

New Government Emergency Ordinance Regulating the Romanian Energy Market

September 2022

On 1 September, 2022, the Romanian Government enacted a new government emergency ordinance ("GEO 119/2022") regulating the Romanian energy market and which further amends Government Emergency Ordinance No. 27/2022 on the measures applicable to final consumers of electricity and natural gas for the period 1 April 2022 to 31 March 2023 ("GEO 27/2022").

The most important changes and additions brought by GEO 119/2022 are:

1. Price caps in the electricity invoices to the end-consumers

The price caps applicable to final consumers remain at the same levels as established by GEO 27/2022, although certain amendments have been made as follows:

(a) For the electricity sector:

- (i) maximum 0.68 lei/kWh price cap for household electricity customers whose average monthly consumption in 2021 is between 0 -100 kWh inclusively;
- (ii) maximum 0.80 lei/kWh price cap for household customers whose average monthly consumption in 2021 was between 100.01-300 kWh, for a monthly consumption of maximum 255 kWh;
- (iii) 1 RON/kWh price cap previously applied to all non-household electricity consumers, applies now only for:
 - non-household consumers such as hospitals, entities active in education or social services for 100% of the consumption;
 - other public entities, small and medium enterprises and companies operating in the food sector for 85% of the consumption.

The maximum settlement cap that shall be used for the compensation from the state budget of electricity suppliers that delivery electricity to the final consumers is RON 1,300 (approximately EUR 265).

(b) For the natural gas sector:

- maximum 0.31 lei/kWh price cap for household customers;
- 0.37 RON/kWh price cap remains applicable for all non-household gas consumers that have an annual consumption below 50,000 kWh remains applicable.

The applicability of the price caps is extended until 31 August 2023 as opposed to 1 April 2023 per the previous version of GEO 27/2022.

2. Obligations imposed on gas suppliers, producers of thermal energy in cogeneration plants and thermal power plants for consumption by the population, gas producers carrying out onshore and/or offshore extraction activities as well as natural gas sales activities, electricity producers in the Romanian state's portfolio as well as electricity producers other than those in the Romanian state's portfolio:

- (a) The natural gas suppliers/heat producers in cogeneration plants and in heat plants for domestic consumption as direct consumers of natural gas producers must build up during the period from 1 April 2022 to 31 October 2023 a minimum stock of natural gas (at least 30% of the quantity of natural gas necessary for the consumption of final consumers in its own portfolio/own consumption) in underground gas storage facilities to ensure continuity and security of supply to their final consumers/ensure their own consumption and affordability;
- (b) Capped sale price at RON 150/MWh during the period from 1 September 2022 to 31 August 2023 for natural gas producers carrying out both onshore and/or offshore extraction activities, and natural gas sales activities when they sell the domestic production:
 - (i) to suppliers of heat producers or directly to heat producers only for the quantity of natural gas used to produce heat in cogeneration power plants and in heat plants for domestic consumption;
 - (ii) to suppliers of household consumers, in order to meet the consumption needs of household consumers from current production and from underground gas storage facilities.
- (c) Capped transfer price at RON 100/MWh during the period from 1 September 2022 to 31 October 2023 for natural gas producers carrying out both onshore and/or offshore extraction activities and electricity generation activities using natural gas;
- (d) Maximum 5 working days to respond with partial or total sales offers to requests for the purchase of electricity/natural gas for technological consumption made by the transmission system operator and distribution system operators and concession operators, individually or in aggregate, directly or through centralised market platforms:
 - by the energy producers in which the Romanian state holds full or majority stakes and the holders of petroleum agreements producing electricity;
 - by the holders of onshore and offshore petroleum agreements, producers of natural gas

The rest of the electricity producers may offer the electricity in the same conditions.

3. Contribution to the Energy Transition Fund

This contribution to the Energy Transition Fund is levied on electricity producers as well as electricity and gas traders, suppliers performing trading activities and aggregators for the period 1 September-31 August 2023.

The contribution to the Energy Transition Fund is determined as follows:

- (a) **for electricity producers:** contribution to the Energy Transition Fund= the total delivered quantities multiplied by the difference between the monthly sale price and reference price (RON 450);
- (b) **for electricity and gas traders, suppliers performing trading activities and aggregators:** contribution to the Energy Transition Fund = the total delivered quantities multiplied by the difference between the average monthly sale price and the average monthly acquisition price and multiplied by 1,02.
- (c) **for export or intra-community electricity sales**
 contribution to the Energy Transition Fund = the total delivered quantities multiplied by the difference between the day ahead market price in the day before the transaction and the acquisition price of the electricity and multiplied by 100%

The contribution to the Energy Transition Fund does not apply to electricity generation facilities commissioned after 1 September 2022 and to those companies providing public heat services that produce electricity through cogeneration.

4. Obligations of non-resident entities licensed in Romania and carrying out transactions on the Romanian energy market

As of 1 September 2022, non-resident entities carrying out transactions on the energy market in Romania are required each month to calculate, declare and pay the contribution to the Energy Transition Fund directly or to appoint a representative to fulfil their obligations

The representative must be established in Romania and is jointly liable with the non-resident entities licensed in Romania for the declaration and payment of the contribution to the Energy Transition Fund.

The procedure and conditions for registration of such representative shall be approved by order of the President of the Tax Authority within ten (10) days as of the date of entry into force of GEO 119/2022.

The non-resident entities carrying out transactions on the energy market in Romania must submit a cash collateral or a bank guarantee in the amount of EUR 1,000,000.

The non-resident entities are required to submit to the Tax Authority an affidavit on the method of payment of the contribution to the Energy Transition Fund. The model of the declaration and the deadline for submission shall be established order of the President of the Tax Authority.

Failure to comply with the above obligations can result in the suspension of the right of the non-resident entities to operate on the Romanian market.

5. Other information regarding contribution payment, settlement, bilateral agreements, fines

- (i) The Energy Transition Fund contribution shall be calculated, declared and paid by the seller on a monthly basis up to and including the 25th of the month following the month for which it is due;
- (ii) The amounts representing the countervalue of the contribution to the Energy Transition Fund must be paid into a separate cash account in RON opened with the State Treasury units of the competent central tax authorities, coded with the tax identification code of the payer;
- (iii) Bilateral contracts concluded on the wholesale market through direct negotiation must be reported to ANRE within two (2) working days from the date of conclusion;
- (iv) As of 1 September 2022, electricity producers are required to directly sell the available electricity with delivery until 31 December 2022, only to those electricity suppliers with final customers in their portfolio (exclusively for their consumption), to the electricity distributors, to the national system operator, or to consumers who have benefited from the provisions of Government Emergency Ordinance no. 81/2019;
- (v) The maximum value of the weighted average electricity price at which ANRE calculates the amounts to be settled from the state budget for electricity suppliers is 1,300 lei/MWh.
- (vi) Successive sales of electricity or natural gas with the purpose of artificially inflating energy prices, is sanctionable by a fine of 5% of the annual turnover.

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