

Recent changes to the legal framework for promoting the use of energy from renewable sources



On 6 December 2022, Government Emergency Ordinance no. 163/2022 ("GEO 163/2022" or the "Ordinance") for supplementing the legal framework on the promotion of the use of energy from renewable sources and for amending and supplementing certain regulatory acts, was published in Official Gazette of Romania No. 1165, entering into force on the same date.

The Ordinance transposes the provisions of Art. 2-31, Art. 37 and Annex II, Annex III and Annexes V-IX of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources and is primarily aimed at regulating the needs of both citizens and the private sector by aligning national policies with European policies and by accessing European funds for future investments in the renewable energy production sector.

Below is a selection of the amendments and additions brought under GEO 163/2022:

1. General aspects regarding potential new support schemes in the renewable energy sector

The Ordinance provides that, in order to reach or exceed the European target for the share of energy from renewable energy sources ("**RES-E**") in gross final consumption (i.e. 32% by 2030), new support schemes may be implemented in addition to existing support schemes.

These can establish mechanisms to ensure regional diversification of renewable electricity use, in particular to ensure a cost-effective system integration.

Support schemes for RES-E should also be designed to enhance the integration of RES-E into the electricity market and ensure that RES-E producers respond to market price signals and optimize their market revenues.

Specifically, direct price support schemes for RES-E are granted in the form of a market premium, which can be variable or fixed.

In addition, it is provided that the Ministry of Energy may propose to the Romanian Government the possibility to cooperate in the implementation of projects related to RES-E production, individually or together with other Member States, under joint agreements with third countries. Such a cooperation may involve private operators and must be carried out in full compliance with international law.

The Ordinance creates a general regulatory framework for the further regulation of supporting schemes (without

introducing a specific supporting scheme) that should be further approved / regulated under subsequent legislation.

Also, the Ordinance refers to possibilities of cooperation between states in the field of renewable energy (such as the coordination of national support schemes in the renewable energy sector, the implementation of common projects), which depend upon further actions and initiatives by the competent authorities.

2. Simplification of/expediting the authorization procedures for RES-E generation and storage. Contact point

The Ordinance provides that simplified authorization procedures are to be established for RES-E production and storage, including through a simple notification procedure. In this respect, the public authorities involved in the investment authorization process define all the technical specifications that must be observed by the RES-E equipment and systems to benefit from support schemes.

The authorization process *(i)* covers the relevant administrative authorizations for the construction, reengineering and operation of plants for the production of RES-E and the assets necessary for their connection to the grid, and *(ii)* includes all procedures from the acknowledgement of receipt of the application to the communication of the procedure outcome.

Measures have been introduced in the building regulations and codes to increase the share of all types of RES-E in the construction sector. However, such measures will apply to the armed forces only to the extent that their application is not incompatible with the nature and main purpose of the armed forces' activities and apart from materials used exclusively for military purposes.

As part of the authorization process, the applicant needs to contact only one contact point. The contact point will provide a manual of procedures to project developers aimed at the production of E-SRE and will publish this information online as well.

In this respect, within 9 months from the entry into force of the Ordinance, one or more contact points shall be designated by Government Decision, which, at the applicant's request, shall provide guidance and administrative support throughout the administrative application and permitting process.

As a rule, the permitting process does not exceed **two (2) years** for power plants, including for all relevant procedures of the competent authority. As an exception, the permitting period is reduced to maximum **one (1) year** in the following cases: *(i)* for installations with an electrical output of less than 150 kW and *(ii)* for retrofitting existing RES-E power plants.

However, the above (maximum) permitting periods may be extended by up to one (1) year when duly justified for reasons related to exceptional circumstances.

3. Amendments / additions concerning guarantees of origin

The Ordinance regulates the obligation of the Ministry of Energy, in collaboration with the National Energy Regulatory Authority ("ANRE"), to amend and supplement the Regulation on the issuance and tracking of guarantees of origin for RES-E within 6 months from its entry into force.

In particular, the following aspects should be taken into account: *(i)* the issuance of guarantees of origin may be conditional on the minimum installed electric power, which is established under the above-mentioned regulation; *(ii)* guarantees of origin are valid for a one year period from the electricity generation date to which they refer; *(iii)* producers and suppliers holding guarantees of origin shall cancel them not later than six months after the end of

their validity period; (iv) all guarantees of origin that have not been cancelled shall expire 18 months after the generation of the energy unit in question.

4. Amendments and additions concerning prosumers

ANRE is required to establish, within 6 months from the entry into force of the Ordinance, a simple notification procedure for grid connections, allowing *the installations or generating units of RES-E prosumers and demonstration projects with an approved electrical power lower than or equal to 10.8 kW or the equivalent* for connections other than three-phase connections, to connect to the grid following the submission of a notification to the distribution operator and the implementation, if necessary, of modifications to the grid connection installations of the consumption site in question.

In this respect, the Ordinance provides that, within 15 days of the above-mentioned notification, the distribution operator (i) may refuse the requested grid connection according to the primary legislation provisions or (ii) may propose an alternative grid connection point for duly justified reasons. In addition, it should be noted that in the absence of a decision by the distribution system operator within one month of notification, the installation or generating unit may be connected to the grid.

Separately, the prosumers' right is regulated so that, individually or through aggregators:

- a) to produce RES-E for their own consumption, to store and sell their excess RES-E production to consumers connected to the power plant's busbars, including under RES-E purchase agreements, both through electricity suppliers and under peer-to-peer trading arrangements (i.e. sales of RES-E between market participants under a contract with pre-established terms and conditions governing the automatic execution and settlement of the transaction either directly between market participants or indirectly through an authorized third party market participant such as an intermediary, without prejudice to the rights and obligations of the parties involved as final customers, producers, suppliers or intermediaries), and by settling the electricity produced and delivered with the electricity consumed from the grid for several generation and consumption sites of prosumers, if the same energy supplier is responsible for those consumption sites and if they are connected to the electricity grid of the distributor to which the prosumer is connected, **without being subject**:
 - i. *to discriminatory or disproportionate procedures and charges and grid tariffs that do not reflect costs*, with the electricity they consume from the grid or feed into the grid;
 - ii. *to any discriminatory or disproportionate procedures and any charges or tariffs*, with their self-produced RES-E remaining on their premises;
- b) to install and operate electricity storage systems combined with RES-E generation facilities for self-consumption without having to pay any double charges, including grid charges, for the stored electricity remaining on their premises;
- c) to maintain their rights and obligations as final consumers;
- d) to receive, including, where appropriate, through support schemes, for the self-produced RES-E they feed into the grid, a remuneration that reflects the market value of that energy and which may take into account the long-term value of the electricity fed into the grid, the environment and society.

However, central government authorities and ANRE **may** apply non-discriminatory and proportionate charges and tariffs to RES-E prosumers for their self-produced RES-E remaining on their premises in one or more of the following cases:

- a) if self-produced RES-E is actually supported through support schemes, only to the extent that the economic viability of the project and the incentive effect of such support are not undermined;
- b) **from 1 December 2026, if the installed capacity in prosumers' power plants exceeds 8% of the total installed capacity** in electricity generation capacities at national level and if it is demonstrated, by means of a cost-benefit analysis carried out by ANRE, that the absence of charges has either resulted in a significant disproportionate burden on the long-term financial sustainability of the electricity system or has created an incentive that goes beyond what is objectively necessary to achieve a cost-effective use of RES-E, and that such burden or incentive could not be minimized by taking other reasonable actions; or
- c) if self-produced RES-E is produced in installations with a total installed electricity capacity of more than 30 kW.

5. Provisions regarding renewable energy communities

Final customers, in particular household customers, shall be entitled to participate in a renewable energy community, while maintaining their rights and obligations as final customers and without being subject to unjustified or discriminatory conditions or procedures that could prevent them from participating in a renewable energy community, provided that, as far as private undertakings are concerned, electricity generation does not constitute their main commercial or professional activity.

Thus, renewable energy communities shall have the right: a) to produce, consume, store and sell RES-E, including under RES-E purchase agreements, b) to share, within the renewable energy community, RES-E produced by generation units owned by that community, and c) to have access to all appropriate energy markets, both directly and through intermediaries, on a non-discriminatory basis.

In addition, **the specificities of renewable energy communities should be considered in the design of support schemes** to enable them to compete for support on an equal basis with other market participants. The Ordinance sets forth several principles which should underpin the regulations regarding energy communities.

6. Aspects regarding customers' disconnection from district heating or cooling systems

According to the Ordinance, customers of district heating or cooling systems that do not qualify as an efficient district heating or cooling system or do not become such systems by 31 December 2025 may disconnect themselves by terminating or amending their contract so as to produce heating or cooling from renewable sources themselves, based on a disconnection plan drawn up and approved by the local system operator (on the basis of requests received from final consumers) and endorsed by the local public authorities.

The right of disconnection by terminating or amending the contract as mentioned above may be exercised by individual customers, by various forms of customer association or by parties acting on behalf of customers, and in the case of apartment blocks, such disconnection may only be exercised on a building-wide basis.

However, disconnection as stated above shall only be granted to customers who can demonstrate that the planned alternative supply solution for heating and cooling results in significantly higher energy performance; the assessment of the energy performance of the alternative supply solution may be based on the energy performance certificate.

7. Share of RES-E in transport

Fuel suppliers are required to ensure a minimum share of 14% of RES-E in final energy consumption in the transport sector by 2030.

However, the above obligation may be amended after 2023 so as to increase it if substantial additional reductions in RES-E production costs are found if the revision is necessary to meet international decarbonization commitments or if a significant reduction in energy consumption in Romania justifies it.

In particular, within the above-mentioned minimum share, the contribution of advanced biofuels and biogas produced from the raw materials listed in Annex No. 10 Part A of Government Emergency Ordinance No. 80/2018 as a share of final energy consumption in the transport sector shall be at least 0.2% in 2023, at least 1% in 2025 and at least 3.5% in 2030.

8. Obligation of final customers to contribute to the costs associated with smart meters

The Ordinance introduces the **obligation for electricity consumers to contribute, in a transparent and non-discriminatory manner, to the costs associated with the introduction of smart metering systems**, where, according to primary legislation, (i) final customers holding generation sources with an installed capacity of less than 10 kW and those with an annual consumption above a certain threshold set by ANRE must have smart meters by 1 January 2024, while (ii) other final customers must have such meters by 31 December 2028.

9. Other aspects

The Ordinance also requires the Ministry of Energy, in collaboration with ANRE, to assess the regulatory and administrative barriers to long-term contracts for the purchase of RES-E, to remove unjustified obstacles to such contracts, in compliance with the primary legislation in force, and to facilitate the choice of such contracts and ensure that such contracts are not subject to discriminatory or disproportionate procedures or charges.