Developing non-discriminatory rules for trade and settlement of conflicts;
- Attracting and protecting private investments;
- Protecting the environment and developing energy efficiency.

Within this context and in order to contribute to the achievement of these objectives, the Summit of Heads of State and Government decided on January 19, 2008, A/SA.2/01/08, to create the regional regulatory authority of the ECOWAS electricity sector through a supplementary act.

The regulation establishing the composition, organization, powers and functioning of ERERA was adopted on December 27, 2007⁶ and was amended by a resolution of 24 November 2009 on Articles 5 (4), 12 (2), 13 (1) and 39⁷.

⁴ Decision A/DEC.3/5/82.

⁵ Protocol A/P4/1/03.

⁶ Regulation C/REG.27/12/2007

⁷ Regulation C/REG.24/11/08

Finally, within the framework of the organization of its activities, ERERA adopted the following:

- Decision No.001/ERERA/11 to adopt the bylaws;
- Decision No.002/ERERA/11 to adopt the organization chart;
- Decision No.003/ERERA/11 to adopt the Regulation setting up advisory committees.

3.1.1.2 - The setting up of WAPP

In conformity with Decision A/DEC.5/12/99, the Summit of ECOWAS Heads of State and Government decided to establish a trade system of the West African Power Pool (WAPP).

In compliance with Decision A/DEC.18/01/06, the Summit of ECOWAS Heads of State and Government adopted the Convention on the setting up of WAPP General Secretariat and allocated to it the status of 'specialized institution of ECOWAS' according to Decision A/DEC.20/01/06.

The objective of WAPP is especially to ensure the reliability of electricity supply in the region and in this regard it shall:

- Develop regional generation and transmission projects;
- Define technical and business rules for the execution of trade.

3.1.2 - ERERA'S COMPETENCES

In accordance with the provisions of Regulation C/REG.27/12/07 on the composition, organization, powers and functioning of ERERA dated 27 December 2007 as amended by the Instrument of 24 November 2008, ERERA has fairly broad missions, powers and functions.

Thus, with regard to the missions of ERERA, Article 16.1 of the abovementioned Regulation states that "ERERA has as general mission [...] contributing to the establishment of a regulatory and economic environment to the development of the regional market."

Similarly, Article 16.3 states that "ERERA shall ensure the technical regulation of the regional electricity trade and monitor the operation of the regional market and in particular:

a) With regard to technical and trade regulations in the area and especially access conditions to the interconnected transmission system, entry of operators in the regional market and development of transport infrastructure."

In this context, ERERA has important powers, including:

- Enacting, establishing, clarifying or interpreting the technical and commercial rules that regulate the electricity cross-border trade.

As such, ERERA can establish implementing regulations intended to clarify the rules governing electricity cross-border trade.

- Resolve disputes between public and private actors when the dispute submitted to it involves actions or conducts affecting the organization or operation of the electricity cross-border trade.

Finally, under its powers over technical regulation of the electricity cross-border trade, ERERA shall:

- Approve the technical operation and access rules to the regional electricity transmission network;
- Ensure non-discriminatory access to regional transmission networks and approve protocols for network access.

Thus, ERERA already has powers and competences to intervene in electricity cross-border trade contracts.

In this respect, an amendment to the Regulation of 27 December 2007 may not be necessary. To this end, ERERA could adopt relevant decisions to guide its intervention in cross-border contracts.

However, given the very disparate institutional frameworks of the Member States in the regulation of the electricity sector, given the sensitivity of the sector and more specifically the issue of cross-borders as well as the strong impact that ERERA intervention could have on contracts, on the market, on national operators, etc., it is very relevant to suggest an amendment to the Regulation of 27 December 2007.

3.2 - Recommendations for amendments

3.2.1 - Principle of suggested amendments

Changing the current legal framework regulating ERERA and especially the Regulation of December 27th, 2007 aimed at providing the guideline that lays down clear competence for ERERA, in terms of cross-border contracts.

An amendment of the law is likely to give the indisputable legal basis and political legitimacy required to impose its solutions to operators and national authorities which are mainly regulators.

These amendments should focus:

- on one hand, on contracts ;
- on the other hand, on disputes about interpretation or execution of contracts.

In this regard, it should be noted that it is not necessary to lay down modifications with regard to sanctions as far as Article 30 of the Regulation of December 27th, 2007, lays down the principle and sometimes how to apply the sanctions.

However, decisions adopted by ERERA should supplement these measures.

3.2.2 - Suggestions for amendment of regulations

3.2.2.1 - Amendment of the Regulation of December 27, 2007

As mentioned above, the Regulation already lays down measures which interpretation could allow ERERA to get involved in cross-border electricity trade contracts.

However, this kind of change, occurring by an act of the Council of Ministers, is likely to prevent any disputes and shall provide a strong support for ERERA as well as a policy signal to the various authorities involved and market operators.

3.2.2.1.1 - Expertise in contracts

Concerning contract regulation, several solutions might be suggested and could be based on various criteria. Among these criteria: the authorized level of involvement for a regional regulator in cross-border contracts signed between public or private national operators.

In this respect, two main types of contracts must be distinguished:

- On one hand, import/export contracts concluded between a producer in country A and a company provided in electricity in country B;
- On the other hand, contracts for access and use of interconnections signed between the producer and the grid manager in country A and between the company provided in electricity and the grid manager in country B.

Naturally, they require an agreement and harmonization between managers of countries A and B.

Regarding import / export contracts, three options could be considered:

- **Approved Contracts**

In this case, the parties are free to negotiate and develop the contract autonomously. However, to come into force, this contract must be notified to a public authority that shall approve or at least not oppose it.

- **Model contracts**

In this case, it is a model whose clauses can become the negotiation frame for the parties whether they want it or not. However, in case of disagreement on any clause, the contract retains the clause of the model contract.

It should be noted that in practice, the contracting parties will, on a constant basis, tend to conform to the model contract.

- **Standard contracts**

In this case, the parties are required to accept the contract as it was written and can only negotiate factual data: watts, tariffs etc. Obviously, this solution provides great security to a new operator entering the market but toughly restricts contractual freedom.

Each solution has its advantages and disadvantages. However, taking into account the very distinctive starting points of each member State and in order to allow some flexibility to operators, providing necessary safety at the same time, especially to new operators, it would be appropriate to recommend the second solution : model contracts.

Indeed, this solution has the advantage of:

- giving autonomy, in accordance with the objective of market liberalization ;
- providing adequate security to contracting parties on the quick outcome of negotiations, as far as without agreements, clauses of the model contract are applied ;
- ensuring fluidity in the conclusion and in the enforcement of the contract, avoiding any approval by a regulatory authority which would necessitate a long analysis and decision time.

Moreover, this solution, and in fact the other alternatives, also has the advantage of not initiating negotiations ab initio but using a framework or a contract that has already been endorsed and discussed.

If this competence is attributed to ERERA, by amending the Regulation of December 27 2007, ERERA should at least have a harmonized regional model contract.

This amendment of Regulation December 27, 2007, could be included in Article 18, after point 3 c) and shall be written as follows:

"C) bis Develop contract model(s) for the importation/exportation of electricity between ECOWAS member countries.

This model shall serve as a basis to negotiate an importation/exportation contract of electricity.

In case of disagreement between operators, the clauses of the model contract should be included in the contract between the parties.

Regarding access-and-use contracts of interconnection

Given the limited scope of action of the parties in this field, the solution of approved contracts could be recommended.

However, this requires the existence of a legal framework guaranteeing the suitability and proper implementation of these contracts, including: the establishment and the principle of third party access to the grid and therefore to interconnections and the application of a regulated tariff or a transparent economical mean to access and use the interconnection.

In case the area of expertise would be attributed to ERERA, by amending the Regulation dated December 27 2007, ERERA should have at least a harmonized regional model contract.

This amendment of the Regulation, dated December 27 2007, can be included in Article 18, 3 point f) and shall consist of a more precise draft which specifically targets interconnections.

This draft could be written as follows "guaranties a non-discriminatory access to the transmission grid and approves the contracts, the protocols and the rules governing the access, the use and the management of interconnections."

In case these contracts, protocols or rules include clauses that are contrary to the objectives of the regional energy policy of the ECOWAS Treaty, ERERA may require the managers concerned, by a modified decision, to change these clauses.

In case ERERA thinks necessary to include other clauses in these contracts, protocols or rules, ERERA may require the managers concerned, by a modified decision, to lay down these clauses. "

In any event, the area of expertise of ERERA, in terms of induced contract, requires the control of existing and future contracts.

This competence comes with the competence of ERERA to settle disputes and to sanction.

3.2.2.1.2 - Competence in dispute settlement

Article 17 e) already lays down that ERERA has the power *"to resolve disputes between all public and private actors as far as the submitted dispute deals with facts or behaviors that affect the organization or cross-border electricity trade"*.

It requires adding a second paragraph drafted as follows:

"ERERA is the sole authority able to settle disputes when they concern the interpretation or execution of contracts for the importation/exportation of electricity between ECOWAS Member States and of contracts, protocols and rules governing the access, use and management of interconnections.

This is not a prejudice to the most diligent party which can resort to arbitration or to refer a matter to competent courts. "

Indeed, ERERA should be the only competent regulatory authority to deal with this type of dispute. This is all the more legitimate since it is ERERA that developed importation/exportation model contracts and approved contracts, protocols, rules governing access, use and management of interconnections.

Moreover, ERERA's competence should not be a barrier to court referral, which of course is subject to comply with an amicable settlement procedure that shall be included in the contract.

Finally, it is necessary to take into account arbitration as far as the protocol favors arbitration if there is no possible dispute settlement.

3.2.2.2 - Adoption of implementing decisions by ERERA

The amendment of the rules empowering ERERA should come with implementing decisions decided by ERERA. These decisions should be as follows:

- A decision laying down a standard contract for importation/exportation of electricity across borders;
- A decision laying down the procedure for the approval of contracts, protocols and rules governing access, use and management of interconnections (notification of projects or existing documents, deadlines, trade, injunctions, etc.).
- A decision establishing the procedure for dispute settlement (referral, guidelines, respect of the adversarial principle, composition, deadlines, hearings, etc.), pursuant to Article 21 of Decision No. 001/ERERA/11 to adopt the bylaws;
- A decision fixing the procedure for sanction (referral, guidelines, compliance with the adversarial principle, composition, deadlines, hearings, etc...). This procedure should be applied in case of non-compliance with the rules established by ERERA (Article 30 of the Regulation dated 27 December 2012) or in case of non-compliance with a decision of ERERA, following dispute settlement.

4 - BEST CONTRACTUAL PRACTICES

4.1 - Comparative study of other existing regional markets in terms of contractual practices

In accordance with the terms of reference, this comparative study was conducted on the basis of existing reports of ERERA.

In this context, the following reports and documents were examined:

- Design of the WAPP Market and development of market rules, July 2012;
- Regional regulations program for the electricity sector, assistance to SOGEM to improve electricity trade between OMVS member countries, May 2009;
- Studies of detailed drafts and development of tender files for the Sambangalou hydroelectric development project and interconnection line of OMVG member countries, January 2007;
- Diagnostic report on the institutional and regulatory framework of the electricity sector of ECOWAS Member States, July 2006.
- Regional electricity regulatory mechanisms, October 2006.

None of the existing ERERA's reports focuses specifically on contracts or contractual practices. However, it is possible from these contracts to draw the following lessons and practices:

Firstly, it should be noted that the ECOWAS regional market remains dominated by long-term bilateral contracts until the regional interconnection network is effective and imposes a demand and supply balance.

In addition, the development of a regional electricity market and the development of contracts underlying this trade, necessarily require to open national markets. Naturally, this can and must be done progressively. Consumers complying with eligibility requirements can be included first.

Finally, it is necessary to clearly specify the purpose of each contract. Thus, a long term trade contract is not the same as a short term trade contract and an import/export contract does not give the same rights and obligations as a trade contract.

Practices in other regional authorities

- **FERC (Federal Energy Regulation Commission), United States**

FERC is in charge of trade contracts, and especially on the terms and conditions under which these contracts should be signed. It gives a deadline to future contracting parties for their negotiations, in order to avoid delays that can jeopardize the facilities.

If the Commission does not approve the terms of the contract or if the parties do not reach an agreement, the Commission may lay down the terms and conditions of the contract.

- **Electric Interconnection Regional Commission (SIEPAC - Central America)**

CRIE, on the proposal of the EOR (the organization responsible for the regional grid operations) develops rules for the exploitation and maintenance of the regional transmission system.

It approves and also implements all the rules laying down the principles governing dispatching, the spot market, bilateral contracts as well as the rules regulating technical aspects.

- **Regional Electricity Regulators Association of South Africa (RERA)**

One of the objectives of RERA is to promote policies, legislation and regulatory mechanisms in the electricity sector owing to law and regulation harmonization for cross-border trade, and in particular for the conditions of access to the transmission network and for cross border trade pricing. RERA also promotes regional cooperation in terms of regulation. To this end, it makes recommendations on the economic regulation of electric interconnections and electricity trade between Member States, in accordance with the Energy Protocol.

- **ACER (European Agency for the Cooperation of Regulators)⁸**

The Agency plays an important role in the development of framework guidelines that are non-binding but with which network codes should comply.

It is also in charge of reviewing network codes (both during their creation and their amendment) to ensure that they are consistent with the framework guidelines, before recommending their adoption to the European Commission.

It should be reminded that network codes basically concern the following issues:

- Grid connection rules;
- Third party access rules;
- Data exchange and settlement rules;
- Allocation rules for capacity and congestion management rules;
- The rules that regulates trade when it deals with technical and operational supply to access and adjust the grid.

⁸ Although existing reports of ERERA target CEER and ERGEG, henceforth, this report shall dwell on ACER which is the regional regulatory authority of the European Union.

4.2 - Basic terms and conditions of existing contracts

4.2.1 - List of contracts reviewed

The list of contracts, agreements and protocols that have been discussed in this report is as follows:

Contract	Parties	Date	Remarks
Agreement to supply energy	CIE – SONABEL	November 1997	Amendment No.1 of 3 April 2001 Amendment No.2 of 10 March 2005
Memorandum of Understanding on the trade of electric energy	VRA – CIE	28 dec. 2007	
Power trade agreement	VRA – CEB	24 May 2011	
Agreement to supply electric energy	CIE – CEB	November 1999	Replaced by the CiEnergies – CEB – CIE memorandum of understanding of 25 January 2013
Memorandum of Understanding to supply electric energy	CiEnergies – CEB – CIE	25 January. 2013	
Energy supply agreement for the supply of Po and LEO	VRA – SONABEL	22 mars 2000	This agreement is no longer in force
Sale and purchase of electricity relating to the Agreement for the Bolgatanga-Ouagadougou interconnection project	VRA – SONABEL	28 March 2012	This is only a term sheet
Electricity transmission service agreement	GRIDCO – CEB	25 Feb. 2011	
Agreement for the supply of electrical power and energy	NEPA – CEB	30 Oct. 1997	Amendment 5 July 2001
Agreement for the supply of electrical power and energy	NEPA – NIGELEC	23 June 1992	
Agreement for the supply of electrical power and energy	PHCN – NIGELEC	22 Dec. 2010	The PHCN replaced the National Electric Power Authority (NEPA) (e.g. integrated monopoly)

Some contracts, like contracts between SOGEM and, respectively SENELEC, EDM and SOMELEC could not be obtained and therefore are not part of the contracts discussed below.

4.2.2 - General remarks

The analysis of available contracts allows to make the following remarks, on the form and the content.

4.2.2.1 - Remarks on the form

Concerning form, several characteristics of the contracts concerned can be identified:

Firstly, there is no common form or harmonized frame with respect to these contracts, which, however, are almost based on the same subject.

It is true that the agreements examined were concluded at different periods between the early 1990s and recently. However, even for contracts concluded at the same time, a disparity in the form and structure of the contracts can be observed.

It is important to add that these contracts adhere to different legal systems and in particular the Anglo-Saxon system and the French system.

Secondly, they are relatively short. Naturally, this is not a problem as such, as long as the contract deals with all electricity supply aspects.

Finally, there are contracts that contain few or no appendices. Whereas, for quite technical contracts, generally concluded for relatively long periods, it is usual to attach several appendices: financial and technical appendices, standard forms, etc...

Now, in the context of a regional market or sub-regional markets, harmonized contracts, including on the form, are advantageous. They allow handling and consultation and therefore an easier negotiation.

The most important aspect remains form harmonization.

4.2.2.2 - Remarks on the content

Besides the lack of harmonization of the contents (this point will be discussed during the review of key terms and conditions), the main remark on the content highlights that these contracts cover supply and access aspects and even the aspects on the exploitation of the interconnection.

Indeed, in a monopolistic market wherein the electricity exporter or importer also manages the transmission network and thus the interconnection, contracts deal with two components: power supply and interconnection access.

However, even in a monopolistic scheme, it is necessary to separate the two components. They do not meet the same constraints and the same legal framework and they do not give the same rights and obligations.

This is particularly true for an open regional market. The exporter or importer of electricity is not necessarily manager of the interconnection or does not belong to the vertically integrated company to which belongs the manager of the interconnection.

Therefore, one of the strong points of improving contractual practice is to separate the import/export component from the interconnection component.

This principle should prevail, even when the exporter or importer of electricity is also manager of the transmission network, in order to clarify the legal status of each component and to state clearly the rights and obligations of the operator (either he is manager of the network and of the interconnection, or an electricity importer or exporter).

4.2.3 - Key terms

In the examined contracts, the classical terms for this kind of contracts are normally included. However, the terms depend on the contract; some are poorly harmonized and are not systematically included in all contracts.

Moreover, most of contracts deal with both import/export and supply.

- Definition clause

A clause laying down relevant definitions in contracts is not always provided, far from it. And when this kind of clause is planned, it lists few definitions whereas several others missed.

- Purpose of the contract

Normally a clause laying down the purpose of the contract is included in every contract. However the scope of this clause changes considerably.

Thus, this clause sometimes only states succinctly the purpose of the contract. Sometimes it extends to the description of rights and obligations of the parties.

- Duration of contract

The purpose and scope of the contract may change and therefore impact the duration. However, the periods planned in the contracts concerned often change and may last 2, 10, 15, 20 or even 25 years, depending on the contract.

The duration of contracts do not necessarily need to be harmonized. However, the choice of periods should be more consistent and justified.

- Price

The price clause raises three points:

- The economic model used is not the same in all the contracts. Thus, only a few contracts adopt the take-or-pay system.

In this system, the seller guarantees to provide the buyer with energy, who in return guarantees the payment of a minimum amount of energy, whether he is delivered or not.

- Some contracts do not have final firm price but indicate a temporary price. Now, the indication of a temporary price in a signed and in force contract may bring confusion and conflicts. The firm price would necessarily be retroactive and would have been negotiated and officially adopted.

- Price revision, billing and payment terms are always planned. However, in practice, either prices are not revised or they are revised but not in compliance with the negotiated calculation in the contract.

- Clause on obligations on power/energy guarantee, power increase
Although this clause is included in all contracts, its deals with supply quality, possibility of increase and procedure in a wide scope.
For example, some contracts do not precise specific obligations regarding the quality of supply and its consequences.
- Liability clause
Contracts do not all include a liability clause. Others include it without indicating the comprehensive legal regime: Procedure, limit, etc...
Some contracts include a renunciation clause for any recourse.
Finally, these clauses generally do not plan sanctions in case of non-achievement of the objectives or non-compliance with contracts.
- Clauses relating to the exploitation of the network
Since contracts generally deal with both import/export and management of interconnection aspects, they include clauses for network operations (rules, conditions, incidents, etc...), and even clauses for the construction of the line.
- Termination
While some contracts have quite accurate and complete termination clauses, others either do not include them or are too general: they do not specify the procedure, the termination options, the legal regime concerned, etc...
- Applicable law
The greatest disparity prevails regarding choice of law applicable. Thus, a contract can either apply supplier, seller or international law, the law of Ontario – Canada – or even do not choose..
However, for contracts with the same purpose, it is useful to retain the same law, or at least the same criteria to determine the applicable law.
- Jurisdiction - Arbitration
In case of dispute, all contracts include an amicable settlement option (however, generally, without specifying the procedure to be followed in this context)
In addition, there is a general agreement for all contracts regarding the choice of arbitration, as a method of settling disputes (OHADA, Switzerland ICC, UNCITRAL, etc.)...
It complies with the Protocol on Energy that favors arbitration if no amicable settlement can be found.

Thus, it appears that if the contracts, including the most recent ones, generally include the key clauses, their content often change. Similarly, it is important to separate the Import/Export component from the interconnection component.

An open regional market imposes harmonized and legally robust contracts. This is the goal of the guideline and of the framework of standard contracts below.

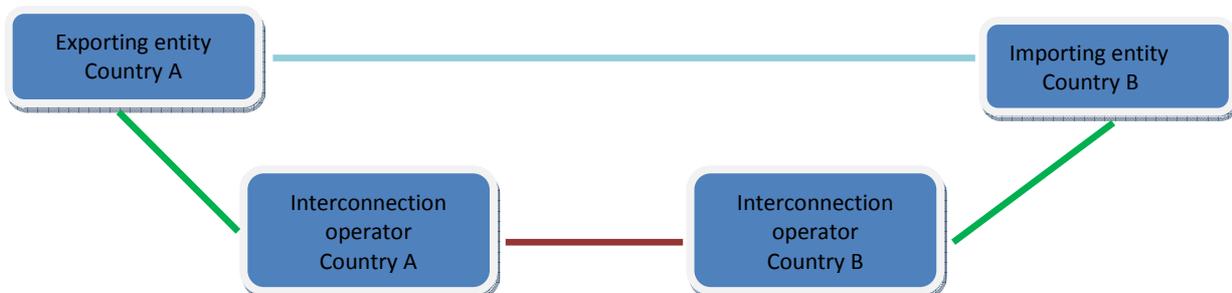
4.3 - Guideline for the harmonization key contracts for cross-border trade

The framework of a guideline on the harmonization of key contracts is detailed hereafter. In this context, it should be noted that the guideline lays down the following hypothesis:

- Harmonization only concerns contracts requiring or involving border crossing between two Member States of ECOWAS (for trade between an ECOWAS member State and a third State, the guideline is not operative and there should be a bilateral agreement);
- For cross border trade, it is necessary to separate interconnections access from importation / exportation of electricity.

4.3.1 - General outline

General outline can be as follows:



- Agreement for the supply of electricity, which model shall be approved by ERERA
- Agreement for the access to interconnection by the exporting entity whose model shall be approved by ERERA
- Common management rules for interconnection between two operators. These rules should be set by WAPP

4.3.2 - Draft of the guideline framework

The following layouts are essential and will be included in the framework of the guideline.

Article 1 - Definitions

Article 2: Purpose of the guideline

With a view to the creation of a regional market and given the disparity of cross-border trade agreements in force or under development, this guideline aims at harmonizing import/export contracts.

Article 3: Scope of the guideline

This guideline only applies to contracts dealing with or concerned by cross-border trade between ECOWAS member countries.

In this context, two types of contract are concerned: on one hand, access and use of interconnections contracts and, on the other hand, imports/exports of electricity contracts.

As regards trade with third party countries, the ECOWAS Member State concerned makes its best efforts to conclude a bilateral agreement which complies with the layouts of this guideline.

Article 4: Role of ERERA

ERERA is responsible for developing a standard contract for import / export of electricity. Parties freely negotiate the terms of the import / export of electricity. If the agreement fails, the clauses of the standard contract developed by ERERA must be included in the contract between the two parties.

As part of the development of this standard contract, ERERA will rely on national regulators.

ERERA is also responsible for approving the standard contract developed by the managers of transmission networks in order to access and use interconnections.

To this end, the transmission system operators are required to notify their standard contract to ERERA before application.

ERERA has a period of • months to approve or refuse to approve the contract model. After this period, without adoption of a reasoned decision, the model contract is presumed approved.

In case ERERA requires by reasoned decision a manager to add, amend or delete certain clauses, the manager should comply with this decision.

As part of the approval of this model, ERERA shall ask for the advice of national regulators involved.

Article 5: Obligation to communicate

The parties are required to notify ERERA of any contract, agreement or protocol in force on cross-border trade.

The parties are also required to communicate any draft agreement on cross-border trade and any difficulties encountered in the preparation of this contract.

Article 6: Transitional period

For contracts already in force, the parties shall endeavor for each negotiation, renewal or revision of import / export contract to make any appropriate amendments to get closer to the model developed by ERERA.

At the end of the current contracts and for any new contract on cross-border trade, terms of Article 4 of this guideline come into force.

Article 7: Dispute settlements

ERERA has jurisdiction to the exclusion of any national authority to settle disputes concerning the conclusion, denial, execution or interpretation of any agreement on cross-border trade, whether this contract is negotiated and concluded under this guideline or it comes into force at the date when this guideline is effective.

ERERA decisions on dispute resolution are motivated and public.

ERERA decisions on dispute resolution are binding on the parties. The parties can refer the case to competent courts.

The competence of ERERA in dispute settlement does not prejudice the ability of the parties to directly refer competent courts.

Article 8: Sanctions

Non-compliance with ERERA decisions laid down in this guideline or with decisions taken on the basis of its Article 9, is punishable after unsuccessful formal demand.

The sanctions are ●

Parties can challenge the decision that pronounces the sanctions if they refer to competent courts.

Article 9: Cooperation

Regulatory authorities and more generally any national authority give their support to ERERA for it to achieve its objectives as laid down in this guideline.

Article 10: Implementation

Member States shall take all necessary measures to comply with this Guideline no later than ●.

More specifically, States are required to remove any legislative or regulatory layouts obstructing the application of this guideline and in particular ERERA powers.

4.4 - Models of harmonized contracts

Here are:

- Key clauses of an electricity supply contract dealing with cross-border trade;
- Key clauses of a contract for access and use of an interconnection.

4.4.1 - Key clauses of an electricity supply contract dealing with cross-border trade

Clauses should include:

- Definitions.
- Obligation for the seller to provide power and energy.
- Obligation for the buyer to take the energy or pay it (take or pay).
- Entry into force, duration and renewal.
- Definition of point of sale and delivery.
- Volume.
- Priority of cross border trade contract.
- Commitments for the quality - control.
- Cases of inadequate supply by the seller or insufficient payment from the buyer.
- Supply rates and penalties.
- Billing.
- Review.
- Liability and force majeure.
- Guarantees and insurance.

- Confidentiality.
- Transfer.
- Termination.
- Applicable Law.
- Amicable settlement - arbitration.

4.4.2 - Key provisions of the framework of a contract for access and use of the interconnection

Provisions should include:

- Definitions.
- Programming.
- Guarantee access capability.
- Limitation, suppression capabilities.
- Obligations in terms of quality.
- Volume.
- Rates and billing.
- Guarantees and insurances.
- Liability and force majeure.
- Confidentiality.
- Transfer.
- Termination.
- Applicable Law.
- Amicable settlement - arbitration.

4.5 - Recommendations for the reference legal framework for the implementation of energy contracts

A reference legal framework for the implementation of energy contracts should be considered consistently with the technical and economic framework.

Indeed, an effective legal framework that considers electricity flowing smoothly through the interconnections is not relevant as long as these interconnections are not planned or are in progress or do not enable such fluidity.

Similarly, it is irrelevant to think of rules that aim at managing congestions on interconnections, rules that are not found in other regions, if congestions do not exist.

In addition, a regional legal framework within ECOWAS States could be fully effective only if it is

consistent with national legal frameworks. Indeed, a national monopolistic market is not supposed to enable the development of a regional market.

In this context, a single buyer national framework is not likely to enable or promote the development and diversification of cross-border electricity trade which will eventually lead to the emergence of a regional wholesale market.

Taking into consideration the information above and in the light of ERERA exclusive regional skills, it is possible to make the following recommendations, as concerns the reference legal framework, for the implementation of contracts:

1. The legal framework should be developed on the basis of regional instruments, on one hand and national instruments, on the other hand.

Indeed, the legal framework enabling the implementation of power contracts for the establishment of a regional market must first of all be based on ECOWAS instruments in general and on those of ERERA in particular: Treaty, protocol on energy, regulations, and decisions of ERERA.

However, it is essential that this national framework complies with the legal framework established by ERERA.

For this purpose, the principle of primacy must be stated in the power sector in case of conflict between a national standard and a regional standard.

Thus, in many Member States, maintaining the status of single buyer raises issues of non-compliance with the ECOWAS regulations.

2. Clear repartition of Responsibilities between regional and national levels

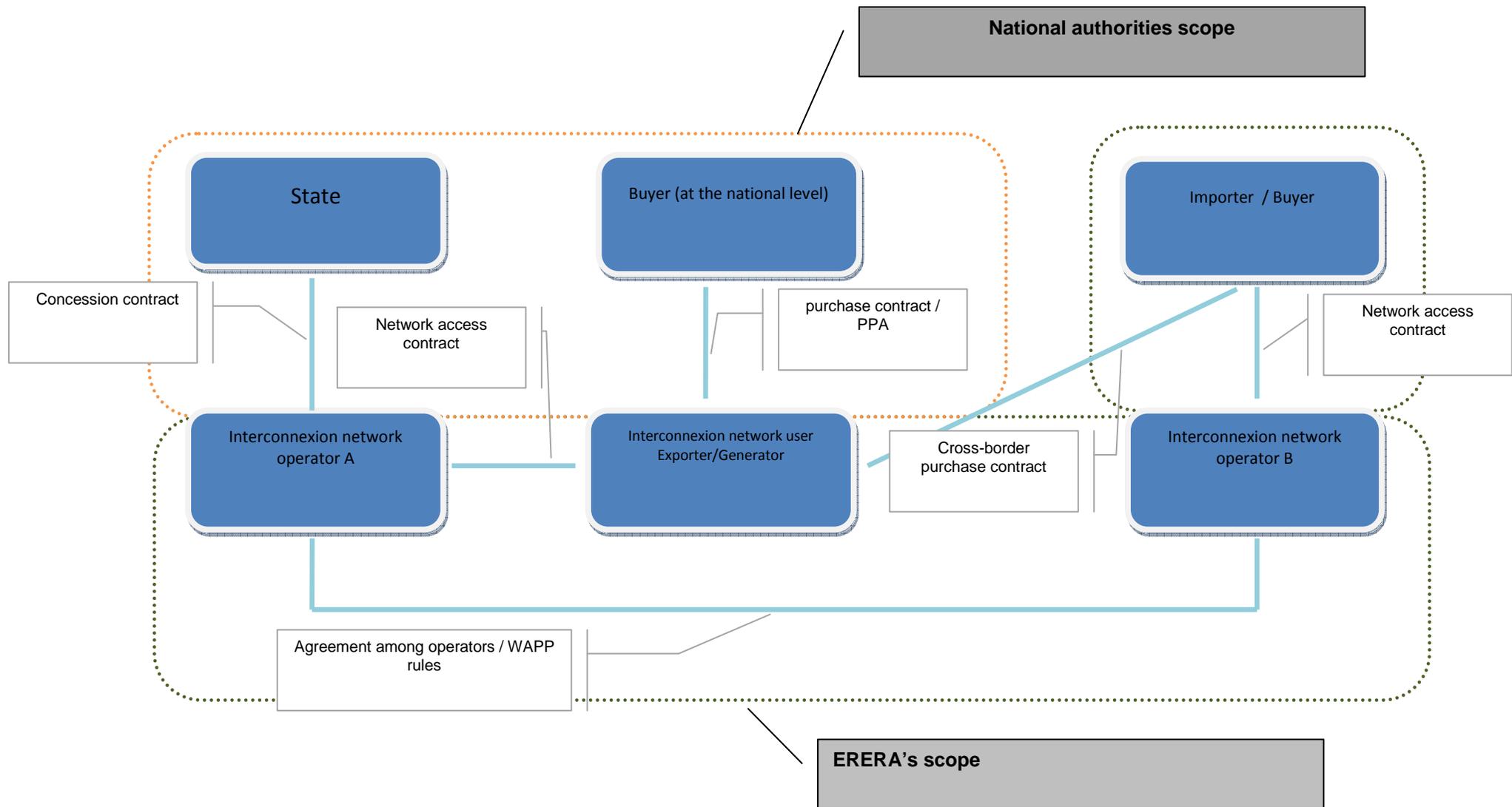
Actually, a clear repartition should be established between the role, competences and remits of ERERA and the role, competences and remits of national authorities, whether they are regulatory authorities or administrative authorities.

Indeed, ERERA's scope of intervention must be strictly limited to cross-border issues.

Nevertheless, in order to harmonize the overall legal framework (national and regional), aspects of national legal frameworks should be in line with the regional framework. Otherwise, this will result in malfunctions or in an unenforceable or ineffective regional legal framework.

It imposes an obligation of strong cooperation between national authorities and ERERA in order to achieve this consistency.

In this context, the following diagram can be considered:



3. Establishment of regulatory authorities

A coherent and effective legal framework at the regional level requires the establishment of independent regulatory authorities, regarding both the market and the States.

Indeed, because the State often owns or controls entities involved in the generation, supply, import / export of electricity, it is essential that market regulation be not assigned to a ministerial body but to an independent regulatory entity.

Of course, this does not affect the competences and powers of the State in setting energy policy for supply security. Similarly, this does not question the role of the State in power regulation.

However, the missions particularly linked to market, conditions of competition, trade (including cross-border trade) should be within the competence of an independent regulatory authority.

In this regard, it should be noted that beyond the establishment of a regulatory authority in the Member States of ECOWAS which do not yet have one, authorities should be provided with significant and effective powers to constitute an efficient focal point for the ERERA, with regard to cross-border trade and the establishment of a regional market.

4. Progressivity principle

The establishment of a regional wholesale market for electricity should be gradual, as for countries concerned and for the different steps that must be reached before becoming a true wholesale market at the level of ECOWAS.

As concerns the States, it must be noted that there are wide disparities concerning the regulatory and institutional framework, the state of the network and interconnections, generation capacity, the supply-demand balance, etc...

Therefore, imposing the same level of harmonization and the same requirements in terms of implementation of contracts would not be relevant.

To this end, it should be necessary to promote a progressive vision enabling States of a sub-region to move faster and to have more and more integrated markets.

As regards the different steps to be covered, it should be necessary to:

Firstly, as indicated above, it would be necessary to harmonize trade contracts and make more transparent rules governing interconnections costing.

Secondly, the regional market could be organized within the framework of a bilateral market (or over the-counter market called "OTC"). Thus, trade will be achieved through bilateral contracts for electricity trade.

Naturally, this contract must plan deal striking but also to maintain and make PPA.

It is true that PPAs and particularly those providing a take-or-pay clause, do not enhance the emergence and development of a regional market. In fact, given their length (usually 25 years) and the content of the take-or-pay clause, PPAs result in market foreclosure.

However, in countries where the markets are structured and the needs in generation tools are significant, PPAs maintain their interest.

- When contracts and trade would have developed and stabilized resulting in a balanced and embryonic fluid market, the relevance of PPAs will be less and less true.

Therefore, bilateral contracts with different durations will increasingly develop, including long-term contracts.

Finally it should be emphasized that at this stage, it is not appropriate to consider the creation of an organized market like electricity exchange.

In any case, even for States or regions, where there is an organized market, bilateral contracts remain and represent a significant share of electricity traded.

5. Maintaining the principle of contractual freedom

In the context of the emergence of a regional market and the implementation of contracts, it is necessary that the regulatory authorities and primarily ERERA can intervene and be endowed with strong powers.

However, while the market is opening to competition and trade liberalization is developing, it is important that the intervention should not jeopardize any contractual freedom and any freedom of negotiation and trade.

This is why it is suggested above that as concerns import/export contracts, models of contracts should be suggested by ERERA. The model of contracts concerned are those whose clauses serve as negotiation framework for parties and from which they may depart. It is only in case of disagreement on a specific clause that the contract will retain the proposed clause in the contract model.

Indeed, the parties will in practice comply with the contract model to the extent that it represents a consensus and a balanced model, however, they will, by the principle of contractual freedom, have to negotiate and establish the contract.

6. Need for a transparent management of interconnections

Whatever the level of market development and its openness to competition, it is clear that interconnections as part of the transmission network, will still be managed under a monopoly, granted to the operator of these networks.

It is likewise undisputed that the development of cross-border trade within a regional market will generate an increase in the use of interconnections.

In this context and as a prerequisite for emergence and development of this market, it is necessary that the interconnections be managed in accordance with transparent and non-discriminatory rules (capacity allocation, scheduling, pricing, discounts, etc...).

Therefore, as it was suggested below, these rules should be approved by ERERA before implementation.

As for the rules managing relations between network operators, they are meant to be discussed, developed and adopted under WAPP.