

Major step forward in the electricity sector: PPAs can now be concluded outside centralized markets

On 19th of May 2020, the Government Emergency Ordinance no. 74/2020 on amending and supplementing the Energy Law no. 123/2012 was published in the Official Gazette and has entered into force (the "**GEO 74**"). This legislative novelty comes as a major step forward for electricity producers who can now conclude power purchase agreements ("**PPAs**") outside centralized markets.

Overview

According to its explanatory note, GEO 74 was mainly adopted to encourage further investments in electricity production capacities and in the context of the Covid-19 pandemic, to avoid later price increases encumbering the end consumers.

The legislation is much awaited by the energy sector which previously argued that such enactment would ease-up the power purchase process and stimulate the wholesale electricity market.

The new legal amendment harmonizes the Romanian energy legislation with: (i) the EU Regulation 2019/943 on the internal market for electricity which promotes *"long-term electricity supply contracts to be negotiable over the counter, subject to compliance with Union competition law"* and (ii) the EU Directive 2009/28/EC which supports long term PPAs.

Concluding PPAs

Under GEO 74, if an electricity production capacity is commissioned after the 1st of June 2020:

- the electricity producers can conclude bilateral PPAs outside OPCOM markets, at negotiated prices, subject to competition rules; and
- the electricity producers are exempt from offering the remaining electricity produced to the centralized markets after delivering to the last resort suppliers.

However, GEO 74 does not give the possibility of existent electricity production capacities or electricity production capacities commissioned before 1st of June 2020, to conclude over the counter PPAs. It remains uncertain if such benefit will apply to all electricity producers, in the future.

Other provisions

Between 1st July 2020 and 31st December 2020, the obligation to provide the last resort suppliers with the electricity necessary to cover the household demand (for which regulated tariffs are applied) must be observed only by: (i) producers operating dispatchable production units and (ii) producers which do not benefit from support schemes; in an ascending order of prices set by the competent authority, for the entire amount of electricity necessary to cover such household demand. Tariffs should not increase above the level regulated on 19 May 2020.

Next steps

The Romanian Energy Regulatory Authority is expected to adopt supporting provisions within 30 days as of the entry into force of GEO 74.

This article does not deal with every topic or cover every matter it deals with. It is not intended to provide and does not represent legal advice.

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