

2 September 2022

Accelerated amendments introducing a solidarity tax in the energy sector and other notable changes

On 1st September 2022 the Government approved a series of amendments to Emergency Government Ordinance no. 27/2022 regarding the measures applicable to final customers on the electricity and natural gas markets between 1 April 2022 - 31 March 2023 ("EGO 27/2022").

The amendments were passed and swiftly published in the Official Gazette no. 864/2022 on the same day as Emergency Government Ordinance no. 119/2022, which shall be in place until 31 August 2023 (EGO 119/2022). These amendments were introduced in an unexpected rapid process and are prone to draw criticism from the actors involved, considering the impact it could have on the market.

A. Introduction of a solidarity tax

- One of the key novelties introduced refers to a *solidarity tax* which is applicable starting with 1 September 2022 for the period when EGO 119/2022 will be in place. The solidarity tax will take the form of a contribution to the Energy Transition Fund, a new fund operated by the Ministry of Finance, and applies to the following market participants: (i) producers of electricity; (ii) aggregated entities of electricity production; (iii) traders, (iv) suppliers which carry out trading activities; (v) and aggregators trading electricity and/or natural gas on the wholesale market. An exemption applies to production capacities that will be commissioned after 1 September 2022 as well as, to companies supplying thermal energy produced in cogeneration as a public service.
- As regards the electricity producers, this new contribution replaces the 80% tax on the additional revenue that was imposed on them and introduced by EGO 27/2022.
- There are separate mechanisms for calculating the solidarity tax, depending on the payer / operation:
 1. Solidarity tax payable by electricity producers:
 - EGO 119/2022 establishes a reference price of RON 450/MWh. The solidarity tax becomes payable if the monthly selling price of electricity of a particular producer is higher than the reference price of RON 450/MWh, and will be calculated as the *difference between the monthly selling price of electricity and RON 450, multiplied by the quantity of electricity physically delivered in the relevant month* – where:
 - the monthly selling price of electricity is obtained by dividing the monthly net revenue by the quantity of electricity physically delivered in the relevant month, where the monthly net revenue is the difference between the monthly revenues and the monthly expenses.
 - the monthly revenues include: (i) revenues from the sale of physically delivered electricity from own production, (ii) revenues from transferring electricity from the production portfolio into the supply portfolio and/or revenues from sale of electricity purchased from third-parties, and (iii) revenues from financial transactions taking place in the relevant month.

- the monthly expenses include those for: (I) purchasing electricity for trades with physical delivery, including those on the balancing market, and (ii) covering the cost of CO2 certificates, BUT excluding expenses for the actual production of electricity.
- In other words, if the monthly selling price obtained by the producer, determined as per the above, is higher than RON 450/MWh, then the producer will have to pay the excess to the Energy Transition Fund in the form of a solidarity tax.
- 2. Solidarity tax payable by (i) entities that produce electricity and natural gas, (ii) aggregated entities for the production of electricity, (iii) traders of electricity and natural gas; (iv) suppliers of electricity and natural gas and, (v) independent aggregators of electricity the contribution for trading activity on the wholesale market
 - As regards these categories, the reference price is determined by adding a 2% profit margin to the acquisition price of electricity and/or natural gas.
 - The contribution is determined as the difference between the monthly weighted average sale price of electricity/natural gas delivered in the relevant month and 102% of the monthly weighted average acquisition price of electricity/natural gas delivered in the relevant month, multiplied by the quantity of electricity/natural gas delivered in the relevant month on the wholesale market of electricity and/or natural gas, irrespective of the date of the sale / purchase contract.
- 3. For any type of electricity sale transaction involving export or intra-community delivery, the solidarity tax represents 100% of the difference between the average trading price of electricity on the day ahead market and the purchasing price, multiplied by the quantity of electricity exported or delivered to another Member State.
- The solidarity tax will have to be calculated, declared, and paid **monthly** by the payer, to the newly created Energy Transition Fund, until the 25th of the month following the relevant month. Failure to comply with this obligation will be sanctioned by the National Agency for Fiscal Administration.

B. Other notable changes

- Producers may sell electricity through bilateral agreements, directly negotiated, concluded after 1 September 2022 and with delivery until 31 December 2022, only to the following: (i) electricity suppliers serving final consumers (designated only for own consumption), (ii) electricity distribution operators, (iii) the national transmission system operator, and to (iv) consumers who benefited from the provisions of the Emergency Government Ordinance no, 115/20111 establishing the institutional framework and authorizing the Romanian Government to auction greenhouse gas emission certificates, attributed to Romania at European level. These agreements must be reported to the National Authority for Regulating Energy ("ANRE") by the contracting parties within two working days from the day they were concluded.
- Back-to-back sales of electricity or natural gas by traders and/or suppliers with trading activities, with the clear intention of increasing the price, shall be sanctioned by ANRE with a fine amounting to 5% of the turnover.

- Between 1 September 2022 – 31 August 2023 producers of natural gas have an obligation to sell at a fixed selling price of RON 150/MWh, the quantities resulting from the internal production activity (with extraction activities taking place either onshore or offshore) to the following customers:
 - a) to suppliers of household consumers, the quantity required to ensure the necessary demand of household consumers from the current internal production and from the underground natural gas storage facilities.
 - b) to suppliers of thermal energy producers or directly to thermal energy producers, only for the quantity used to produce thermal energy in cogeneration plants or in thermal plants required for public demand.
- Between 1 September 2022 and 31 October 2023, the transfer price applied by producers that carry out activities related to both (i) onshore and/or offshore extraction and (ii) production of electricity using natural gas, will be of maximum RON 100/MWh for the natural gas used for the production of electricity.
- The maximum weighted average electricity price at which ANRE calculates the amounts to be settled from the state budget for electricity suppliers is RON 1,300/MWh.

Although it became enforceable the moment it was published in the Official Gazette, EGO 119/2022 can still undergo changes or even be repealed by the Parliament, as any Government ordinance must be approved by law following a legislative procedure in the Parliament.

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