



EIGHTY-FIRST ORDINARY SESSION OF THE COUNCIL OF MINISTERS

Abuja, 13 – 15 December 2018

DIRECTIVE C/DIR/2/12/18 ON THE SECURITIZATION OF THE CROSS-BORDER POWER TRADE UNDER THE REGIONAL ELECTRICITY MARKET

THE COUNCIL OF MINISTERS

MINDFUL of Articles 10, 11 and 12 of the Treaty, as amended, establishing the ECOWAS Council of Ministers and defining its composition and functions;

MINDFUL of Article 28 of the said Treaty relating to the promotion, cooperation, integration and development of the energy projects and sectors of the Member States of the Community;

MINDFUL of Protocol A/P.2/8/94, as amended, relating to the Community Parliament;

MINDFUL of Decision A/DEC.5/12/99 relating to the establishment of the West African Power Pool (WAPP);

MINDFUL of Protocol A/P4/1/03 hereinafter referred to as "ECOWAS Energy Protocol" establishing the legal framework intended to promote long-term cooperation in the energy sector within the ECOWAS region, and based on complementarities and mutual benefits with a view to achieving increased investment in the energy sector and increased energy trade in the West African region;

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MINDFUL of Decision A/DEC.18/01/06 relating to the Articles of Agreement on the organization and functioning of WAPP;

MINDFUL of Decision A/DEC.20/01/06 granting the status of Specialized Institution to the WAPP General Secretariat;

MINDFUL of the Regulation C/REG.27/12/07 relating to the composition, organization and functioning of the ECOWAS Regional Electricity Regulatory Authority (ERERA):

MINDFUL of Supplementary Act A/SA.2/01/08 establishing the ECOWAS Regional Electricity Regulatory Authority (ERERA);

MINDFUL of Supplementary Act A/SA.4/01/08 relating to the adoption of WAPP Emergency Power Supply and Security Plan;

MINDFUL of Supplementary Act A/SA.12/02/12 relating to the ECOWAS Revised Master Plan for power generation and transmission of ECOWAS Member States;

MINDFUL of Decision WAPP/45/DEC.02/11/12 of the WAPP General Assembly held in Abuja, on 2 November 2012 relating to the transformation of WAPP Information and Coordination Centre (ICC) into a Regional Electricity Market Operator;

MINDFUL of Directive C/DIR.1/06/13 of 21 June 2013, relating to the organisation of the Regional Electricity Market;

MINDFUL of Resolution N°0005/ERERA/15, relating to the Adoption of the Regional Electricity Market rules by ERERA;

CONSIDERING that the ERERA Regulatory Council has, through Resolution N°012/ERERA/18 of 22 June 2018, formally launched Phase 1 of ECOWAS Regional Electricity Market as of 29 June 2018;

CONSIDERING that several interconnection projects are under implementation to ensure the interconnection of all the Continental Member States of the ECOWAS region by 2020;

CONSIDERING that the WAPP Information and Coordination Centre (ICC) is under construction and should allow, in 2020, a real time information sharing on power exchanges and functioning of the network;

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CONSIDERING that there are currently structural differences in the electricity sector of Member States with different electricity regulatory systems;

NOTING that cross-border electricity trade among WAPP member utilities has led, in some cases, to accumulations of substantial payment arrears to electricity suppliers, resulting in Governments' intervention for clearance of their debt arrears;

NOTING that the Regional Electricity Market needs to be phased-in gradually to enable the national power systems to adapt flexibly and rationally in tune with their current organizational diversity;

RECOGNIZING that the proper functioning of ECOWAS Regional Electricity Market is based on three requirements, namely, payment of electricity bills as and when due, free access to the regional transmission network, and monitoring and control of cross-border electricity exchanges;

CONSCIOUS of the need to establish an attractive environment for investors and to develop cross-border power exchanges within the ECOWAS power sector;

DESIROUS to promote, in the long run, a regional approach to cross-border power exchanges notably in terms of power generation and transmission capacities of electrical energy; and to monitor the harmonization of rules that govern national power sector institutions in order to organize the Regional Electricity Market and create favourable conditions for investment;

ON THE RECOMMENDATION of the thirteenth meeting of the Energy Ministers of ECOWAS Member States, held in Abidjan on 4 December 2018:

HEREBY RESOLVE AS FOLLOWS:

Article 1: Definitions

For the purposes of this Directive, the following definitions shall apply:

ERERA

The ECOWAS Regional Electricity Regulatory Authority as defined by Regulation C/REG.27/12/07 relating to the composition, organization, functions and operations of ECOWAS Regional Electricity Regulatory Authority - ERERA.

Bilateral Agreement

Agreement between a buyer and a seller of electricity for the sale and purchase of electricity under the Regional Market Rules, including power exchange agreements by which the seller agrees to inject and the buyer agrees to draw a mutually agreed volume of electrical energy within a given period of time intervals at an agreed price.

Cross-border Power Exchange Agreement

An Agreement concluded between a seller and a buyer for the supply of electrical energy within the framework of the regional electricity market, via a power transmission system and a cross-border Interconnection, and through which the seller agrees to inject and the buyer agrees to draw a mutually agreed volume of electrical energy within a given period of time intervals at an agreed price.

WAPP

The West African Power Pool, an ECOWAS Institution created in 1999 through Decision A/DEC.5/12/99 of the 22nd Summit of the ECOWAS Authority of Heads of State and Government held in Lomé, on 10 December 1999 and conferred as a Specialized Institution by the ECOWAS Authority of Heads of State and Government through Decision A/DEC.20/01/06 of 12 January 2006, which brings together all Member States' power utilities signatory to the WAPP Articles of Agreement on the organization and functioning of WAPP.

Electricity Export

Sale or Agreement for the supply of electrical energy for consumption in a State other than the one in which the electrical energy is produced and the delivery of which requires the use of a cross-border interconnection.

Transmission System Operator (TSO)

The Company which, in an exclusive capacity, cumulatively exercises the functions of power system assets maintenance and power systems management.

Electricity Import

Purchase or Power Purchase Agreement from a Member States other than the one in which the electrical energy is produced and the delivery of which requires the use of a cross-border interconnection.

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Lines permitting the inter-tie of two or more national transmission networks, linking the power systems of at least two ECOWAS Member States and equipped with power metering equipment placed on the nodes of the Regional Power Transmission System located within each of the Member States concerned.

Ministry of Energy

Ministry responsible for the development, implementation and monitoring of the Energy Policy of a State.

Ministry of Economy and Finance

Ministry responsible for the development, implementation and monitoring of the Economic and Financial Policy of a State.

Market Participant

A power utility from any WAPP member countries that has complied with the established procedure and is registered by the System Market Operator (SMO) as a market participant.

Regional Market Rules

Rules laid down by ECOWAS competent Authorities for the Regulation of the Regional Electricity Market.

Transmission Network

The set of Very High Voltage and High Voltage power lines and associated equipment for the transmission of electrical energy for the purpose of power supply to end-users or distributors, within the context of cross-border electricity trade as defined by the Regional Market Rules.

Electricity/Power Sector

All activities relating to the generation, transmission, import, export, distribution and marketing of electrical energy, as well as all actors contributing to these activities in any given Member States or within the framework of ECOWAS Community, notably including National and Regional Institutions, power utilities and the consumers.

Power Utility

A company that participates in one of the power generation, transmission, distribution or commercialization segments.

Article 2: Object

This Directive establishes the set of rules to enhance the security of cross-border power trade within the West African Power Pool (WAPP) through secured supplies and payments.

Article 3: Scope

This Directive shall apply to market stakeholders, notably to:

- (1) the States via their Ministries in charge of Finance and Energy;
- (2) the West African Power Pool (WAPP);
- (3) the ECOWAS Regional Electricity Regulatory Authority (ERERA);
- (4) the power utilities providing service to the public;
- (5) the national regulators;
- (6) any other participant or operator.

Article 4: Financial Sustainability

To achieve financial sustainability of the power sector, attention shall be focused on the power utilities' solvency whilst guaranteeing the support of the Ministries in charge of energy and finance.

To this end, the following concerted and coordinated actions shall be required from each stakeholder listed in Article 5 below:

- i. enhancing the creditworthiness of the power sector through a regional power sector policy pact, by taking a systematic range of measures to minimize the cost of power generation, maximize the efficiency of power distribution, and provide a reliable revenue stream to the sector;
- ii. strengthening contractual instruments used for bilateral exchanges, so as to provide greater financial and legal protection that importers will be reliably supplied with energy and exporters will be reliably paid for energy supplied;
- iii. backing contracts with more solid, explicit and symmetrical guarantees, so that both importers and exporters benefit from: (a) effective commercial bank guarantees; or (b) effective commercial bank

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guarantees backed-up with an explicit guarantee mechanism providing a multilateral support, in the case of state-owned utilities that lack a sound track record in the market;

- iv. strengthening the role of regional institutions in bilateral trade facilitation, by having them, as a neutral third party, proactively monitoring the flow of electricity and related payments against contractual commitments among parties trading in the bilateral market.

Article 5: Stakeholders' Roles

The roles of the Stakeholders shall be as follows:

a) Ministries in charge of Economy and Finance

The main role of the Ministry in charge of Economy and Finance is to ensure that power utilities receive the necessary revenues required to deliver on their service obligations, by taking the following actions:

- i. ensuring that the electricity bills of all public sector institutions are paid in a timely manner and on a regular basis, through making appropriate budgetary provision for them, and (if deemed necessary) adopting prepayment mechanisms to support payment;
- ii. adopting escrow accounts that ring-fence utility revenues, accompanied with '**cascade or waterfall**' payment mechanisms that clarify the priority of payment of electricity creditors in situations of cash shortfall;
- iii. budgeting and transferring in a timely manner any compensatory fiscal subsidies that may be required to meet the revenue requirements of power utilities, if electricity tariffs are not set at cost recovery levels;
- iv. introducing mechanism of payments guarantees with the involvement of the Technical and Financial Partners (TFP) for the benefit of the electricity supplier;
- v. adopting a framework for recording, monitoring and making adequate fiscal provision for energy-related contingent liabilities, including those related to independent power projects and power imports.

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b) Ministries in charge of Energy

The main role of the Ministry in charge of Energy is to minimize power generation, transmission and distribution costs, by taking the following actions:

- i. undertaking, publishing and officially adopting sound least cost power generation procurement plans that take into account the availability of domestic and regional options for meeting national energy demands and is updated regularly;
- ii. adopting and ensuring follow-up of an appropriate procurement framework for the regular, competitive and timely implementation of domestic power generation, transmission, distribution projects and power imports that is linked to the national least cost power generation plan;
- iii. adopting a transparent policy with regard to domestic energy security considerations that caps the domestic energy security premium at a reasonable level;
- iv. establishing a sound regulatory framework for the regular revision of the revenue requirement of the power utility based on evolving costs;
- v. ensuring that the revenue requirement of the sector is met primarily through tariff adjustments, or by an equivalent combination of tariff adjustments and compensatory subsidies.

c) Power utilities providing service to the public

The main role of power utilities providing service to the public is, inter alia, to maximize the efficiency of power distribution, by taking the following actions:

- i. adopting measures to enhance the full recovery of revenues from customers billed for electricity consumption (such as application of sanctions for non-payment, improved accountability and incentives for commercial staff, etc.);
- ii. adopting measures to reduce technical and non-technical losses on the transmission and distribution systems (such as installation of prepayment meters for small customers, installation of advanced meters for large

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customers, improved monitoring of power flows through the distribution network, improved customer cadastre and controls, refurbishment of distribution infrastructure, etc.);

- iii. complying with the terms of bilateral contracts for cross-border power trade, whether as importers or exporters, in accordance with the requirements established by the ECOWAS Regional Electricity Regulatory Authority (ERERA).

d) National Power Sector Regulatory Authority

The main role of the National Power Sector Regulatory Authority is to ensure the level of the revenue requirements of the power utilities and determine the combination of tariffs and compensatory subsidies needed to cover these requirements.

e) ERERA and WAPP

The main role of ERERA and WAPP is, inter alia, to provide support to the exchange of electricity among Member States by taking the following actions:

- i. providing and enforcing a contractual template for the bilateral exchange of electricity between Member States that defines the conditions of power supply (firm, semi-firm or interruptible), incorporates suitable measures for sanctioning non-payment (through graduated disconnection) as well as non-delivery (through financial penalties that compensate the importer for back-up generation), and includes standard commercial bank guarantees backed-up by multilateral guarantees;
- ii. monitoring the exchange of electricity and associated payments between Member States against the terms of their respective bilateral contracts;
- iii. monitoring the compliance of Member States with the provisions of this Directive and regularly publishing information regarding the state of adoption of these measures.

Article 6: Implementation

- i. Member States shall adopt Legislative, Regulatory and Administrative Provisions required to enforce compliance with this Directive at the latest by 1st January 2020.

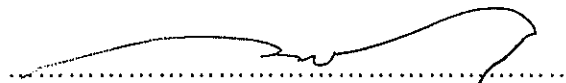
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- ii. Where Member States adopt the provisions referred to in paragraph (i) of this Article, such provisions contain references to this Directive.
- iii. Member States shall communicate all measures and provisions adopted to the ECOWAS Commission to monitor and ensure compliance with this Directive.
- iv. The Member States of the Community shall notify any difficulties in the implementation of this Directive to the President of the Commission, for onward report to the Council of Ministers, which shall, in turn, take appropriate measures to remedy and ensure the effective implementation of this Directive.

Article 7: Entry into Force and Publication

- i. This Directive shall enter into force on the date of its signature by the Chairperson of the Council of Ministers and shall be published in the Official Journal of the Community within thirty (30) days of its signature.
- ii. It shall also be published by each Member State in its Official Gazette within the same time-frame mentioned above.

DONE AT ABUJA, THIS ^{15th}..... DAY OF DECEMBER 2018



H.E. MUSTAPHA L. SULAIMAN

CHAIRMAN
FOR THE COUNCIL OF MINISTERS

SIGNED ON THIS ^{15th}..... DAY OF DECEMBER 2018

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