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DRAFT DIRECTIVE ON THE ORGANISATION OF THE REGIONAL MARKET AND THE HARMONIZATION OF THE ELECTRICAL NATIONAL MARKETS



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1. INTRODUCTION

The ECOWAS Council of Ministers has adopted Directive C / DIR.1 / 06/13 on the organization of the regional electricity market, during its seventieth ordinary session of the ECOWAS Council of Ministers held at Abidjan, 20 and 21 June 2013.

Since the approval of the Directive, ERERA has developed a program of activities aimed at establishing a legal and regulatory framework for the effective implementation and functioning of the ECOWAS regional electricity market. The regional electricity market was officially launched by WAPP and ERERA on 29 June 2018 in Cotonou, Benin.

To implement the regional market, ERERA undertook a number of studies and activities, including the revision of Directive C / DIR.1 / 06/13 on the organization of the regional electricity market. and the development of a new Directive on the harmonization of the organization of the regional electricity market and the national electricity markets.

In this new context, ERERA has set itself the specific objective of improving the current regional arrangements for electricity trading, and preparing the regional market for competition in the wholesale segment, by:

- Strengthening the reliability and management of existing exchanges through the adoption of harmonized access rules;
- Developing cooperation and synergies with existing sub-regional organizations;
- Defining regional market agreements and developing Community directives necessary for institutional and regulatory harmonization and the opening of national markets.

In the framework of the elaboration of the Directive on the organization of the regional market and the harmonization of national markets, the in-depth consultation of all the stakeholders was chosen as a working methodology.

The regional regulatory studies started during summer 2018 by visiting the ECOWAS countries for consultations with the major stakeholders of the electricity sector, collecting the necessary information on the existing rules and practices of the electricity sector operation and regulation, thus aiming at establishing an assessment of the current power situation in each of the countries.

From December 2018 to May 2019, ERERA with EU support has organized three meetings as follows:

- 1st Meeting in Accra – Ghana, 10-11 December 2018, gathering national experts representing the Energy Ministries, the Regulators, the Operators of the ECOWAS member States, Sub-regional Organizations (OMVS, OMVG, CLSG and CEB) and non-ECOWAS countries (Mauritania). This meeting was dedicated to capacity building on the concepts and principles outlined in the draft rules for access to national and regional transmission grid, and the outcomes of the proposal for synergy with the sub-regional organizations and non-ECOWAS countries. The main objective of this meeting was to constitute a common basis of understanding of the topics addressed.
- 2nd Meeting in Accra – Ghana, 25-26 February 2019, gathering the national experts representing the Energy Ministries, the Regulators, the Sub-regional organizations and Mauritania. This meeting was dedicated to presentation, discussion and collection of national positions on: i) the diagnosis report and the review of the ECOWAS Directive C/DIR.1/06/13 on the Organisation of Regional Electricity Market; ii) the clarification report on the role, rules and recommendations for the development of cooperation and the enhancing of synergies with Sub-regional organizations and non-ECOWAs countries; iii) the proposed draft rules for access; and iv) outcomes of the proposal for synergy with the sub-regional organization and non-

ECOWAS countries. The main objective of this meeting was to initiate a continuous dialogue after the meeting with the Representatives of Energy Ministries and Regulators to achieve a consensus on the proposed rules for access, the term sheets of the model agreements for integration of the sub-regional organization and non-ECOWAS countries in the regional West African electricity market, including the proposed timelines for their implementation.

- 3rd Meeting in Abidjan – Côte d'Ivoire, 6-7 May 2019, gathering the experts representing the national operators of transmission networks and power system, the sub-regional organizations and Mauritania. The purpose of this meeting was to capture the reaction and comments, and also initiate a continuous dialogue with the national operators on issues and proposals raised during the 2nd Meeting, including the proposed draft rules for access and the identification of potential barriers / difficulties for their implementation.

Further to the above three meetings, a continuous dialogue was initiated with Working Groups members in order to allow the consideration of all comments, remarks and official inputs of the national Experts transmitted to ERERA and STANTEC before end of July 2019. It is on this first base that ARREC and STANTEC submit to the Member States for opinion, the ECOWAS draft revised Directive on the organization of the regional market and the harmonization of national electricity markets. In parallel, the draft rules for access to the regional electricity market, models of standard agreement for the integration of sub-regional organizations and non-ECOWAS countries (Mauritania) into the regional market of West African electricity and the proposed national roadmaps for implementation will also be submitted for notice.

The last and 4th meeting of the License & Legislation Working Group meeting took place on 7-8 November 2019 in Dakar. This 4th meeting which was devoted to the finalization of the work by the national experts, and gathered all the national electricity stakeholders, specifically the national representatives of the Ministries of Energy, Regulators, Operators of transmission networks and power system Operators, and sub-regional organizations.

The aim of this participatory exercise is to achieve a full consensus among the representatives of the ECOWAS member States on the proposed texts, before they are submitted for final review and adoption by the governing bodies of ECOWAS.

This report concerns the draft revised ECOWAS Directive on the organization of the regional market and the harmonization of national electricity markets.

2. CONTEXT

The draft Directive on the organization of the regional market and the harmonization of national electricity markets considers all the necessary provisions for the regional ECOWAS market to function in harmony.

The organization of the national markets of each Member State wishing to participate in the regional market must include, and within agreed deadlines:

- A modern electricity law and regulatory framework (decrees, orders), which take into account the separation of the activities of the electricity sector and the right of access of third parties to the network without discrimination;
- An autonomous regulatory authority to regulate and control the national market and to check whether the right of access to the network is properly implemented;
- A national market structure that supports the separation of activities (and ideally properties);

- An independent and efficient Transmission System Operator (TSO) at national level;
- A pricing methodology reflecting energy costs for each electricity activity segment (generation, distribution and transmission); and
- A transparent planning process for the transmission network.

To achieve the goal of a harmonized organisation of markets in ECOWAS Member States, the following elements must be met:

- A participatory process for the revision of the legislative and regulatory frameworks at national level to integrate the provisions of the Directive on the harmonization of the organization of national markets;
- A strong political commitment by ECOWAS Member States to strengthen or create autonomous and transparent national regulators, and to develop compatible and effective national and regional policies through firm long-term commitments;
- A close cooperation and collaboration between ERERA and national regulators;
- Sufficient human and financial resources for national regulatory authorities (but also for ERERA); and
- An effective mechanism for monitoring and market surveillance.

3. REVISION OF DIRECTIVE C/DIR.1/06/13

The following tables summarize:

- Comments received on Directive C / DIR.1 / 06/13 during the Consultant's visits to ECOWAS countries;
- Comments received during the three workshops organized and during discussions with members of ERERA's working group; and
- Proposed modifications and additions to harmonize the organisation of regional and national markets.

The proposed amendments and additions are used for the proposed draft Directive in Chapter 4 of this report.

| Article Directive C/DIR.1/06/13 | | Comments and Recommendations (Diagnosis report and Workshops) | Proposed amendments and adding |
|---------------------------------|---|--|---|
| 1 | Definitions | | Definitions to be added. |
| 2 | Objective: The aim of this Directive is to provide the general principles to govern the Regional Electricity Market within the framework of the ECOWAS Energy Protocol. | Directive C / DIR / 1/06/13 needs to be revised. | (1) The aim of this Directive is to provide the general principles to govern the Regional Electricity Market and the harmonization of National Electricity Markets within the framework of the ECOWAS Energy Protocol. (2) The draft new Directive repeals and replaces Directive C / DIR /1/06/13 on the organization of the regional electricity market of 21 June 2013. |
| 3 | Scope: This Directive relates to the general organization and operation of the regional electricity market principles specified below: 1- Regional Market Design and Market Phases; | | <p>The scope of the Directive is extended in section (2) to the principles of harmonization of the organization of electricity markets</p> <ul style="list-style-type: none"> ▪ A sectoral policy document defining the intent and vision for third party access to the networks. ▪ Legislation making third parties' right of access to the networks mandatory. ▪ A regulation defining the criteria of eligible customers. ▪ A structuring of the national market that supports the restructuring of incumbents and the accounting separation of the activities of the electricity sector. ▪ An organizationally, financially and operationally autonomous national regulatory authority that cooperates with ERERA in the investigation and resolution of cross-border disputes. ▪ An independent and neutral Transmission System Operator (TSO). ▪ A pricing methodology for distribution and transmission based on the "truth of costs" principle. ▪ A transparent planning process for transmission networks. ▪ Transparent information on agreements and the real-time availability of transmission capacity. |
| | 2- Open Access to the Regional Transmission Network and access by Eligible Customers; | | |
| | 3- Harmonization of cross-border contractual arrangements relating to: (a) Cross-border electricity trade between a buyer and a seller within ECOWAS Member States, for import and export of electricity. (b) Access, interconnection and use of the Regional Transmission Network. | | |

| Article Directive C/DIR.1/06/13 | | Comments and Recommendations (Diagnosis report and Workshops) | Proposed amendments and adding |
|---------------------------------|--|--|---|
| 4 | <p>Market Design:</p> <p>In line with the principles of the ECOWAS Energy Protocol, the development and establishment of the regional electricity markets shall evolve according to the WAPP Market Design approved by EREDA.</p> | <p>Member States stakeholders are open to the application of this measure.</p> <p>With the willingness of the stakeholders, this measure is to be expedited and implemented by the EREDA, by carrying out an appropriate communication policy.</p> | |
| 5 | <p>Conditions Precedent for evolution of Market Design:</p> <p>EREDA shall in consultation with stakeholders determine the conditions precedent for the evolution of the market from one phase to the next.</p> <p>Member States shall be duly notified of these conditions to allow for the adaption of national markets and regulatory frameworks required to give effect to the realization of the regional market.</p> | <p>Stakeholders are open to the application of this measure.</p> <p>With the willingness of the stakeholders, this measure is to be expedited and implemented by EREDA in carrying out an appropriate communication policy.</p> | <p>An appropriate communication policy will be implemented by EREDA, with technical support for those Member States wishing to do so.</p> |

| Article Directive C/DIR.1/06/13 | Comments and Recommendations (Diagnosis report and Workshops) | Proposed amendments and adding |
|---|--|--|
| <p>6</p> <p>Tariff methodology:</p> <p>The cross-border transmission of electricity tariffs are settled according to a methodology published by ERETA in accordance with its procedures after consultation of the stakeholders.</p> | <p>ERETA took the Decision n ° 006 / ERETA / 15 adopting the Tariff Methodology for the costs and tariff of the transmission network of the West African Electric Power Exchange System, which came into force on August 18, 2015.</p> <p>ERETA will have to intensify its communication and awareness-raising policy, particularly with:</p> <ul style="list-style-type: none"> ▪ The need for implementation at a date to be formally agreed upon, of Decision No. 006 / ERETA / 15, in order to apply transparent and non-discriminatory transmission costs that reflect optimized costs for new contracts. ▪ The reminder of the validity until their term of the energy exchange contracts in force before the entry into force of the rules of the Regional Market. ▪ The reminder that transmission pricing may be mutually agreed upon for existing contracts prior to the entry into force of the Regional Market transmission pricing methodology, as provided in Article 5.3 | <ul style="list-style-type: none"> ▪ Pricing for cross-border transmission of electricity is carried out based on Decision No. 006 / ERETA / 15 (or any decision that will update it). This is applied for new contracts. ▪ The reminder that energy exchange contracts in force before the entry into force of the Rules of the Regional Market remain valid until their deadline. ▪ The reminder that transmission pricing may be mutually agreed upon for existing contracts in force prior to the entry into force of the Regional Market transmission pricing methodology, as provided in Article 5.3. <p>Harmonization at national level:</p> <ul style="list-style-type: none"> ▪ Stakeholders should be consulted before defining a cost-based pricing methodology. ▪ The transmission and distribution tariff methodology must include: <ul style="list-style-type: none"> - Separation of costs by activity; - Regulatory fees; and - Transit charges for cross-border energy flows. ▪ A roadmap to migrate to a tariff regime considering real costs from the beginning of phase 2 of market development. |
| <p>7</p> <p>Regional Transmission Network Open Access:</p> <p>(1) In accordance with Article 7 of the Energy Protocol which provides for freedom of transit (open access) for electric power, Member States are obliged to ensure the development and implementation of the legal and operational framework to give effect to this principle.</p> <p>(2) Accordingly, Member States shall ensure that the following conditions deemed necessary for open access to the regional transmission network are met within the period specified by this Directive:</p> | <p>It is recommended to regulate and limit the deadlines for implementation of the reforms required from the ECOWAS Member States, in particular as regards:</p> <ul style="list-style-type: none"> - The development and implementation of the legal and operational framework for the free flow of energy; and - The effective realization of the free flow of energy (or open access) for the power supply. | <p>The deadlines for the implementation of required reforms by the ECOWAS member states are framed.</p> |

| Article Directive C/DIR.1/06/13 | Comments and Recommendations (Diagnosis report and Workshops) | Proposed amendments and adding |
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| <p>2.a- Generation, transmission and distribution functions are at least functionally and financially independent allowing for separation of costs.</p> | <p>With the delay or lack of implementation of functional separation and / or accounting separation, the issue of a transparent and fair pricing of transmission network services could be a constraint to the effective development of the regional market.</p> <p>ERERA is recommended to support the States in the exercise of the accounting separation process.</p> <p>The structure of the national market must support:</p> <ul style="list-style-type: none"> - Institutional restructuring of vertically integrated incumbent operators. - The establishment of functional separation of activities. - The implementation of cost separation. | <p>Ensure, through harmonized cost separation, transparency and accounting bases so that tariffs reflect costs.</p> <p>The structure of the national market must support:</p> <ul style="list-style-type: none"> - Institutional restructuring of vertically integrated incumbent operators. - The establishment of functional separation of activities. - The implementation of cost separation. <p>ERERA shall support the States in the implementation of the accounting separation process.</p> |
| <p>2.b- The existing Electricity Acts and relevant Regulations of Member States must be adapted to provide for open access to regional transmission network. Conditions of eligibility for major consumers shall be defined by Regulation.</p> | <p>There is a need to communicate, share, convince and support stakeholders by ensuring:</p> <ul style="list-style-type: none"> ▪ The occurrence of a regional market including the interests of incumbent operators and not against them. ▪ Proceed step by step according to the capabilities of each country. ▪ Define and adopt shared and appropriate eligibility criteria for large consumers who: <ul style="list-style-type: none"> - Do not endanger the incumbent operators. - Avoid the diversion of their solvent clientele. - Are evolutionary if necessary. ▪ Highlight the macroeconomic benefits and increased access to energy that would result from: <ul style="list-style-type: none"> - Streamlined use of new producers including IPPs. - Interconnection expected from the realization of the ECOWAS Master Plan projects for the development of regional means of production and transmission of electricity 2019-2033. ▪ Put in place transparent, reliable and secure payment exchange mechanisms for energy exchange. | <p>Participatory process for adaptation of the legislative and regulatory framework at the national level, considering the fears of the incumbent operators.</p> <p>The eligibility criteria are defined to avoid the difficulty of the incumbents. The process can be scalable if necessary.</p> |

| Article Directive C/DIR.1/06/13 | | Comments and Recommendations (Diagnosis report and Workshops) | Proposed amendments and adding |
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| | 2.c- The licensing conditions and procedures for new Independent Power Provider (IPP) should be made simpler and more attractive. | <p>EREDA is recommended to support States that wish for:</p> <ul style="list-style-type: none"> - The implementation of performant and attractive texts for IPPs. - The enhancing of capacity building for negotiation of balanced energy purchase contracts with IPPs. | Establishment of a clear and transparent licensing regime with clear timelines and procedures. |
| | 3- EREDA shall specify by way of regulation specific conditions for third party access to the Regional Transmission Network after due consultations with Stakeholders. | The implementation of this provision by EREDA should include: the observations, constraints and recommendations of Article 7, paragraph 2.b. | <p>Add "rules" to specific conditions for third-party access.</p> <p>Add Article 8 on the harmonization of national electricity markets.</p> <p>Add Article 9: Technical requirements.</p> <p>Add Article 10: Promotion of regional cooperation.</p> <p>Add Article 11: Transmission System Operators.</p> |
| 8 | <p>Harmonization of Contracts:</p> <p>(1) Model bi-lateral Contracts</p> <p>1.a- EREDA shall provide stakeholders in the Regional Market, model long-term and medium term bi-lateral contracts after consultation with key stakeholders. The Model Agreements shall serve as the basic framework that shall guide contracting parties. The parties to the contract shall however be at liberty to negotiate the specific terms of their agreement.</p> | <ul style="list-style-type: none"> - The current contracts in force are bilateral cooperation agreements. They predate the launch of the regional market and include specific formats freely agreed between the States or their incumbents. - The contract templates made available by EREDA to stakeholders are not yet used as a reference contractual framework. - There is a need for the implementation at a date to be formally agreed of the contract templates made available by EREDA for the new energy exchange agreements. | <p>Became article 12.</p> <p>Implementation at a date to be formally agreed of the contract templates made available by EREDA for the new energy exchange agreements.</p> |
| | 1.b- Where parties fail to reach an agreement on specific clauses of their Agreement, the relevant clause of the Model Agreement shall be adopted by the parties. | | |

| Article Directive C/DIR.1/06/13 | Comments and Recommendations (Diagnosis report and Workshops) | Proposed amendments and adding |
|---|---|--|
| <p>Connection and Use of Network Agreements:</p> <p>2.a- WAPP shall in consultation with the transmission system operators of Member States develop a standard Connection and Use of Network Agreement for access to the Regional Transmission Network.</p> | <p>With a view to developing, making operational and sustaining a successful regional market that contributes to citizens' universal access to competitive electricity in the sub-region, it is essential and urgent to:</p> <ul style="list-style-type: none"> ▪ Base energy exchanges on sustainable, high-performance and rigorous technical rules, shared by all stakeholders, in the form of: <ul style="list-style-type: none"> - Transmission Network Codes to be applied at regional and national levels. - Distribution Network Codes to be applied at the national level. ▪ Starting the operation of the CIC which will have to play the central role of Independent System Operator (ISO). | <ul style="list-style-type: none"> ▪ Base energy exchanges on sustainable, high-performance and rigorous technical rules, shared by all stakeholders, in the form of: <ul style="list-style-type: none"> - Transmission Grid Codes to be applied at regional and national levels. - Distribution Grid Codes to be applied at the national level. |
| <p>2.b- ERERA shall approve the Standard Connection and Use of Network Agreement after consultation with the national regulatory authorities.</p> | <p>It is recommended that ERERA:</p> <ul style="list-style-type: none"> ▪ Urge the Member States to launch immediately the elaboration of: <ul style="list-style-type: none"> - National transmission grid code, compatible with the regional transmission grid code. - National distribution grid code, compatible with regional and national transmission grid codes. ▪ Ensure, if necessary, to accompany the States that request it, in the elaboration of national transmission and distribution grid codes. ▪ Apply the regional grid code as soon as possible. ▪ Ensure the installation of metering equipment in accordance with international standards for cross-border energy flow measurement. ▪ Ensure the establishment of secure payment terms, with the guarantees required for regional market energy exchanges. ▪ Encourage in collaboration with WAPP, each Member State to the diligent implementation of its specific projects, targeted by the ECOWAS Master Plan for the development of regional means of production and transmission of electricity 2019-2033. | <ul style="list-style-type: none"> ▪ Secure payment terms for exchanged energy flows. |

| Article Directive C/DIR.1/06/13 | | Comments and Recommendations (Diagnosis report and Workshops) | Proposed amendments and adding |
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| | 3. Approval 3.a- All such Contracts entered into between parties shall be submitted to ERERA for approval for such Agreements to be effective. | <ul style="list-style-type: none"> - This provision concerns all new contracts initiated after the launch of the regional market. - The ECOWAS member states have expressed their willingness to apply the provision. | |
| | 3.b- ERERA shall within a period of sixty (60) calendar days take a decision on the contracts submitted for approval. After this period, any other act notwithstanding, without any decision of ERERA, the contract is deemed approved. | | |
| | 3.c- ERERA may, following the review of the contacts make recommendations for the deletion, modification or addition of one or more terms of the contract. | | |
| | 3.d- Parties within the Regional Electricity Market are required to inform ERERA of any contract, agreement or protocol in force on cross-border exchanges in electricity. Parties are also required to notify ERERA of any proposed contract for cross-border electricity exchanges. | <ul style="list-style-type: none"> - With the willingness of the stakeholders, this measure is to be expedited and implemented by the ERERA, by carrying out an appropriate communication policy. - ERERA will also have to ask the stakeholders to transmit for information all contracts in progress, in accordance with this paragraph. | Stakeholders must submit to ERERA, for information purposes, all contracts in progress. |
| 9 | Sanctions: 1- All cross-border electricity trade agreements in violation of the Rules of the Regional Market and the provisions of this Directive shall be void. | <ul style="list-style-type: none"> - This provision concerns all new contracts initiated after the launch of the regional market. - The ECOWAS member states have expressed their willingness to apply the provision. | Became article 13. |
| | 2- Failure by the Regional Market participants to respect the provisions of this Directive shall result in penalties in line with Regulation C/REG.27/12/ 07, adopted by the ECOWAS Council of Ministers on December 15, 2007, which are applicable in accordance with the terms and conditions specified by Article 30 of the Regulation, without prejudice to the remedies indicated particularly in Article 31 thereof. | | |

| Article Directive C/DIR.1/06/13 | Comments and Recommendations (Diagnosis report and Workshops) | Proposed amendments and adding |
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| <p>Strengthening of National Regulatory Authorities</p> <p>1- In order to ensure the smooth operation of the regional market, Member States are mandated to establish an independent regulatory authority where none exists.</p> | <p>Continued support from ERERA is required to:</p> <ul style="list-style-type: none"> - Strengthen the capacity and expertise of Regulatory bodies that request it. - Accompany Guinea Bissau in the process of setting up and implementing of the Regulatory body. | <p>Became article 14.</p> <p>To this end, an appropriate communication policy will be implemented by ERERA, with technical support for those Member States wishing to do so.</p> |
| <p>10</p> <p>2- The powers of the national regulators shall be expanded to include market monitoring and tariffs setting.</p> | <p>Most ECOWAS states consider that tariff policy is their exclusive domain, and as such they do not delegate the allocation relative to the setting of tariffs to regulatory bodies. Thus, the regulatory bodies are limited to giving advice or opinions on the tariffs they submit, in the form of "simple opinions" or "opinions in conformity" to the Authorities, in order to request their decision regarding the level of the applicable tariff.</p> <p>Electricity tariffs should be sustainable, based on cost-effective allocation, based on productive efficiency (cost optimization), equitable, non-discriminatory, simple, acceptable, predictable, reproducible and stable.</p> <p>The prerogative of fixing the tariff conditions and / or the required revenues should be left to regulatory bodies.</p> <p>To this end, the pursuit of necessary reforms at the state level should include the adoption of regulations to:</p> <ul style="list-style-type: none"> - Guarantee equilibrium revenues and a required remuneration margin for operators in the sector, according to procedures to be determined by the regulatory bodies. - Providing, where appropriate, mechanisms at the expense of the States, to modulate the applicable level of tariffs, in case of perspective of supervision and support of certain categories of consumers, at the request of the States. | <p>The national regulatory authority must have the mandate, the means and the capacity to:</p> <ul style="list-style-type: none"> - Be organisationally independent; - Be financially autonomous; - Be operationally independent; - Define and regulate the methodology and pricing conditions and control the required revenues; - Monitor the national market; and - Cooperate with ERERA in the investigation and settlement of cross-border disputes. |

| Article Directive C/DIR.1/06/13 | Comments and Recommendations (Diagnosis report and Workshops) | Proposed amendments and adding |
|--|--|---|
| <p>3- To protect the independence of the regulatory authority, Member States shall in particular provide the regulatory authority with legal personality, budgetary autonomy and adequate human and financial resources to carry out its duties.</p> | <p>To ensure the functioning of the regulatory body, the main mode of financing and the most common in the sub-region is the allocation of tax revenue.</p> <p>It turns out that the disadvantage of this modality is that it is a potential source of political interference in the operation of the regulatory body.</p> <p>Regarding the budgetary autonomy of the regulatory bodies, the pursuit of necessary reforms at the state level should include the adoption of texts to assess their periodic budgetary needs and pass them on to consumers through the tariff, through the operators billing, in the form of pass-throughs. This method is consistent with the autonomy of regulatory bodies, is transparent to industry players and is a stable source of financing that is simple to manage.</p> | |
| <p>4- The national regulatory authorities shall give full support to ERERA for the implementation of the provisions of this Directive by ensuring the efficient functioning of their national markets and the regional market to promote effective competition.</p> | <p>It is recommended to regulate and limit the maximum timeframes for the implementation of the reforms required by the ECOWAS Member States.</p> | <p>Confirm the maximum timeframes for implementing the required reforms.</p> |
| <p>Obligations of Member States</p> <p>11</p> <p>1- Member States shall take all measures necessary to comply with this Directive and bring into force the laws, regulations and administrative provisions required to give effect to this Directive not later than twenty-four (24) months after the Directive comes into force.</p> <p>2- Member States are required to remove or adapt any legislative or regulatory provision barring the application of this Directive, particularly to do with ERERA's powers as provided by Supplementary Act A/SA.2/01/08 adopted by the Conference of Heads of State and Governments and Regulation C/REG.27/12/07 adopted by the Council of Ministers of ECOWAS.</p> | <p>It is recommended to regulate and limit the maximum timeframes for the implementation of the reforms required by the ECOWAS Member States.</p> <p>It is recommended to regulate and limit the maximum time frames for the implementation of the reforms required by the ECOWAS Member States.</p> | <p>Became article 15. Time frames (related to road maps received from Member States).</p> <p>Time frames.</p> |

| Article Directive C/DIR.1/06/13 | | Comments and Recommendations (Diagnosis report and Workshops) | Proposed amendments and adding |
|---------------------------------|---|---|--|
| | 3- Any legislation or Regulation of Member States in relation to the application of this Directive should include a specific reference or a copy annexed thereto in the official publication. | | |
| | 4- Member States shall notify ERERA of the provisions or measures taken to comply with this Directive. | | |
| 12 | Challenges in implementation: 1- Member States shall notify ERERA of any challenges encountered in the implementation of this Directive. | | Became article 16. |
| | 2- ERERA shall submit these challenges to the next session of the Council of Ministers. | | |
| 14 | Transitional period: Cross-Border electricity trade agreements which are effective on the date of publication of this Directive, as well as contracts in transition or associated with it, shall continue to be in effect until the end of the term originally agreed by the parties. However, in the event of any review of such contracts, the parties shall endeavour to comply with the provisions of this Directive. | A renegotiation of contracts already in force between the parties would be de facto the will of the parties and the contractual clauses initially planned. However, the ERERA by its mission is at the disposal of the parties who request it, especially for specific needs on contracts already in force and requiring support, within the framework of the prerogatives and regulations in force. On the other hand, in the case of new contracts, in case of disagreement during the negotiations, a conciliation measure is planned. | Became article 17. ERERA remains at the disposal of the parties that request it, particularly for specific needs on contracts already in force and requiring support. |
| 13 | Publication | | Became article 18. |

4. DRAFT DIRECTIVE ON THE ORGANISATION OF THE REGIONAL ELECTRICITY MARKET AND THE HARMONISATION OF THE NATIONAL ELECTRICITY MARKETS

XX ORDINARY SESSION OF THE COUNCIL OF MINISTERS OF ECOWAS

Place, date

DIRECTIVE C/DIR/ / / / ON THE ORGANISATION OF THE REGIONAL ELECTRICITY MARKET AND THE HARMONISATION OF THE NATIONAL ELECTRICITY MARKETS

THE COUNCIL OF MINISTERS,

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

MINDFUL of Articles 28, and 55 of the said ECOWAS Treaty relating to the promotion, cooperation, integration and development of energy projects and energy sectors of the Member States of the Community within the framework of creating a customs union and an economic, and monetary union;

MINDFUL of Protocol A/P.1/7/91 as amended, relating to the Court of Justice of the Community;

MINDFUL of Protocol A/P2/8/94 as amended, relating to the Parliament of the Community;

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

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

MINDFUL of Regulation C/REG.27/12/07 as amended, concerning the Composition, Organization, Functions and Operations of the ECOWAS Regional Electricity Regulatory Authority (ERERA);

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

... [To be completed by ECOWAS Legal Services]

CONSIDERING the following:

(I) Facilitating cross-border access by Member States and national Regulatory Authorities to ensure competition and the supply of electricity, produced from different energy sources including renewable energies, at the lowest possible price.

(II) Effective separation of grid activities from generation and supply.

(III) The removal of elements that encourage vertically integrated companies to discriminate against their competitors in terms of access to the network.

(IV) The establishment of a Transmission System Operator (TSO) independent of the supply and generation structures, provided that the independent TSO performs all the functions of a network manager, in the context of the existence of clear regulations and comprehensive regulatory control mechanisms.

(V) Being able to choose suppliers and conclude contracts with several suppliers to cover their electricity needs.

(VI) A proven autonomy of Regulatory Authority from other public or private interests. This does not preclude either the exercise of judicial control or the exercise of parliamentary control in accordance with the constitutional law of the Member States.

(VII) Setting the methodology for calculating tariffs by Regulatory Authority, based on non-discriminatory and cost reflective proposals.

(VIII) Dispute resolution mechanisms accessible and efficient for dealing with complaints in order to guarantee a better protection of the national Market.

(IX) The development of a genuine Regional Electricity Market, through an interconnected network and the regulatory aspects relating to cross-border interconnections should therefore be one of the main tasks of national Regulatory Authorities, in close cooperation with ERERA.

(X) That there are currently structural differences in national electricity sector within ECOWAS Member States, with different structures for the regulation of the electricity sector.

ACKNOWLEDGING the need to set up a regional regulatory body with the principal objective of developing an attractive investment climate for investors and for the development of cross-border trade within the ECOWAS electricity sector.

CONVINCED that regional electricity regulation and open access to regional transmission network are imperative for the efficient operation and monitoring of cross-border electricity trade and constitute a necessary condition for the development of the regional electricity market.

NOTING that the regional electricity market must be developed gradually to enable national electricity sectors adapt in a gradual and rational manner the current diversity in the way they are organized.

DESIRING to promote a regional approach to cross-border electricity trade and to ensure the harmonization of institutions and rules within ECOWAS, with a view to organizing the regional electricity market and creating favourable conditions for the development of investment and capacity within the member States of ECOWAS.

UPON THE RECOMMENDATION of the “xx” Meeting of Ministers of Energy of the Member States of ECOWAS, held in “place” on “date”.

ADOPTS:

Article 1: Definitions

For the purposes of this directive, the under-listed definitions are applicable:

ACCOUNTING SEPARATION

A breakdown allowing to hold an autonomous accounting and highlight dissociated financial statements for electrical generation, transmission and distribution activities. The accounting separation is performed from the accounting data used to produce the operators' company accounts and operated from the existing accounting and financial system.

AFFILIATED ENTERPRISE

An enterprise generating energy or operating a distribution network and which is affiliated or part of the vertically integrated structure of the transmission system operator.

CROSS-BORDER ELECTRICITY TRADE AGREEMENT

Agreement made, within the framework of the regional electricity market, between a seller and a buyer, for the delivery of electricity, using a Transmission Network and cross-border interconnection by which the seller is committed to transfer the volume of electricity agreed to the buyer within the prescribed interval or intervals and at an agreed price;

CROSS BORDER INTERCONNECTION

The lines that connect two or more national transmission networks and connecting the power systems of at least two ECOWAS Member States, including metering equipment placed on the Regional Transmission Network nodes located in each of the participating Member States.

ELECTRICITY EXPORT

Sale or supply agreement for electricity to a State other than that in which electricity is produced and whose delivery requires the use of a Cross-Border interconnection;

ELECTRICITY IMPORT

Purchase agreement of electricity from a State other than that in which the electricity is produced and whose delivery requires the use of a cross-border interconnection;

ELECTRICITY SECTOR

All the activities of generation, transmission, import, export, distribution and marketing of electricity, as well as all the stakeholders involved in these activities in any given Member State or through ECOWAS, including national and regional institutions, utilities and consumers;

ELIGIBLE CUSTOMER

Any consumer who meets the conditions set by the national regulations and the rules of the Regional Market to choose his electrical energy supplier.

END CUSTOMER

The end customer is the receiver at the point of delivery of cross-border electricity trade.

NATIONAL ELECTRICITY MARKET

Forms of organization of the activities of generation, transmission and supply of electricity at the level of each State.

NATIONAL ELECTRICITY NETWORK

All energy infrastructures of a State allowing to convey generated electricity towards the national consumers.

ERERA

ECOWAS Regional Electricity Regulatory Authority – the body mandated to regulate the regional electricity market, as defined by Regulation C/REG.27/12/07 on the Composition, Organization, Functions, and Operations of the ECOWAS Regional Electricity Regulatory Authority;

REGIONAL ELECTRICITY MARKET

All cross-border electricity trading and related services made through the regional interconnected transmission networks within the ECOWAS sub region;

REGIONAL MARKET RULES

Rules made by competent authorities of ECOWAS governing the regional electricity market;

REGIONAL TRANSMISSION NETWORK OR INTERCONNECTED TRANSMISSION NETWORK OF THE WEST AFRICAN POWER POOL

All lines and transmission sub-stations duly declared by WAPP or Sub-regional Organizations as constituting the Regional Transmission Network; these lines include specially regional interconnections, regional lines owned by Specific Purpose Companies of the WAPP and lines of national systems being part of the Regional Transmission System.

REGULATORY AUTHORITY

The body created by a State and endowed with the mission and powers to monitor, regulate and ensure the proper functioning of the Sector and the National Electricity Market.

REVENUE REQUIRED

The income expected by an operator from the tariff applied to cover all costs, expenses, and profit margins, in the context of the principle of price truth.

RIGHT OF ACCESS OF THIRD PARTIES TO NETWORKS

This is the guarantee of fair and transparent access of third parties to the networks (independent power producers and eligible customers) using the networks at a third-party access tariff. The right of access must be accompanied by technical and organizational regulation.

STAKEHOLDERS

Institutions, operators and other actors at national, regional and sub-regional levels that can influence or can be influenced by the Regional Electricity Market.

SUB REGIONAL ORGANIZATIONS

Energy Organizations in charge of development, operation, maintenance and commercial management, for means of production and networks, implemented collectively by a sub-group of ECOWAS Member States, (including following sub-regional organizations: CEB, CLSG, OMVG, and OMVS).

THIRD STATE

Any State other than the Member States of ECOWAS.

TRANSMISSION NETWORK

All high voltage lines and related equipment for the transmission of electricity, which facilitate delivery to eligible customers or to distributors, in the context of cross-border electricity exchanges.

TRANSMISSION SYSTEM OPERATOR

The company responsible for maintaining the assets of the transmission network, operating and conducting Transmission System.

VERTICALLY INTEGRATED OPERATOR

An operator who performs at least the following functions: transmission or distribution, and at least one of the following functions: generation or supply of electricity.

WAPP

West African Power Pool, a specialized institution of ECOWAS established by Decision A/DEC.20/01/06 of January 12, 2006, by the Conference of Heads of State and Governments, with a responsibility to develop electricity infrastructure and establish a unified electricity market.

Article 2: Objective

- (1) The aim of this Directive is to provide the general principles to govern the Regional Electricity Market and the electricity National Market harmonisation within the framework of the ECOWAS Energy Protocol.
- (2) This Directive repeals and replaces Directive C / DIR / 1/06/13 on the organization of the regional electricity market of 21 June 2013.

Article 3: Scope

This Directive relates:

- 1-** To the general organization and operation of the regional electricity market principles specified below:
 - (1.1) Regional Market Design and Market Phases.
 - (1.2) Open Access to the Regional Transmission Network and access by Eligible Customers.
 - (1.3) Harmonization of cross-border contractual arrangements relating to:
 - (a) Cross-border electricity trade between a buyer and a seller within ECOWAS Member States, for import and export of electricity.
 - (b) Access, interconnection and use of the Regional Transmission Network.
- 2-** To the common rules concerning the organization of the national electricity markets below:
 - (2.1). The intention and vision of the electricity national and regional markets.
 - (2.2). Free access to the national transmission network and access of eligible customers to the national network.
 - (2.3). The regulation, non-discrimination and competition modalities.
 - (2.4). The organizational and operational modalities of the national electricity market.
- 3-** To the persons to whom the Directive applies: Member States electricity companies, Sub-regional organizations, third States electricity companies wishing to participate in the Regional Electricity Market.

Article 4: Market Design

In line with the principles of the ECOWAS Energy Protocol, the development and establishment of the regional electricity markets shall evolve according to the WAPP Market Design approved by ERERA.

Article 5: Conditions Precedent for evolution of Market Design

ERERA shall in consultation with Stakeholders determine the conditions precedent for the evolution of the market from one phase to the next.

Member States shall be duly notified of these conditions to allow for the adaption of national markets and regulatory frameworks required to give effect to the realization of the regional electricity market.

To this end, an appropriate communication policy will be implemented by ERERA, with technical support for those Member States wishing to do so.

Article 6: Tariff methodology

1. For new contracts concluded from the date of entry into force of this Directive, the tariffs of cross-border electricity transmission shall be carried out on the basis of a mechanism laid down and published by ERERA, in accordance with procedures and after consultation with stakeholders.

In this respect, ERERA took the Decision No. 006 / ERERA / 15 adopting the Tariff Methodology for the costs and the tariff of the transmission network of the West African Electricity Exchange System, which is implemented effectively from the date of entry into force of this Directive.

Energy exchange contracts in force before the date of entry into force of this Directive shall remain valid until their completion. Transmission tariff may be mutually agreed upon for existing contracts in accordance with the provisions of Article 5.3 of Decision No. 006 / ERERA / 15.

2. The harmonization of tariff methodologies at the national level should include a participatory process to define a tariff methodology reflecting the costs for each segment of the sector activities as well as the implementation of the accounting separation. The tariffs must provide the regulatory fees and the transit costs for cross-border energy flows. Harmonization must also include mechanisms for the payment of financial flows generated by energy transactions. These mechanisms shall include the required guarantees.

3. Within **six (6) months** of the date of entry into force of this Directive, the Member States shall submit to ERERA their roadmap to migrate to a harmonized and applicable tariff regime considering real costs, from the beginning of phase 2 of market development.

Article 7: Regional Transmission Network Open Access

1. In accordance with Article 7 of the Energy Protocol which provides for freedom of transit (open access) for electric power, Member States are obliged to ensure the development and implementation of the legal and operational framework to give effect to this principle.

2. Accordingly, Member States shall ensure that the following conditions deemed necessary for open access to the regional transmission network are met within the period specified by article 15 of this Directive:

(2.a) The institutional restructuring of the vertically integrated incumbents must be implemented, and generation, transmission and distribution functions are separated in transparent conditions and at least functionally and financially independent allowing for a harmonized separation of costs.

To this end, ERERA will support the Member States that wish to do so by: (i) determining the limits and accounting bases of the segments of the electricity sector, and (ii) implementing a harmonized accounting separation process.

(2.b) The sector policies, the existing Electricity Acts and relevant Regulations of Member States must be adapted and harmonized, as part of a participatory process involving the incumbent operators and put into effect to provide for open access to regional transmission network. The principle of the

eligible customer is defined in the law and conditions of eligibility for major consumers (eligible customers) shall be defined by Regulation.

(2.c) The licensing conditions and procedures for new Independent Power Provider (IPP) should be made simpler and more attractive. The licensing regimes are clear, transparent, with clear deadlines and procedures.

3. ERERA shall specify, by way of Regulation, specific rules and conditions for third party access to the Regional Transmission Network after due consultations with Stakeholders.

Article 8: Harmonization of national electricity markets.

Member States based on their institutional organization: (i) ensure that operators in the electricity sector are governed and regulated in accordance with the principles of this Directive, in order to achieve an electricity market that is competitive, secure electricity and sustainable environmentally; and (ii) abstain from any discrimination with regard to the rights and obligations of these operators.

1. The sector policy document must:

- Provide clear government vision and objectives that reflect the best options for the national and regional electricity markets, including the organization of the electricity subsector, ownership of the transmission system, existence of an independent TSO or system operator, etc.
- Highlight the changes in the legal and regulatory framework needed to implement the national and regional market vision.
- Introduce a stakeholder consultation mechanism at the national level to improve the policy document and reduce barriers to its implementation.

2. The legal framework must:

- Provide guidelines on unbundling/separation of sector activities and functional separation of generation, transmission and distribution facilities and infrastructure.
- Define the role of the autonomous regulatory authority.
- Define the general principles for competition and the (progressive) opening of the sector to new market players.
- Define the principles for free and non-discriminatory access by Third Parties to the network.
- Define the general principles on cross-border electricity trade.
- Define the general principles on eligible customers.
- Define the tariff principle of cross-border electricity trade.
- Define the principles of general tariff (generation, transport, distribution).
- Define the general criteria for granting licences.

3. The regulatory framework must define and specify:

- The mission, responsibilities, prerogatives, and funding modalities of the autonomous Regulatory Authority.
- The ownership at national level of the TSO.
- The procedures and rules for granting licenses, as well as the promoters selection criteria (legal persons and natural persons).
- Methodology and tariff regulation.
- The eligibility criteria and the regulation of eligible customers.
- The rules and regulation of the accounting separation of electricity sector activities.
- The settlement of complaints and the settlement of disputes.
- The national transmission grid code (including the metering code).

- The national distribution grid code.

4. The structure of the national market must support:

- Institutional restructuring of incumbent vertically integrated operators.
- The implementation of accounting separation.
- The implementation of an efficient transmission and distribution tariff, transparent and reflecting the real costs of networks.
- The transmission network planning process, integrating data from all relevant stakeholders.
- Transparent exchange of information on agreements and the real-time availability of transmission capacity.

Article 9: Technical requirements.

National Regulatory Authorities, where Member States so provide, or Member States shall ensure that technical safety criteria are defined, and that technical requirements laying down the minimum technical design requirements and operation of the transmission networks shall be drawn up and notified to the ERETA.

These technical requirements ensure the interoperability of national transmission networks. With the regional transmission network ERETA may make appropriate recommendations to ensure, where appropriate, the compatibility of these requirements.

Article 10: Promotion of regional cooperation.

1. Member States and national Regulatory Authorities cooperate to ensure the integration of their national markets at regional level and promote and facilitate the cooperation of transmission system operators at regional level, including on cross-border issues.
2. ERETA cooperates with national Regulatory Authorities and Transmission System Operators to ensure the compatibility of regulatory frameworks between Member States, with the aim of creating a competitive regional electricity market. When ERETA considers that binding rules are necessary for such cooperation, it makes the appropriate recommendations.

Article 11: Transmission System Operators.

1. Member States shall ensure that within **two (2) years** of the date of entry into force of this Directive, each company which owns a transmission system acts as a Transmission System Operator.
2. Each Transmission System Operator must:
 - (2.a) Manage electricity flows on the grid considering exchanges with other interconnected networks. To this end, the Transmission System Operator shall ensure a safe, reliable and efficient electricity network and, in this context, ensure the availability of all necessary ancillary services, including those provided in response to the demand.
 - (2.b) Provide the operator of any other network interconnected with his network with sufficient information to ensure safe and efficient operation, coordinated development and interoperability of the interconnected system.
 - (2.c) Ensure non-discrimination between users or categories of users of the network, without favouring its affiliated enterprises.
 - (2.d) Provide network users with the information they need for efficient network access.

(2.e) Collect revenue from congestion management and payments under the Transmission System Operator compensation mechanism.

(2.f) Grant and manage third party access and specify the reasons for any refusal of such access, under the control of the national Regulatory Authorities.

Article 12: Harmonization of Contracts

1. Model bi-lateral Contracts for electricity supply

(a) ERERA shall provide stakeholders in the Regional Market, model long-term and medium term bi-lateral contracts after consultation with key stakeholders.

(b) The Model Agreements shall serve as the basic framework that shall guide contracting parties. The parties to the contract shall however be at liberty to negotiate the specific terms of their agreement.

(c) Where parties fail to reach an agreement on specific clauses of their Agreement, the relevant clause of the Model Agreement shall be adopted by the parties for all energy exchange agreements from the date of entry into force of this Directive.

2. Connection and use of Network Agreements

(a) WAPP shall in consultation with the Transmission System Operators of Member States and Sub-regional Organisations TSO, develop a standard Connection and Use of Network Agreement for access to the Regional Transmission Network.

Energy trading is based on compliance with Transmission Grid Codes at regional and national levels.

(b) ERERA shall approve the Standard Connection and Use of Network Agreement after consultation with the national Regulatory Authorities.

Energy trading is based on compliance with Transmission Grid Codes at regional and national levels.

3. Approval

(a) From the date of entry into force of this Directive, all such contracts entered into between parties shall be submitted to ERERA for approval for such agreements to be effective.

(b) ERERA shall within a period of sixty (60) calendar days take a decision on the contracts submitted for approval. After this period, any other act notwithstanding, without any decision of ERERA, the contract is deemed approved.

(c) ERERA may, following the review of the contacts make recommendations for the deletion, modification or addition of one or more terms of the contract.

(d) Parties within the regional electricity market are required to inform ERERA of any contract, agreement or protocol in force on cross-border exchanges in electricity and to send for information all contracts in progress. Parties are also required to notify ERERA of any proposed contract for cross-border exchanges.

Article 13: Sanctions

1. All cross-border electricity trade agreements in violation of the Rules of the Regional Market and the provisions of this Directive shall be void.

2. Failure by the regional electricity market Stakeholders to respect the provisions of this Directive shall result in penalties in line with Regulation C/REG.27/12/ 07, adopted by the ECOWAS Council of

Ministers on December 15, 2007, which are applicable in accordance with the terms and conditions specified by Article 30 of the Regulation, without prejudice to the remedies indicated particularly in Article 31 thereof.

Article 14: Strengthening of National Regulatory Authorities

1. In order to ensure the smooth operation of the regional electricity market, Member States are mandated to establish an independent Regulatory Authority where none exists.

To this end, an appropriate communication policy will be implemented by ERERA, with implementation support for those Member States wishing to do so.

2. Within **three (3) years** of the entry into force of this Directive, the national Regulatory Authority shall have the mandate, the means and the capacity to:

- Be independent on the organizational and operational levels;
- Be financially autonomous;
- Define and regulate the methodology and pricing conditions and control the level of revenue required;
- Monitor their national market; and
- Cooperate with ERERA in the investigation and settlement of cross-border disputes.

3. To protect the autonomy of the Regulatory Authority, Member States shall in particular provide the Regulatory Authority with legal personality, budgetary autonomy and adequate human and financial resources to carry out its duties.

4. The national Regulatory Authorities shall give full support to ERERA for the implementation of the provisions of this Directive, within the time limits laid down in Article 15, by ensuring the efficient functioning of their national markets and the regional electricity market to promote effective competition.

Article 15 : Obligations of Member States

1. Member States shall take all measures necessary to comply with this Directive and bring into force the laws, regulations and administrative provisions required to give effect to this Directive within the following deadlines, defined after consultation with the Member States:

| Actions to comply with this Directive | Timeline from the entry into force of this Directive |
|--|---|
| Sector Policy document | 2-4 years * |
| Legal Framework | 2-4 years * |
| Regulatory Framework | 2-7 years * |
| National Market Structure | 2-6 years * |

* These deadlines are based on the initial situation: institutional, regulatory, technical and financial, and the commitment of the Member States.

2. Within the timelines prescribed above, Member States are required to remove or adapt any legislative or regulatory provision barring the application of this Directive, particularly to do with ERERA's powers as provided by Supplementary Act A/SA.2/01/08 adopted by the Conference of Heads of State and Governments and Regulation C/REG.27/12/07 adopted by the Council of Ministers of ECOWAS.

3. Any legislation or Regulation of Member States in relation to the application of this Directive should include a specific reference or a copy annexed thereto in the official publication.

4. Member States shall notify ERERA of the provisions or measures taken to comply with this Directive.

Article 16: Challenges in implementation

1. Member States shall notify ERERA of any objective challenges encountered in the implementation of this Directive.

2. ERERA shall submit these challenges to the next session of the Council of Ministers.

Article 17: Transitional period

Cross-Border electricity trade agreements which are effective on the date of publication of this Directive, as well as contracts in transition or associated with it, shall continue to be in effect until the end of the term originally agreed by the Parties.

However, in the event of any review of such contracts, the contracts Parties shall endeavour to comply with the provisions of this Directive.

In all cases, ERERA will assist the Parties that request it, especially for specific needs on contracts already in force that require support.

Article 18: Entry into force and publication

1. This Directive shall enter into force on the date of its signature by the President of the Council of Ministers and shall be published in the Official Journal of the Community within thirty (30) days of its signature.

2. It shall also be published by each Member State in its Official Journal within the same period mentioned above.

DONE AT

THE CHAIRMAN

FOR THE COUNCIL