

For the urgent attention of:

Presidential Administration of Romania

Mr. Klaus Iohannis, President of Romania

Parliament of Romania - Senate

Mrs. Anca Dana Dragu, President of the Senate

Parliament of Romania – Chamber of Deputies

Mr. Florin-Claudiu Roman, Interim President of the Chamber of Deputies

Mr. Sandor Bende, President of Industry and Service Commission of the Chamber of Deputies

Government of Romania – Office of the Prime Minister

Mr. Florin Cîțu – Acting Prime Minister of Romania

Government of Romania – Ministry of Energy

Mr. Virgil Popescu, Minister of Energy

National Energy Regulatory Authority (ANRE)

Mr. Dumitru Chirita, President

Mr. Zoltan Nagy-Bege, Vice-President

In copy to:

The European Commission

Ms. Kadri Simson, European Commissioner for Energy

Ms. Ditte Juul-Jørgensen, Director-General

Ms. Mechthild Wörsdörfer, Deputy Director General .

Mr. Christof Lessenich, Head of Unit C3 – Internal Energy Market

The Agency for Cooperation of Energy Regulators (ACER)

Mr. Christian Zinglensen, Director

Mr. Christophe Gence-Creux, Head of the Electricity Department

The Energy Community Secretariat

Mr. Janez Kopač, Director

Dear Esteemed Colleagues,

EFET^[1] concerns regarding interventions in the Romanian Electricity Market

The European Federation of Energy Traders (EFET) represents over 120 companies which trade energy across Europe. We seek to promote and facilitate European energy trading in open, transparent and liquid wholesale markets. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and enable the transition to a carbon neutral economy.

We wish to express our very significant concerns regarding the Romanian Government's Emergency Ordinance 118/2021 (GEO 118/2021). The version of the Ordinance voted on by the Senate on 18 October contains measures which would lead to significant distortions in wholesale energy markets which we believe would negatively impact competition and market confidence – raising costs to customers in the longer-term. We note that these measures are inconsistent with those included in the 'toolbox' recently recommended by the European Commission, and with the European rules of the Internal Energy Market.

We recognise the need for consumer protection

EFET appreciates that the intention of GEO 118/2021 is to limit the negative impacts of rising energy prices on the Romanian economy and energy consumers and we support this intention. We also recognise that a majority of the measures are consistent with those included in the European Commission's toolbox for tackling rising energy prices ("*Tackling rising energy prices: a toolbox for action and support*", COM(2021) 660 final^[2]), such as the proposed compensation of part of end-consumer bills by the government, or the reduction of certain taxes and levies.

Amendments 11 and 12 are inconsistent with European Law and ACER guidance

However, two elements of the text of GEO 118/2021 will, in our view, lead to significant market distortions. These are:

- Amendment 11: which introduces a claw-back mechanism on producers of electricity, whereby 80% of revenues resulting from sales at prices above 450 LEI/MWh (app. 90 EUR/MWh) would be taxed^[3]; and
- Amendment 12: which imposes a limit on seller profits, whereby profits are limited to 5% of costs incurred (other than costs of energy purchase, applicable to both electricity and natural gas)^[4].

The two amendments introduce a form of price regulation in the wholesale market, which we deem incompatible with the existing framework of the Internal Energy Market. Though they may not introduce direct price caps into the wholesale market, the measures would have a significant impact on the behaviour of buyers and sellers in the market, and affect the free formation of prices as required by the Electricity Directive (2019/944) and the Electricity Regulation (2019/943).

We see these two measures as inconsistent with the European Commission's recommendation that any tailored measure to support vulnerable groups of customers in times of high energy prices should "*avoid interfering with market dynamics or dampening incentives for the transition to a decarbonised economy*"^[5]. We also note ACER's statement that: "*In ACER's view, protective measures that aim to provide short-term relief should seek to refrain from interfering with the operation of energy markets*"^[6].

We also consider that the measures will prove counterproductive. While designed to benefit consumers, they will have the opposite effect in the long-run. By creating incentives not to produce electricity at certain times and by severely damaging investor confidence, it is probable that the measures could endanger security of supply and damage competition in the longer term.

The clawback mechanism would reduce security of supply

The implementation of a claw-back mechanism as per Amendment 11 would in the short term:

- Prevent wholesale price formation according to the interaction of demand and supply, and lead to either:
 - o i) artificially high(er) prices to compensate for the taxation imposed; or
 - o ii) reduced production because the additional taxation would mean that generation costs could not be recovered.
- Discriminate between producers with different production costs. This could potentially lead to the insolvency of producers with higher production costs who would be unable to increase their sale prices to compensate for the additional taxation.
- Reduce incentives for domestic production without being able to count on imports. While the clawback mechanism could drive certain domestic generators to stop unprofitable electricity production, the incentive to import would be further reduced by the profit limitation clause introduced under Amendment 12.

We consider that each of these effects could endanger security of supply.

The profit limitation would encourage market exit, to the detriment of consumers

The implementation of the profit limitation clause as per Amendment 12 would, in the short to medium term, lead to:

- Distortions within the Romanian day-ahead market, where bidding dynamics will be driven by the fear of being in breach of the profit limitation clause, rather than being guided by market fundamentals (such as expected supply and demand, weather, etc.).
- Additional risk for electricity market participants, which would need to ensure there was no breach of the profit limitation clause. This is difficult to manage in practice because transactions are settled based on the matching of demand and supply at a collective level, rather than on their individual bidding.

As a consequence, we consider there to be a strong probability that market participants will limit transactions on the Romanian electricity market, and possibly exit it for good. Were this to be the case, it would reduce competition and harm liquidity, increasing the cost of transacting each unit of electricity.

The negative impacts would be felt beyond Romania

The impacts of GEO 118/2021 in its current form would reach beyond the Romanian electricity market and would have a negative impact on regional and European electricity markets.

Romania is integrated in the various European market coupling mechanisms, together with other EU Member States. It is also highly interconnected with neighbouring Energy Community countries. The size and position of the Romanian market in South-East Europe mean that market dynamics in Romania influence price formation in neighbouring EU and Energy Community countries. Hence, the planned interventions in the Romanian energy market would alter demand-supply fundamentals not only in Romania, but also in the entire region.

As all the countries in South-East Europe already face important challenges with rising energy prices, we see a significant possibility that the measures could have undesirable unintended consequences for the regional market.

The investment climate would deteriorate, endangering Romania's energy transition

The adoption of Amendments 11 and 12 of GEO 118/2021 would significantly erode investor confidence in the Romanian energy market and could consequently jeopardize Romania's progress towards national energy and climate goals.

Investment in renewable energy, as well as innovative technologies and services that accompany them in the energy transition, relies on attracting large volumes of private capital. These investment decisions are based on an assessment of returns that can be earned through energy markets, prices they expect to see in carbon markets, and revenues received through support schemes. Unexpected changes make investors wary and increase the return they need to invest – a cost ultimately paid by customers.

The insecurity that the Romanian measures create for existing and future investments in the country, combined with the lack of stakeholder involvement in the formal proceedings leading to the adoption of GEO 118/2021, significantly erode confidence in the stability and transparency of the Romanian legal and regulatory framework.

The measures are difficult to view as truly circumscribed and temporary

While the clawback mechanism and the profit limitation clause proposed in GEO 118/2021 would only be applicable from 01 November 2021 to 31 March 2022 initially, it is difficult for us to view the measure as circumscribed and temporary.

First, the lack of clarity in the measures' wording suggests the possibility that the measures could be applicable retroactively, i.e. to already concluded transactions with delivery within the 2021-2022 winter period. Buyers and sellers in the electricity market conclude most of their transactions far in advance of delivery in order to hedge their positions. This allows them to provide a continuous, least-cost supply to customers at stable prices The retroactive imposition of price control measures would significantly erode confidence in the Romanian electricity market, and endanger the ability of market participants to supply electricity to consumers in the long term.

Second, although conceived as a temporary measure, the reference in the clawback measure to an electricity price of 450LEI/MWh makes it difficult to view the measure as truly temporary. Were, for example, the electricity price to be above this level in March 2022, or to move above this level at any other point in future, it would seem logical to assume there would be pressure to reintroduce the measure. The threat of an extension or resurgence of the gas clawback is a risk that will be factored in by any market participant in the short to medium term, with a direct effect on prices in the spot and forward markets. And investors will also take this threat into account for their investment decisions, potentially endangering security of supply in the long term.

EFET conclusions and recommendations

While we appreciate that the intention of GEO 118/2021 is to limit the negative impacts of rising energy prices on the Romanian economy and energy consumers, we have serious concerns as to the compatibility of Amendments 11 and 12 with EU law. In addition, we expect that the implementation of these Amendments would lead to significant short-term distortions in the market - in Romania and beyond – and deter much needed investment in the country's energy transition. All this will translate into additional costs for the consumers which these measures are intended to protect.

Consistent with recent recommendations by the European Commission and ACER, we believe that Romania should further refine – and possibly expand – direct consumer relief measures, and avoid implementing measures which will distort the functioning of markets and could prove counterproductive.

We therefore urge the Romanian Parliament and the Chamber of Deputies **to withdraw Amendments 11 and 12 from GEO 118/2021 and ensure that only measures that are compatible with the European Commission’s toolbox for tackling rising energy prices (COM(2021) 660 final) are adopted as part of the Government Extraordinary Ordinance.** We also invite the Government to reopen a dialogue with all interested parties, with a view to addressing its concerns over affordability of energy supply in a manner which is consistent with European law; which avoids market distortions; and which promotes decarbonisation, security of supply and affordability in the long run.

EFET would, of course, be happy to provide any information to facilitate further consideration of alternatives to these measures.

Yours Sincerely,



Mark Copley
Chief Executive Officer

^[1] The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. We build trust in power and gas markets across Europe, so that they may underpin a sustainable and secure energy supply and enable the transition to a carbon neutral economy. EFET currently represents more than 120 energy trading companies, active in over 30 European countries. For more information: www.efet.org

^[2] Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A660%3AFIN&qid=1634215984101>

^[3] Full text: *Art.II. - (1) During the application of the Government Emergency Ordinance no. 118/2021, the additional income realized by the electricity producers resulting from the difference between the selling price of electricity and the price of 450 le / MWh is taxed by 80%.*

(2) The manner of application of the tax provided in par. (1) shall be established by order of the President of the National Agency for Fiscal Administration within 15 days from the entry into force of this law.

^[4] Full text: *Art. III.- During the application of the Government Emergency Ordinance no. 118/2021, for the sale activity, the electricity and natural gas sellers cannot register a profit rate higher than 5%, applied to the supply costs, without including the purchase of electricity and natural gas.*

^[5] See reference in footnote 2.

^[6] See

https://documents.acer.europa.eu/en/The_agency/Organisation/Documents/Energy%20Prices_Final.pdf.