

**Supporting the proposed amendments to the Croatian Electricity Market Act (Official Gazette No. 22/13, 95/15, 102/15; hereinafter: Electricity Market Act).**

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**EFET - 20 April 2018****Introduction**

EFET<sup>1</sup> has, on numerous occasions, highlighted cumbersome licensing procedures in the region, especially the requirement to establish a local presence, as one of the major barriers for accessing the market and for the development of competition. Accordingly, we fully support the amendments to the Croatian Electricity Market Act as proposed by the Croatian Power Exchange Ltd. (CROPEX) as they aim to eliminate the legal uncertainty for non-Croatian electricity traders.

CROPEX proposed an amendment to Article 45 of the Electricity Market Act in order to allow the unimpeded participation of foreign electricity traders licensed by their national regulation authority, whose seat is registered in a Member State of the European Union or in a Contracting Party to the Energy Community in the wholesale electricity trading activities in Croatia without the obligation to set up a branch in Croatia. Such an obligation is currently provided by Article 612 of the Companies Act.

**Background**

Article 612 of the Companies Act (Official Gazette No. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15, hereinafter: the Companies Act) provides that a non-Croatian company and a non-resident individual trader, cannot permanently perform activities in the territory of the Republic of Croatia without previously establishing a branch.

The concepts of „permanent performance of activities” is not explicitly defined by the Companies Act.

Article 612 of the Companies Act further provides that occasional or one-time performance of activities is not considered to be a permanent performance of activities. However, determining

<sup>1</sup> EFET is an industry association which was set up in order to improve the conditions of energy trading in Europe, mainly in electricity and gas markets. Established in 1999, EFET represents today over 100 companies in 29 European countries. EFET works to promote and facilitate European energy trading in an open, transparent market unhindered by national borders.

whether an activity is performed permanently or non-permanently, will be subject to a case-by-case discretionary assessment.

The Companies Act also envisages a misdemeanor liability of a foreign company if a foreign company permanently performs activities in the Republic of Croatia without previously setting-up a branch.

The Companies Act applies to all companies regardless of the activities they perform. The same applies to the above cited Article 612. However, in some areas there are exemptions to the general rule provided for in Article 612, for example in:

- (a) insurance services, Articles 418(1) and 421(1) of the Insurance Act; and
- (b) leasing services, Article 46(1) of the Leasing Act.

Similar exemption to the general rule provided for in Article 612 could be introduced, with regard to electricity traders, by an amendment of a relevant Article of the Electricity Market Act.

### **Current provision of the Electricity Market Act**

Pursuant to Articles 45(2) and 51(1) of the Electricity Market Act, there is an obligation on non-Croatian electricity traders to obtain a license for performing electricity trading in Croatia from the Croatian Energy Regulatory Agency (HERA). Hence, the Electricity Market Act does not provide for an obligation for a foreign company or a non-resident individual trader whose seat is registered in a Member State of the European Union or in a Contracting Party to the Energy Community, to set up a branch in the Republic of Croatia in order to obtain a license for electricity trading.

In EFET view, the current Croatian legislation creates a high risk for energy traders whose seat is registered in a Member State of the European Union or in a Contracting Party to the Energy Community. Established energy traders who are active in the energy trading business in the Republic of Croatia, are at risk to be subject to discretionary inspections in order to establish whether such energy trading activity is a permanent or a non-permanent activity and whether such energy trader was obliged to set up a branch in the Republic of Croatia. We consider this to be against common EU-wide wholesale trading practice.

The adoption of the following amendment to Article 45 of the Electricity Market Act is necessary in order to eliminate the legal uncertainty for foreign electricity traders who are very hesitant to enter the electricity market of the Republic of Croatia. Also, such legal uncertainty causes electricity traders to withdraw their energy activities from Croatia.

In our view, the proposed amendment to Article 45 of the Electricity Market Act is therefore necessary for the development of a liquid wholesale electricity market in Croatia.

## **Proposed amendment to Article 45**

Addition of Paragraph 3 to Article 45 of the Electricity Market Act, which will read as follows:

### Article 45

*(1) Electricity trading is activity independent of activity of electricity transmission and distribution, and it refers to the purchase and sale of electricity, including resale, of electricity to customers on the wholesale market, excluding the sale of electricity to final customers.*

*(2) Electricity trading may be performed by an energy entity on the basis of a license issued in accordance with the act regulating the energy sector and the provisions of this Act.*

***(3) Subject to the conditions provided for in Paragraph 2 of this Article, a foreign company and a foreign individual trader whose seat is registered in a Member State of the European Union or in a Contracting Party to the Energy Community, is entitled to perform electricity trading activity as a permanent activity, even if such a foreign company and a foreign individual trader did not set up a branch in the territory of the Republic of Croatia.***

*(4) Every electricity trader is obligated to make available to the Agency, to the Croatian Competition Agency and in accordance with international obligations accepted by the Republic of Croatia, to other competent institutions in the Energy Community or the European Union which are authorized or obligated to carry out related tasks on the basis of international treaties, for a period of five years, relevant data regarding all contracting transactions concluded with customers in the wholesale market and with the transmission system operator or the electricity market operator in connection with the purchase and sale of electricity, including derivatives.*

*(5) Relevant data referred to in Paragraph 4 of this Article must include details of the characteristics of the relevant transactions, including the duration, provisions regarding delivery, takeover and settlement, quantities, dates and time of execution and the prices in transactions and ways of identifying the buyer in the wholesale market, as well as specific details of all non-settled sale-purchase agreements and derivatives. "*