

CMS | Romania takes further steps in response to the energy market prices



On 1 September 2022, the Romanian government published Emergency Ordinance no 119/2022 (GEO 119) in the Official Gazette, which amends and supplements Government Emergency Ordinance no 27/2022 on measures that will apply to the electricity and natural gas markets between 1 April 2022 and 31 March 2023. GEO 119 introduces expected legal provisions, but other more questionable elements of the ordinance could generate dysfunction in the Romanian energy sector, both in the domestic market and also pertaining to the European strategy.

Details on the ordinance can be found here: [Romania extends measures against high electricity and gas prices \(cms-lawnow.com\)](https://cms-lawnow.com)

As background, Romania's price ceilings scheme and compensation for the difference between the capped and wholesale price that were introduced in previous regulations did not encourage energy savings as expected and has proved to be a burden to the state budget. According to the market, the government has not yet paid compensation to suppliers. Because many suppliers used bank loans to finance the purchase of high-priced energy, suppliers are now saddled with cash-flow problems and indebtedness. Lenders are now exhibiting a greater degree of caution regarding investments in the energy sector.

GEO 119 introduced legal provisions and reform to resolve these issues. But experts fear that that this ordinance may not be enough to bring order to this sector. Given the rapid rise in energy prices and the conflict between Russia and EU over natural gas, Romanian market participants state that GEO 119 lacks sufficient clarity and could have a negative impact on the activity of suppliers, traders and producers, which could, in the end, jeopardise the security of Romania's energy supply for consumers.

GEO 119 requires that electricity producers conclude bilateral contracts negotiated directly only with suppliers of final customers, network operators and a small number of consumers, for the quantities necessary to meet the portfolio needs of each supplier. Also, the formula in the ordinance that determines the solidarity contribution for suppliers and traders establishes that charges are based on the difference between the weighted average selling price and the reference price. The reference price is the purchase price of electricity and natural gas, to which a 2% gross margin is added. For border transactions, this 2% margin does not cover the costs that will determine the stoppage of imports.

Contrary to Directive (EU) 2019/944 on common rules for the internal electricity market, GEO 119 allows exports, but the state collects 100% of the profits by establishing a contribution to the Energy Transition Fund. This translates into no future interest for electricity exports.

The Romanian Energy Regulator (ANRE) reacted immediately to the ordinance with public statements drawing attention to the fact that the new amendments might violate EU legislation.

The following are details of the most important amendments included in GEO 119:

- For the period 1 September 2022 to 31 August 2023, the final price invoiced by electricity suppliers will remain at the same level, but with these amendments:
- Household customers whose average monthly consumption achieved at the place of consumption in 2021 was between 0 and 100 kWh (inclusively) will only pay a maximum of RON 0.68/kWh, VAT included;
- Household customers whose average monthly electricity consumption at the place of consumption in 2021 was between 100.01 kWh and 300 kWh will continue to benefit from a capped price of RON 0.8 /kWh, but only up to a monthly consumption of 255 kWh;
- Public or private hospitals, private or public schools, nurseries and social service providers will pay a maximum of RON 1/kWh for their total consumption.
- For Small and Medium Enterprises, companies in the food industry and public institutions other than those mentioned above, the ceiling will be RON 1/kWh, but only for 85% of the average monthly consumption at the place of consumption in 2021. Entities with no consumption history in 2021 will benefit from the cap for 85% of monthly consumption. Other non-household consumers will no longer benefit from the cap.
- For all electricity customers who do not benefit from caps, the final invoiced price is set by each supplier as the sum of the following components: the purchase component (under the same conditions as now) and the supply component (73 lei/MWh), where appropriate.
- For the period 1 September 2022 to 31 August 2023, natural gas and heat producers will maintain the current ceilings of RON 0.31 /kWh for households and RON 0.37/kWh for non-households whose annual consumption of natural gas at the place of consumption in 2021 is 50,000 MWh or less.
- For all gas customers who do not benefit from caps, the final invoiced price is set by each supplier as the sum of the following components: the purchase component (under the same conditions as now) and the supply component (12 lei/MWh), where appropriate.
- For the period from 1 September 2022 to 31 October 2023, the transfer price of natural gas used for electricity generation will not exceed RON 100/MWh for natural gas producers carrying out both onshore and/or offshore extraction activities, irrespective of the date of commencement of such activities, and for electricity generation activities using natural gas.
- For the period from 1 September 2022 to 31 August 2023, onshore and offshore gas producers are obliged to sell gas sales volumes against a predefined price to secure household consumption or for the production of thermal energy. The selling price is set at RON 150/MWh for the volumes designed to secure household consumption needs or for the storage obligation that has been reintroduced for gas suppliers to secure 30% of consumption needs. The gas-selling price is set at RON 150/MWh for gas volumes sold by onshore and offshore producers to thermal energy producers or their suppliers for the gas quantities required for household consumption.
- One of the most important changes brought by the GEO 119 is a contribution to the Energy Transition Fund (ETC Contribution) to be paid by electricity generators, aggregated electricity generating entities, traders, suppliers

carrying out trading activities and aggregators trading quantities of electricity and/or natural gas on the wholesale market. Generating capacities commissioned after 1 September 2022, as well as companies providing thermal utilities generating electricity through cogeneration, are not subject to payment of this contribution.

→ For any type of electricity sales transactions for export or Intra-Community delivery from the territory of Romania, for the companies subject to the contribution mentioned above, the ETC Contribution will be determined as follows:

→ $ETC\ Contribution = (Energy\ trading\ price\ on\ the\ DAM\ on\ the\ day\ before\ the\ transaction - purchase\ price) \times$
 $quantity\ of\ energy\ traded\ for\ export\ or\ delivered\ intra-Community \times 100\%$.

→ The ETC Contribution will be calculated, declared and paid by the seller on a monthly basis up to and including the 25th of the month following the month when it is due.

→ The ETC Contribution for electricity producers is calculated as follows:

→ $ETC\ Contribution = (monthly\ sale\ price - RON\ 450/MWh) \times electricity\ physical\ monthly\ quantity\ delivered.$

→ The contribution to ETC for aggregated electricity generating entities, traders, suppliers carrying out trading activities and aggregators trading quantities of electricity and/or natural gas on the wholesale market will be calculated as follows:

→ $ETC\ Contribution = (Average\ monthly\ sale\ price - Average\ monthly\ purchase\ price \times 1,02) \times monthly$
 $quantity\ delivered.$

→ The ETC Contribution is determined when the trading price is higher than the reference price.

→ The successive sale of quantities of electricity or natural gas by traders and/or suppliers with trading activities, with the clear purpose of increasing the price, will result in sanctions from ANRE of fines of 5% of the turnover.

→ For the purpose of paying the ETC Contribution, starting 1 September 2022 non-resident persons who carry out transactions on the energy market in Romania are obliged to calculate, declare and pay the solidarity contribution directly or to appoint a representative for the fulfilment of their obligations under the GEO 119. Also, they are obliged to provide a guarantee in the form of a bank letter of guarantee or cash collateral in the amount of EUR 1 million or the equivalent in RON. Failure to comply with these provisions will result in the suspension of the right to operate in the Romanian market.

→ 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.

→ Through bilateral contracts negotiated directly from 1 September 2022, electricity producers are obliged to sell directly available electricity with delivery until 31 December 2022 only to electricity suppliers with final customers in their portfolio designed exclusively for their consumption, to electricity distribution operators, to Transelectrica, and to large industrial consumers benefiting from ordinance GEO 81/2019.

→ The obligation of all participants in the wholesale natural gas market (except producers with more than 3 TWh annual production) to sell a quota of the natural gas contracted/delivered in a certain year on centralised markets has been extended until 31 December 2024.

→ After the suspension period ends on 31 December 2022, the following obligations provided by the Energy law at art. 177, para 316 and 317, respectively will be extended until 31 December 2024: ((a) the obligation of the gas producers with more than 3 TWh annual production have to put on offer on centralised markets the sale of a certain quota and (b) the obligation of all the participants in the wholesale natural gas market, to the extent that they contract the purchase of natural gas on the wholesale market, in a calendar year, are obliged to offer annually, as a buyer, in the calendar year in which they purchase natural gas, applications for the purchase of natural gas on the centralised markets, in a transparent, public and non-discriminatory manner, in accordance with the regulations issued by ANRE.)

→ It should be noted that the quantities related to the fulfilment of the obligations mentioned above (i.e. the obligation of the gas producers, including producers with more than 3 TWh annual production, to sell a certain quota on the centralised market) must be sold in accordance with the provisions of points 1.4 and 1.5 above.

Romania is not singular in adopting measures to protect consumers ahead of the winter season. In recent statements on energy, EC President Ursula von der Leyen mentioned five immediate measures that Europe is acting upon to overcome the current energy crisis:

- To demand reduction/ smart savings of electricity;
- To cap revenues of companies that are producing electricity with low costs;
- To provide a solidarity contribution for fossil fuel companies;
- To facilitate the liquidity support by EU member states for energy companies;
- To cap prices on Russian gas.

Moreover, on September 14, during the State of the Union speech, the Commission's plan for reforming the energy market revealed the steps forward: reduction of the energy consumption, ceiling the profits of energy companies, reference value of the natural gas (TFF) to be adapted to the new developments, updated regulations to ease the liquidity issues of the energy companies by amending the rules on collateral - and by taking measures to limit intra-day price volatility, temporary state aid framework to allow for the provision of state guarantees.

In this context, GEO 119 possesses several elements that must be addressed in order for Romania to comply with the general European effort to overcome the current energy distress. The new regulation must also be assessed from the perspective of the Extraordinary Transport, Telecommunications and Energy Council (Energy) meeting held on September 9 where discussions were focused on extended caps on gas prices, provision of emergency funds for energy companies facing increasing liquidity requirements and also on cutting excess profits from wind, nuclear and coal generation. A "solidarity contribution" to be paid by Energy companies using fossil fuels is also considered.

For more information on GEO 119 and how Romania's response to the current energy crisis could affect your business, contact your CMS client partner or these local CMS experts: [Varinia Radu](#), [Ramona Dulamea](#) and [Raluca Diaconeasa](#).