



## THE NEW ERA OF BILATERALLY NEGOTIATED POWER PURCHASE AGREEMENTS

### 1. General overview

As a direct consequence of the COVID-19 outbreak and the consequent measures implemented by the Romanian State, the economic growth process has experienced a short to medium term slowdown, impacting the labor market and subsequently household income.

Nowadays, the Romanian Government claims that a declining tendency has been noticed regarding wholesale prices for electricity, especially in the short term. This trend follows the basic principle according to which prices are influenced by demand and supply. When supply remains constant, but demand decreases, prices will naturally go down. In our case, the reduction of demand incurred due to the effects of the restrictive measures adopted for limiting the spread of the SARS-CoV-2 Coronavirus.

In order to address this issue, inter alia, the Romanian Government enacted Government Emergency Ordinance no. 74/2020 for the amendment and supplement of the Law on electricity and natural gas no. 123/2012 (“**GEO 74/2020**”), published in the Romanian Official Gazette no. 416 as of May 19, 2020.

The two main legislative changes generated by GEO 74/2020 are aiming to:

- (i) stimulate investments in new electricity production capacities, with a direct positive impact on the economy and the functioning of the national electricity system in the medium to long term;
- (ii) maintain the commitments assumed by Romania towards the European Commission for regulating the electricity market as of January 1, 2021.

Given the above, GEO 74/2020 focuses essentially on regulating the long expected bilaterally negotiated Power Purchase Agreements (“PPAs”), as well as National Energy Regulatory Authority’s (“ANRE”) obligation to regulate the selling prices of electricity delivered by producers to suppliers of last resort.

## **2. The measures set forth in GEO 74/2020**

The main novelty brought by GEO 74/2020t refers to the bilaterally negotiated PPAs. In this respect, producers operating electricity production capacities commissioned after June 1, 2020 will be exempted from the obligation to trade exclusively on the Romanian Electricity and Natural Gas Market Operator (“OPCOM”) market in a public and centralized manner the entire available production of electricity. Thus, the producers are being offered the alternative possibility to conclude bilaterally negotiated PPAs.

As there are no limitations in GEO 74/2020 for the bilaterally negotiation PPAs, the parties are free to negotiate the contractual terms, complying at the same time with the competition rules.

It is worthy to mention that GEO 74/2020 does not apply to the production capacities commissioned before June 1, 2020, therefore producers operating old power plants will carry out their trading activity just as before. The amendments proposed by GEO 74/2020 are mainly meant to stimulate investments in new electricity generation capacities, in the context of aging of the existing ones.

Another significant legislative change brought by GEO 74/2020 is linked to the selling price of electricity delivered by producers to suppliers of last resort. In this regard, starting with July 1, 2020, ANRE will be responsible of setting the selling prices of electricity. According to GEO 74/2020, secondary legislation regulating these matters is expected to be approved by ANRE within 30 days from the date of entry into force of GEO 74/2020.

## **3. Future prospects**

Besides the worldwide epidemiological context caused by the spread of the SARS-CoV-2 Coronavirus, which will continue to influence our country and thus force the Romanian authorities to issue corresponding enactments, the particular field of energy production is highly volatile. The European trend for promotion of energy produced from new era power plants is likely to be maintained in Romania, dynamically shaping the legislative framework on this matter.

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This article contains general information and should not be considered as legal advice.



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