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To the attention of:

Mr. Virgil Daniel Popescu
Minister of Energy

Mr. Adrian Câciu
Minister of Finance

Object: removing article II of Romanian Ordinance GEO 118/2021 on measures to manage the effects of rising energy prices

18 February 2022

Dear Minister Popescu, dear Minister Câciu,

As **discussions are ongoing at ministerial level to guarantee affordable energy supply to Romanian consumers in the long run**, we urge the Energy and Finance Ministers to restore the proper functioning of the electricity market in Romania. We also seriously caution the government against introducing new discriminatory measures that would damage investor confidence, threaten the ability of Romania to meet its decarbonisation goals and ultimately backfire onto end-consumers.
On 29 October 2021, **Romania adopted the Ordinance 118/2021**[1]. The Ordinance contained a number of **welcome measures to alleviate the burden of the rise in energy prices on end-consumer bills**, such as direct financial support to consumers or a reduction of taxes and levies, which are compatible with EU rules and recommendations.

However, a clawback mechanism was introduced in article II of the Ordinance to capture revenues of renewable and low-carbon power generators that are considered "excessive" in relation to current prices. We **challenge the compatibility of the clawback mechanism with EU law**, and **regret that the most recently adopted GEO 3/2022 (published on 26 January 2022 and amending GEO 118/2021) leaves the clawback mechanism untouched.**

We insist on the ineffectiveness of the clawback mechanism in addressing rising energy prices. We regard the introduction of the clawback mechanism on renewable and low-carbon power generation to be ill-advised as:

- it creates **significant short-term market distortions** in Romania and the region
- it **exposes consumers to a more expensive electricity supply** in the short and long term
- it introduces **discrimination between electricity producers** based on technology
- it **reduces the confidence of investors** by introducing high regulatory uncertainty
- it **puts the energy transition at risk** in the long run

As Ordinance 118/2021 will expire on 31 March 2022, **we urge the Romanian government not to reconduct the clawback mechanism or to introduce any new distortive measures to the functioning of the wholesale electricity market**.

[1] Full text of the Ordinance available at: https://www.monitoruloficial.ro/Monitorul-Oficial--PI--1036--2021.html.

We appreciate the attention placed by the Romanian government on the affordability of energy supply in their country. In that regard, we welcomed a number of measures introduced by Ordinance GEO 118/221, such as the compensation of invoices for domestic consumers or the reduction in taxes, which are fully compatible with the recent toolbox presented by the European Commission[2]. However, **article II of GEO 118/2021 introduced a clawback mechanism on renewable and low-carbon power generators**: from 1 November 2021 until 31 March 2022, sales from renewable electricity, hydro and nuclear power generation at prices above 450 LEI/MWh (app. 90 EUR/MWh) will be taxed ex-post at 80%.

With this tax, the clawback mechanism modifies the relative costs of different technologies. Against the recommendations of both the European Commission and ACER[3], **the mechanism directly interferes with market dynamics**:

- The low-cost (and carbon-free) electricity production capacity subject to the clawback, particularly RES, might potentially be reduced.
- The missing energy will be replaced by coal and gas generators, which are not subject to the clawback but provide comparatively more expensive (and carbon-intensive) electricity – or by imports.

With cheap volumes disappearing from the merit order and being replaced by more expensive bids (from Romania or neighbouring countries), the marginal spot price of electricity risks rising even higher. As a result, rather than stabilising prices, **the clawback mechanism risks exacerbating price spikes in Romania and the wider region, to the detriment of consumers**.

Further, **the clawback mechanism discriminates between electricity producers** as it applies to renewables and low-carbon generation, while fossil-fuel generators (coal, gas and CHP) are exempted from the mechanism. This creates an unlevel-playing field between market participants and distorts the signals for the dispatch of power generation in Romania and the region – with a direct risk to increase Romania's CO2 emissions in the short term.

In the longer term, it also **sends the wrong signal to all the actors of the energy transition** in the country. Romania, like many EU Member States, needs very significant investment in renewables, but also in innovative technologies that will support the transition, e.g. demand-response, electricity storage and power-to-X. The adoption of the clawback mechanism, without an impact assessment or a public consultation, is a highly negative signal towards investors. With degraded legal certainty, investment in new capacity in renewables and innovative technologies will at best become more expensive, and, at worst, not materialise. In the end, **consumers will foot the bill of an energy system made more expensive by a measure that was supposed to protect them**.

The adoption of Ordinance GEO 3/2022 on 26 January 2022, amending many provisions of Ordinance GEO 118/2021, regrettably, left the clawback mechanism in place.

Conclusions and recommendations

EFET, WindEurope, Eurelectric and SolarPower Europe fully support the wish of the Romanian authorities to protect vulnerable consumers from peaks in energy prices**.** We firmly believe that the market is playing its part in ensuring stable and affordable energy prices for consumers. When additional support measures are necessary, European rules and recommendations provide the framework for a range of solutions that do not negatively affect the functioning of the energy and emissions markets, or the ability of the sector to pursue the

[2] Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A660%3AFIN&qid=1634215984101.
[3] See https://documents.acer.europa.eu/en/The_agency/Organisation/Documents/Energy%20Prices_Final.pdf

energy transition**.** These measures all support vulnerable customers without jeopardising the ability of the market to serve them in a cost-efficient manner in the long run.

Article II of the Romanian Ordinance 118/2021 creates significant distortions in the market, as well as uncertainty for long-term investments in the energy transition in Romania and beyond. **We therefore urge the Romanian Government not to reconduct the clawback mechanism after the expiration of GEO 118/2021 on 31 March 2022.**

Any follow-up measures to the Ordinance aiming to ensure affordable electricity supply to consumers should be compatible with the European Commission's toolbox for tacking rising energy prices (COM(2021) 660 final). **The Romanian government should not introduce new discriminatory measures or tamper with the functioning of the electricity market**, at the risk of further damaging investor confidence, threatening the ability of Romania to meet its decarbonisation goals and ultimately backfiring onto end-consumers.

We invite the Romanian Government to open a dialogue with all interested parties, with a view to addressing its concerns over affordability of energy supply. EFET, WindEurope, Eurelectric and SolarPower Europe would be happy to provide any information to facilitate further consideration of alternatives measures.

Yours sincerely,

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