

THE ACTIVITY OF TRANSPOSING DIRECTIVE 2014/94/EU OF THE EUROPEAN PARLIAMENT AND COUNCIL OF 22 OCTOBER 2014 ON THE DEPLOYMENT OF ALTERNATIVE FUELS INFRASTRUCTURE. THE POST-TRANSPOSING ATTRIBUTIONS OF THE ROMANIAN ENERGY REGULATORY AUTHORITY

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Abstract

This article proposes an analysis of the activity of transposing the Directives, an obligation of the Member States of the European Union provided by the Treaty on the Functioning of the European Union. The transposing obligation entails that the Member State to which a Directive is addressed has the option to choose the form and means and the important issue is that the obtained result should be the one set up by the concerned Directive. Following up the study, we shall analyze the sanctions that can be implemented by the European Commission in case of failure of transposing or partially transposing a Directive. We further proposed ourselves to analyze the case of Directive no. 2014/94/EU of the European Parliament and Council from 22 October 2014 on the deployment of alternative fuels infrastructure. The analysis shall refer to the scope of issuing the Community deed, but especially to the challenges recorded during the process of transposing Directive 2014/94/EU in Romania and the triggering of the infringement procedure against Romania. The article shall also compare the stage of transposing the Directive in other Member States. Last, but not least, we shall also make an analysis of the attributions of the Romanian Energy Regulatory Authority in domestic law.

Keywords: *obligation of transposing the directives, sanctions in case of failure to transpose/partial transposing, scope of the issuance of Directive 94/2014/EU, alternative fuels, transposing in Romania, infringement procedure, notification of the Court of Justice of the European Union, Romanian Energy Regulatory Authority, collaboration, distribution of electricity, natural gases.*

1. Introduction

In the first part, this study proposes an overview of “directive” - concept, especially in regard to the obligation of the Member States of the European Union to transpose the Community act. The first part of the study also addresses the sanctions that may be taken against a Member State of the European Union in case of partial transposition or non-transposition of a European directive.

The second part of the study is dedicated to the particular case of the Directive no. 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure through the difficult course of transposing this Community act in Romania. We have chosen this Community act as it is topical, namely the European-wide project to remove petroleum-based fuels and the transit to alternative fuels.

The study analyzes the stages of Directive no. 2014/94/EU from the point of view of the European institutions issuing the Community act.

An essential issue of the study is a comparative analysis of the transposition of the Directive by other Member States of the European Union. Romania and Malta are the last two countries to have fully transposed the Directive, under the threat of sanctions that could be applied by the Court of Justice of the European Union, as the final stage of the infringement procedure.

The study also analyzes the attributions of the Romanian Energy Regulatory Authority following the transposition process of the Directive, in the light of the status of this regulatory authority.

Last but not least, the study aimed to draw attention upon the “restrictions”, especially such of financial nature regarding on one hand, the necessary investments to be made in infrastructure following the transposition of the Directive in Romania and, on the other hand, the reluctance of the population to purchase alternative fuel vehicles.

2. Content

2.1. General considerations on the concept of the directive

2.1.1. Directive – binding act for Member States of the European Union

Each action undertaken by the EU is based on treaties - legally binding agreements signed by all EU countries setting out EU objectives, rules of operation of European institutions, decision-making procedures and relations between the European Union and its Member States.

Treaties are the starting point for EU law and are known in the European Union as “primary law”.

The legislative corpus deriving from the principles and objectives of the Treaties is known as

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“secondary legislation”. This includes regulations, directives, decisions, recommendations and opinions.

Directives require from Member States to achieve a certain result, without imposing the means by which they can do this. Member States must adopt measures incorporating directives into the national law (“transposition”) in order to achieve the objectives set by them. National authorities must notify the European Commission about such measures.

According to Article 288 of the Treaty on the Functioning of the European Union (TFEU)¹, the Directive is binding on each recipient Member State in regard to the outcome to be achieved, leaving the competence to national authorities concerning the form and means to achieve the result. Thus, it can be said that “*the directive imposes results and leaves to the recipients the competence in regard to the form and means to achieve the targeted results, within the established deadlines.*”²

In essence, the directive theoretically requires the intervention of the national authorities to produce legal effects in the domestic law of each recipient Member State. Deriving out of the Community decision-making process, the correctly published or notified directive creates an obligation on the receiving Member State to take the necessary measures for its effective application in the national legal order. The obligation derives directly from the requirement imposed by art. 288 TFEU.

It follows that the “normal” situation corresponds to the adoption by the competent national authorities of an act transposing the Community Directive.

2.1.2. Obligation to transpose directives

The transposition of the Directive is the operation by which the Member State receiving a Community Directive takes the necessary measures to implement such. The state has the choice of “form” (in terms of the legislative or regulatory technique of each state) and “means” (legal institutions likely to achieve the stated objective) and it is essential that such lead to the achievement of the result. The State may adopt laws or regulations, as may be required to repeal or amend internal provisions incompatible with the provisions of the Directive.

For a directive to enter into force at national level, EU countries must adopt a law to transpose such. This national measure must achieve the objectives set by the Directive. National authorities must communicate such measures to the European Commission.

The transposition must occur within the deadline set at the time of adopting the Directive (generally within two years).

2.1.3. Sanctions that can be taken in case of non-transposition/partial transposition of directives

In accordance with art. 17 para. (1) from the Treaty on European Union, the European Commission

has the scope to ensure the application of the Treaties by the States that have ratified them, the measures adopted by the institutions for that purpose, and also oversees the application of EU law under the control of the Court of Justice of the European Union.

If the concerned Member State fails to communicate measures fully transposing the provisions of the directives or fails to take action to remove the suspicion that EU legislation has been infringed, the Commission may initiate a formal infringement procedure. The procedure follows a series of stages provided for in the EU Treaties, each of which ends with an official decision³.

The “*infringement*” procedure is triggered by the European Commission against states that do not respect their community obligations.

The triggering thereof may be caused in three cases:

- a) Omission of notification of national normative acts transposing and implementing directives - Member States have the obligation to notify transposing legislation and implementing legislation;
- b) Non-compliance of national legislation with Community/EU requirements - this means that domestic legislation has to be in full compliance with Union requirements;
- c) Inappropriate application of Community/EU normative acts - Member States are also required to ensure the application of Community provisions.

This procedure involves several steps: from the notification about the failure to comply with EU directives, the submittal before the Court of Justice of the European Union (CJEU) and until a fine (lump sum or periodic penalty payment) is imposed upon the Member State.

Therefore, we shall briefly outline the stages of the procedure to explain the current situation of Romania (with reference to the specific case subject to analysis, transposition of Directive 2014/94/EU), what exactly the three infringement procedures relate to and, we shall also briefly present the situation which the state may reach, if the non-compliance with directives continues (CJEU notification by the European Commission).

In the first stage of commencing the procedure, the Commission draws up a “letter of formal notice” which it sends to the concerned State and in which are itemized the infringements of Community law. The letter means the formal opening of the infringement procedure.

The second step is the possibility for the Member State to defend itself. This stage is called “*Member State Observations*” and aims to protect the interests of that State. However, the State cannot rely on any current provision, practice or circumstance in domestic

¹ Ex-Article 249 (3) of the Treaty establishing the European Community (the Directive is binding on each Member State of destination with regard to the outcome to be achieved, leaving the national authorities competent in form and means).

² Augustin Fuerea, Handbook of the European Union, 6th reviewed and supplemented edition, Universul Juridic, Bucharest 2016, page 237;

³ https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_ro;

law to justify the failure to comply with the Community law.

The next step is the “*Reasoned Opinion*”, i.e. the last warning by the Commission prior to the referral to the CJEU, a warning issued in the absence of the observations of Member State or if they are considered unsatisfactory.

The “Member State reply” followed therefore to the reasoned opinion, meaning the measures taken by the State to comply with the Commission's opinion. The deadline for compliance is set by the latter, and if the State does not make the necessary changes, the Commission shall refer the case to the CJEU in order to start the contentious procedure.

If the Court resolves the case in favour of the Commission⁴, the state is bound to align the domestic national law to the European one. If State still fails to comply thereafter, then the Court is required to pay a lump sum or periodic penalty payment until the obligations laid down in the first judgment have been complied with. Penalties are proposed by the European Commission, but the decision on their amount pertains to the CJEU. It follows that, in the specific case of Member States which have not implemented the directives within the period agreed by the Council of the European Union and the European Parliament, the Commission may ask the Court to penalize the Member State in financial view, when it first adopts the decision.

This possibility, introduced by the Treaty of Lisbon, is provided in Article 260 (3) TFEU. If, despite the first judgment, the Member State fails to take the necessary measures, the Commission may initiate a new infringement procedure pursuant to Article 260 TFEU by sending a single written warning before notifying the Court again.

If it does indeed refer the matter to the Court again, the Commission may propose to it to impose financial penalties on the Member State, depending on the duration and gravity of the infringement and the size of the Member State. There are two elements:

- a lump sum, determined on basis of the time elapsing since the ruling of the first decision;
- and a daily fine, calculated as of the date of the second decision, until the Member State ceases the infringement.

2.2. Directive no. 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure

2.2.1. Scope of the occurrence of Directive no. 2014/94/EU

The European Commission has announced at the level of 2013 an ambitious package of measures to create alternative fuel stations across Europe with common design and usage standards.

The package was based on analyses of each type of fuel:

- **Electricity:** the situation of electricity charging points varies considerably across the EU. Leaders in this area are Germany, France, the Netherlands, Spain and the United Kingdom. The Commission's legislative proposal provides for the imposition in each Member State of a minimum number of recharge points equipped with a common socket outlet. The objective was to have a sufficient number of loading points so that car manufacturers could launch a mass production at reasonable prices. The concept of “common socket outlet” at EU level has been established as an essential element for the widespread adoption of this fuel.

- **Hydrogen:** Germany, Italy and Denmark already have a significant number of hydrogen refuelling stations, although some are not accessible to the public. Common standards are still required for certain components, such as fuel hoses. Under the proposed measures, existing power stations will be connected to form a network with common standards, ensuring the mobility of hydrogen vehicles. This applies to the 14 Member States that currently have a hydrogen network.

- **Biofuels:** already represent almost 5% of the market. They are used combined with traditional fuels and do not require any specific infrastructure. A major challenge will be to ensure their sustainability.

- **Liquefied (LNG) and compressed (CNG) natural gas:** LNG is used for water transport, both sea and river. LNG infrastructure for the supply of vessels is at a very early stage, with only Sweden having bunkering (fuel supply to a ship) with small-scale LNG for seagoing vessels, with plans to build such facilities in several other Member States. The European Commission has proposed that, by 2020 and 2025, LNG refuelling stations should be installed in all 139 maritime and river ports that are part of the trans-European transport network. It is not about large gas terminals, but fixed or mobile refuelling stations. All major EU ports are targeted. LNG: Liquefied natural gas is also used by trucks, but there are only 38 filling stations in the EU. The Commission has proposed that by 2020 refuelling stations should be installed every 400 km on the roads that are part of the trans-European transport network.

- CNG: Compressed natural gas is mainly used by cars. Currently, one million vehicles use this fuel, which represents 0.5% of the fleet; the sector aims to increase this figure by 2020. The proposal of the Commission will ensure that publicly available refuelling points with common standards at intervals of no more than 150 km are available throughout Europe.

- **LPG:** Liquefied Petroleum Gas. No action for LPG is foreseen, with core infrastructure already in place.

⁴ By the CJUE Decision from 13 February 2014 in Case C 530/11, the United Kingdom of Great Britain and Northern Ireland was convicted for the non-transposing of a directive in an action of assessing the failure to fulfil obligations under Article 258 TFEU Committee

The European Strategy for Alternative Fuels and Appropriate Infrastructure has been materialized into the following documents:

1. European Commission Communication “Europe 2020: A European Strategy for a Smart, Green and Inclusive Growth Favourable to Inclusion”⁵ having as scopes:
 - improving competitiveness
 - improving energy security
 - more efficient use of resources and energy.
2. **Commission White Paper for the period 2011-2020**⁶ with the aim of reducing oil dependence of transport by:
 - a multitude of policy initiatives, including the drafting of a sustainable alternative fuels strategy, as well as an adequate infrastructure
 - a reduction by 60% until 2050 versus the values from 1990 for greenhouse gas emissions from transport
3. **Communication from the Commission from 2013** entitled “Clean energy for transport: a European strategy on alternative fuels”:

The main alternative fuels that have the potential for long-term substitution of oil:

- electricity
- hydrogen
- biofuels
- natural gas and liquefied petroleum gas (LPG)

There is a possibility to use such simultaneously and combined, for example through dual fuel technology systems.

In the *Official Journal of the European Union*, series L 307⁷, was published DIRECTIVE 2014/94/EU OF THE EUROPEAN PARLIAMENT AND COUNCIL on the deployment of alternative fuels infrastructure.

The purpose of the adoption of the Directive was to establish a common framework of measures for the installation of alternative fuels infrastructure in the Union in order to minimize oil dependency and reduce the impact of transport on the environment. The directive also set minimum requirements for the creation of alternative fuel infrastructure, including refuelling points for electric vehicles and natural gas refuelling points (LNG and CNG) and hydrogen, to be implemented through national policy frameworks of Member States, as well as common technical specifications for such recharging and refuelling points, as well as user information requirements. The Directive entered into force on the twentieth day following its publication in the Official Journal of the European Union (28 October 2014), i.e. until 18 November 2016.

Thus, the emergence of the Directive has made it mandatory for each Member State to adopt by 18 November 2016 a national market policy framework for the development of alternative fuels in the transport

sector and the installation of the relevant infrastructure with the ultimate goal:

- Supply of electricity for transport
- Hydrogen supply for road transport especially for networks
- Providing natural gas for transport
- Informing users

The installation of alternative fuels infrastructure within urban agglomerations has the following levels to achieve:

1. Electricity for transports:

- a suitable number of publicly accessible recharging points shall be installed by 31 December 2020 to ensure that electric vehicles can circulate at least in urban/suburban agglomerations and other densely populated areas and, where appropriate, within networks established by the Member States

- the number of recharging points is determined by taking into account, *inter alia*, the estimated number of electric vehicles by the end of 2020

- recharging points for electric vehicles installed or renewed as of 18 November 2017 comply at least with the technical specifications set out in the Appendix to the Directive and with the specific safety requirements applicable at national level.

2. Natural gas for transports:

- a suitable number of publicly accessible GNC refuelling points is installed by 31 December 2020 to ensure that CNG operated vehicles can drive in urban/suburban agglomerations and other densely populated areas

- Developing standards, including detailed technical specifications, for refuelling points for LNG and CNG vehicles

- CNC refuelling points for vehicles installed or renewed as of 18 November 2017 comply with the technical specifications set out in the Appendix to the Directive.

- an appropriate number of LNG refuelling points is installed in inland ports by 31 December 2030 to allow LNG-operated ships to circulate throughout the TEN-T central network (the Trans-European Transport Network).

2.2.2. Difficulties encountered in transposing the Directive in Romania. Adoption of Law no. 34/2017 insufficient for the European Commission; Transmitting Reasoned Opinion; Referral to the European Court of Justice; Comparative analysis to other EU Member States

In order to transpose the Directive in Romania, a working group was established, the activity of which started in April 2015 with the aim of having a transposition act by the end of 2015.

However, almost two years after the Directive was issued and numerous warnings from the European Commission in the Official Journal of Romania, Part I,

⁵ <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A52010DC2020>, Bruxelles, 3.3.2010;

⁶ https://www.untrr.ro/oldcontent/content2/WP-Roadmap-to-a-Single-European-Transport-Area-2011_ro.pdf

⁷ <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=OJ:L:2014:307:TOC>

no. 214/29.03.2017 was published Law no. 34/2017 on the deployment of alternative fuels infrastructure.

The Law regulates measures destined to install the alternative fuel infrastructure, in order to reduce to a minimum the oil dependence and mitigate the impact of transport on the environment.

To achieve this goal, the Law set minimum requirements for the creation of the alternative fuel infrastructure, including refuelling points for electric vehicles and refuelling points for compressed natural gas, liquefied natural gas and hydrogen, to be implemented through national policy frameworks and common technical specifications for such recharging and refuelling points, as well as user information requirements.

The Law had a deadline of 60 days as of the date of its publication in the Official Journal of Romania, Part I, and the Ministry of Energy, as the competent regulatory authority, informed the European Commission in this view.

On a first analysis of the text of the normative act, it was easy to see that it was a true copy of the Directive's provisions without application norms and without presenting to the Commission a strategy to be followed in order to fulfil the purpose of Directive 2014/94/EU.

This issue was also raised by the Commission, which initiated the infringement action against Romania for the complete non-transposition of the Directive, according to the purpose established by the Community act.

Thus, although on March 30, 2017, the measure transposing the Directive was notified to the Commission, and the Conformity Table was remitted on 12 April 2017, the European institution initiated the infringement procedure in a non-contentious phase by sending a Letter of late payment.

Therefore, on 13 July 2017, the Commission summoned Romania, along with 6 other Member States, to fully transpose the rules on the deployment of the alternative fuel infrastructure.

The Commission sent a reasoned opinion to Greece, Ireland, Malta, Romania, Slovenia and the UK, asking them to notify their national policy framework based on the EU rules on the deployment of alternative fuels infrastructure (Directive 2E).

The national policy framework is the main tool foreseen by the Directive to ensure the creation of sufficient infrastructures for alternative fuels, including recharging points for electric vehicles and gas and hydrogen refuelling points, and to avoid fragmentation of the internal market. Accelerating the deployment of alternative fuel infrastructure is indeed essential in order to give all Europeans green and competitive mobility, as set out by the Commission in the "Europe

on the move" package adopted in May 2017. These seven Member States had at their disposal two months to fulfil their obligations under the Directive; otherwise, the Commission could decide to refer the case to the EU Court of Justice. Furthermore, the Commission also decided to send a letter of formal notice to Sweden, which notified a national policy framework not comprising the minimum elements required by the Directive⁸.

On 4 October 2017, the European Commission informed that Bulgaria, Denmark, Estonia, France, Lithuania, Malta, Poland, Romania and Sweden have to fully transpose EU rules on the installation of alternative fuels infrastructure, according to a communiqué of the EC⁹.

The main objective of the Directive, to be transposed by 18 November 2016, was to establish a common framework for the large-scale deployment of alternative fuels infrastructure in Europe. The nine Member States had two months to notify the Commission of the concerned measures, otherwise the Commission may decide to refer the case to the EU Court of Justice.

On 25 January 2018, the European Commission decided to refer Malta and Romania to the EU Court of Justice for failing to fulfil the obligation of notifying about the national policy frameworks under Directive 2014/94/EU on the deployment of alternative fuel infrastructure¹⁰, whereas the other 7 states manages to evade the threat of being sanctioned by the CJEU.

Initially, Member States (including Romania and Malta) were requested to notify the Commission about the national policy frameworks by 18 November 2016. Until the date of the referral to the CJEU, Malta and Romania have not answered to this request, although they received from the Commission a letter of formal notice and a reasoned opinion on 15 February and 13 July 2017 respectively.

Accelerating the deployment of infrastructure for alternative fuels is essential to give all Europeans green and competitive mobility, as announced by the Commission in the "Clean Mobility Package" adopted in November 2017¹¹.

2.2.3. Competences of the Romanian Energy Regulatory Authority after the transposition of the Directive

By the entry into force of Law no. 160/2012¹² for the approval of Emergency Ordinance of the Government no. 33/2007 on the organization and functioning of the Romanian Energy Regulatory Authority, its statute has been substantially reconfigured, ANRE becoming an administrative authority with legal status, under parliamentary control, which is not part of the executive power and has no right of legislative initiative.

⁸ http://europa.eu/rapid/press-release_MEMO-17-1935_ro.htm

⁹ http://europa.eu/rapid/press-release_MEMO-17-3494_ro.htm

¹⁰ http://europa.eu/rapid/press-release_IP-18-358_RO.htm

¹¹ https://ec.europa.eu/transport/modes/road/news/2017-11-08-driving-clean-mobility_en

¹² Published in the Official Journal of Romania, Part I, no. 685/3 October 2012

As a peremptory argument in this respect are also the provisions of Article 35 from the Directive of the European Parliament and of the Council concerning common rules for the internal market in electricity and repealing Directive 54/2003/EC, art. 39 of Directive 73/2009/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas and repealing Directive 55/2003/EC, which consecrates the thesis according to which *“Member States shall guarantee the independence of the regulatory authorities and ensure that they impartially and transparently exercise their powers. For such purpose, the Member State shall ensure that, when carrying out their regulatory tasks under this Directive and the relevant legislation, the regulatory authorities: are legally distinct and functionally independent from any other public or private entity”*.

By virtue of the legal provisions regarding the relations with third parties, mentioned in art. 11 paragraph (1) of the aforementioned normative act, regarding the responsibilities of ANRE for *“collaboration with the ministries”*, without the Authority acting or being permitted to act as initiator or co-initiator of the draft law on the transposition of the Directive 2014/94/EC, the indirect contribution of the regulatory body consisted of the following issues:

- According to current regulations **in the field of electricity**, operators of recharging points are free to purchase electricity from any electricity supplier in the European Union if it is interested in concluding contracts for the supply of electricity with operators of loading points on the territory of Romania and it either holds a license for the supply activity granted by ANRE, or it has acted or acts in order to be confirmed by ANRE the right to supply electricity in Romania under a license or an equivalent right granted by the state from the European Union where it has its registered office, according to art. 10 paragraph (5) of the Regulation for Licensing and Authorizations in the Electric Power Sector, approved by ANRE President Order no. 12 / 2015¹³;

- The relation of electricity distribution/transmission operators to economic operators that install and/or operate publicly available recharging points fall within the type of relations covered by the regulations regarding the access to the public electricity networks and the provision of the service distribution of electricity. The principles laid down in Art. 25 and art. 44 paragraph (2) of Law no. 123/2012 on Electricity and Natural Gas, as subsequently amended and supplemented¹⁴, were

expressed in the following regulations relevant for this analysis:

- Regulation on connection of users to public electricity networks, approved by ANRE President Order no. 59/2013, with subsequent amendments and supplementations¹⁵;

- The general conditions attached to the license for the provision of the electricity distribution service by the economic operators concessionaries of the power distribution service and the General Conditions related to the license for the provision of the electricity distribution service by operators who are not concessionaries of the distribution service electricity, both of which are approved by ANRE President Order no. 73 / 2014¹⁶;

- In the field of natural gas, any economic operator may acquire natural gas from a license holder for carrying out natural gas supply activity, Romanian or foreign legal entity. Thus, relevant for the transposition of Directive 2014/94/EC, in accordance with the provisions of Article 7 letter a) of the Regulation on the granting of licenses for the establishment and licensing of natural gas, as subsequently amended and supplemented, approved by the Order of the ANRE President no. 34/2013¹⁷, ANRE issues licenses for natural gas, biogas/biomethane, liquefied natural gas (LNG), compressed natural gas for vehicles (CNGV) and, according to art. 7 pt. (V) of the same regulation, ANRE issues licenses for the operation of the LNG terminal operation. It is also worth mentioning that, according to the provisions of art. 6 lit. (f) and (g) of the Regulation, it is necessary to have establishment permits for LNG and CNGV facilities.

- According to the general principles, the connection of LNG and CNGV facilities to the natural gas transmission system, to the upstream pipelines or to the distribution systems shall be carried out in a regulated regime in accordance with the provisions of Law no. 123/2012, respectively of Government Decision no. 1043/2004 approving the Regulation on Access to the National Gas Transmission System and the Regulation on access to upstream pipelines, as subsequently amended and supplemented¹⁸;

- Regarding the general regulatory framework for LNG and CNGV, it is established by the LNG Technical Code, approved by ANRE President Order no. 109/2013 and the Technical Code for compressed natural gas for vehicles, approved by the ANRE President's Decision no. ;

- Regarding hydrogen, ANRE does not have attributions for this TP.

¹³ Published in the Official Journal of Romania, part I, no. 180/17 March 2015

¹⁴ Published in the Official Journal of Romania Part I, no. 485/16 July 2012;

¹⁵ Published in the Official Journal of Romania Part I, no. 517/19 August 2013;

¹⁶ Published in the Official Journal of Romania Part I, no. 599/12 August 2014;

¹⁷ Published in the Official Journal of Romania Part I, no. 427/15 July 2013;

¹⁸ Published in the Official Journal of Romania, part I, no. 692/2 August 2004; currently repealed by Government Decision no. 326 of 10 May 2018 on the abrogation of Government Decision no. 1043/2004 on the approval of the Regulation on Access to the National Gas Transmission System, the Regulation on access to natural gas distribution systems and the Regulation on access to upstream pipelines, published in the Official Journal of Romania, part I no. 412 from 15 May 2018.

From the analysis of these issues, it can be noticed that the Regulatory Authority has no legislative initiative, but only technical and regulatory support after the transposition of Directive 2014/94 / EC.

3. Conclusions

The EU has clearly outlined a European vision and strategy for alternative fuels and appropriate infrastructure.

With regard to the alternative fuels infrastructure was adopted Directive 2014/94/EU. The transposition deadline of the Directive was 18 November 2016, but Romania reached the stage of referral to the Court of Justice of the European Union for not fully transposing the Community act.

Although initially the Romanian authorities believed that a Transposition Law was sufficient enough to comply with the provisions of the Directive, the European institutions took a different view, initiating the infringement procedure, which came to the notice of the CJEU.

Faced with this reality, the Romanian authorities have stepped up cooperation to speed up the development of a *Strategy on the National Policy Framework for the Development of the Alternative Fuels Market*.

Thus have been outlined the following steps:

- Establishing the current market situation in relation to (a) alternative fuel vehicles and (b) installed infrastructure;
- Inventory of incidental national legislation and relevant strategic and programmatic documents;
- Establishing criteria for analyzing future market development;
- Analysis of future market development;
- Establishing the targets set by the Directive;
- Establishing the necessary measures to achieve the targets set by the Directive;
- Consultation of relevant players, including producers' associations, industry etc.

Almost one year and a half after the deadline for transposition, including after the CJEU has been

notified of the violation of Art. 258 TFEU, on 7 June 2018, the Court ordered the case to be closed, with the Romanian authorities succeeding in convincing the Commission that they have developed a strategy on a credible and feasible national policy framework¹⁹, in accordance with the scope targeted by Directive 2014/94/CE. The aim of the Strategy is to reduce greenhouse gas emissions in transport by promoting alternative fuel infrastructure, including refuelling points for electric vehicles and natural gas refuelling points (LNG and CNG) and hydrogen, and promoting vehicles clean and energy-efficient road transport.

Although Romania escaped the threat of a CJEU decision, the question remains whether Romania's infrastructure is ready to implement the Strategy, which at least at the theoretical level seems ambitious. Obviously the answer is negative, unfortunately, but what is to be done? When investments is needed, who will do such? The state or private sector? Is the state able to stimulate private sector investments in creating the infrastructure necessary to implement the Strategy outlined following the transposition of Directive no. 2014/94/EC?

Furthermore, the question arises, which is perhaps the most difficult one, whether at a mentality level we are able to take the step towards modernization and accept the evolution?

"Clean" fuels, as they are called in the current language, have three main impediments: the high cost of vehicles, low consumer acceptance, and the lack of recharging and refuelling stations. It's a vicious circle. No refuelling stations are being built because there are not enough vehicles. Vehicles do not sell at competitive prices, because there is no sufficient demand. Consumers do not buy vehicles, because they have high prices and there are no stations.

By modifying national regulations to encourage the involvement and investment of the private sector, Romania, as other Member States, should be able to implement these changes without necessarily involving public spending by developing projects to benefit of aid from the EU.

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- Augustin Fuerea, Handbook of the European Union, 6th reviewed and supplemented edition, Universul Juridic, Bucharest, 2016
- Augustin Fuerea, EU Law – Principles, Actions, Freedoms, Universul Juridic, Bucharest, 2016

¹⁹ Approved by GD no. 87 of 7 March 2018 for the approval of the Strategy on the National Policy Framework for the development of the market in regard to alternative fuels in the transport sector and for the deployment of the relevant infrastructure in Romania and the establishment of the Interministerial Coordination Council for the Development of the Market for Alternative Fuels published in the Official Journal of Romania no. 225 / 13 March 2018.