

RES LEGAL INSHIGHTS: THE YEAR-END LEGISLATIVE CHANGES IN ROMANIA – ENERGY, CORPORATE LAW, AND TAX UPDATES

As we close the year, several significant legislative changes have been enacted, impacting various sectors, including corporate law, energy field, and administrative governance. Below, we outline the most notable amendments introduced in last days of 2024:

A. EMERGENCY ORDINANCE NO. 152/2024: KEY AMENDMENTS TO STRATEGIC ENERGY, ECONOMIC, AND COMPETITION LEGISLATION IN ROMANIA

On 20 December 2024, Government Emergency Ordinance No. 152/2024 on the amendment and completion of certain normative acts, published in the Official Gazette, Part I, No. 1297 of 20 December 2024 (“**GEO No. 152/2024**”) entered into force.

GEO No. 152/2024 amends inter alia the following normative deeds:

- (i) Emergency Ordinance No. 20/2014 on measures for the efficiency of privatization activities for the profitable development of state-owned economic operators, approved with amendments by Law No. 123/2015, with subsequent amendments;
- (ii) Emergency Ordinance No. 46/2022 on measures for the implementation of Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments in the Union, approved with amendments by Law No. 164/2023, with subsequent amendments;
- (iii) Law No. 21/1996 - Competition Law, republished, with subsequent amendments;
- (iv) Emergency Ordinance No. 59/2023 on measures at the level of central public administration, approved by Law No. 359/2023, with subsequent amendments;
- (v) Emergency Ordinance No. 67/2023 on temporary measures to combat the excessive price increase of certain agricultural and food products, approved by Law No. 10/2024, with subsequent amendments;
- (vi) Law No. 133/2019 on the establishment of the Agency for the Quality and Marketing of Agro-Food Products, with subsequent amendments;
- (vii) Emergency Ordinance No. 84/2023 on the establishment of a coordinated consultation and reaction mechanism in the context of the export authorization system introduced by Ukraine for agricultural products, with subsequent amendments;
- (viii) Emergency Ordinance No. 132/2024 on the amendment and completion of the Fiscal Code (Law No. 227/2015) and the Fiscal Procedure Code (Law No. 207/2015), and the amendment of other normative acts, with subsequent amendments;
- (ix) Law No. 123/2012 on electricity and natural gas, with subsequent amendments;
- (x) Ordinance No. 2/2001 on the legal regime of contraventions, approved with amendments by Law No. 180/2002, with subsequent amendments.

A.1. FDI clarifications

From an foreign investment perspective, the recent legislative amendments bring the clarification that Romanian investors, as EU investors, are subject to FDI approval requirements, including Romanian companies or individuals.

Also, the legislation defines a foreign investor as an individual who is not a citizen of a European Union member state or who holds multiple citizenships, including that of a non-EU country, and who has made or intends to make a direct foreign investment in Romania.

A.2. REMIT II- related infringements & fines

The partial recognition of the concept of lucrative unlawful conduct in connection with REMIT- related infringements represents a progressive development. However, the hurried codification of this concept is likely to create challenges in ensuring consistent application and may introduce legal uncertainty. This places a complex responsibility on the relevant authorities, requiring them to accurately calculate and effectively enforce the associated provisions.

The recent enactment of GEO No. 152/2024 introduces significant changes to the penalties associated with insider trading and market manipulation within Romania's energy sector. Notably, the GEO No. 152/2024 sets fines starting at a minimum of 15% of the operator's turnover. This approach appears to misinterpret the stipulations of Regulation (EU) 2024/1106 of the European Parliament and of the Council of 11 April 2024 amends Regulations (EU) No 1227/2011 and (EU) 2019/942 to enhance the Union's protection against market manipulation in the wholesale energy market ("REMIT II"), which mandates that national regulatory authorities must have the capability to impose fines of up to 15% of the annual total turnover for such infringements, thereby setting a maximum threshold rather than a minimum.

Implementing fines that begin at 15% of turnover is disproportionate and raises constitutional concerns. This misalignment with REMIT II's principles could lead to inconsistent application and legal uncertainties, posing significant challenges for market operators. The Agency for the Cooperation of Energy Regulators ("ACER") has provided guidance that underscores these discrepancies, highlighting the need for immediate correction of this legislative approach.

A.3. Prior ANRE's approval for sale of licensed energy capacities in Romania

The transfer, sale, or disposal of licensed energy capacities in Romania (e.g. photovoltaic, wind, storage power plants,) can only be carried out with the prior approval of ANRE. Non-compliance with this requirement may result in regulatory sanctions, including invalidation of the transaction or penalties. Stakeholders are advised to include this step in their transaction planning and consult legal experts to ensure compliance.

B. OMNIBUS ORDINANCE

Government Emergency Ordinance No. 156/2024 on certain fiscal-budgetary measures in the field of public expenditures for the substantiation of the consolidated general budget for the year 2025, for the amendment and completion of certain normative acts, as well as for the postponement of certain deadlines (the “**GEO No. 156/2024**”) entered into force on 31st December 2024.

- (i) Increase in dividend tax: The taxation rate will rise from 8% to 10%. This increase applies to dividends corresponding to the year 2025, with payments made in 2025 or 2026.
- (ii) Changes in the microenterprise regime: The threshold for microenterprises will gradually decrease: (a) 2025: EUR 250,000, (b) 2026: EUR 100,000. While this adjustment aligns with commitments to the European Commission and the National Recovery and Resilience Plan (“**NRRP**”), Romania’s threshold remains higher than the EU requirement (EUR 88,500).
- (iii) Elimination of tax benefits for certain sectors: Individuals working in agriculture, construction, and IT will be taxed under the standard fiscal system, without special benefits.
- (iv) Introduction of the special construction tax (the “**Pillar Tax**”): amendment to Article 498 of the Tax Code, introducing a new tax of 1% of the value of constructions existing in the patrimony of the taxpayer as of 31st December will be applied to constructions not subject to local taxation. These provisions also apply to the value of buildings located in industrial, scientific, and technological parks that, according to the law, do not benefit from an exemption from the building tax. Within 90 days from the entry into force of GEO No. 156/2024, the Ministry of Finance will issue the methodological norms necessary for the application of these provisions. If, during the current year, operations are recorded that increase or decrease the value of such constructions, the construction tax shall not be recalculated. This means that the first payment will be due after 1st of July, and the second after 1st of October; however, the amount will be calculated starting from 1st of January.

C. COMPANIES LAW AMENDMENTS

On 6th December 2024 entered into force Law No. 299/2024 for the amendment and supplementation of the Companies Law No. 31/1990, has been published in the Official Gazette, Part I, No. 1212, dated 3rd December 2024.

These amendments focus on three major areas: administrative simplification, digital transformation, and enhanced efficiency in decision-making.

C.1. Digital transformation of general meetings

One of the most impactful changes is the regulation of electronic voting and remote participation in general meetings of shareholders (AGA) and associates: Shareholders can now participate and vote remotely via secure electronic communication platforms that enable:

- (i) Real-time identification and engagement of participants.
- (ii) Continuous retransmission of deliberations.
- (iii) Transparent and secure voting processes with post-vote verification.
- (iv) Resolutions adopted in such meetings can be signed electronically, simplifying bureaucratic hurdles and accelerating implementation.
- (v) For limited liability companies (SRL) and similar entities, remote participation is permitted if:
- (vi) It is explicitly provided in the constitutive act.
- (vii) A majority decision or unanimous written agreement is reached.

For joint-stock companies (SA), meeting notices must now include clear procedures for online participation and voting, ensuring transparency and accessibility.

C.2. Expanded delegation of shareholder responsibilities

Extraordinary General Meetings (AGEA) can delegate additional powers to the board of directors or directorate, including:

- (i) establishing or closing secondary offices.
- (ii) such flexibility allows companies to adapt swiftly to operational and market changes.

C.3. Simplification of administrative formalities

The requirement to include beneficial owner information in constitutive acts has been eliminated, reducing compliance burdens while safeguarding personal data. Updates on beneficial owners will continue to be recorded through separate declarations.

C.4. Impact and recommendations

In order to implement these changes, we recommend that companies:

- (i) update their constitutive deeds to incorporate provisions for electronic participation in general meetings.
- (ii) invest in secure and efficient technology platforms for hosting online meetings and ensuring data security.
- (iii) revise internal policies and procedures to reflect these legislative updates.

D. AMENDMENTS TO THE MANAGEMENT AND USE OF PERMANENT GRASSLAND

On 23rd December 2024, Decision No. 1700/2024 regarding the amendment and supplementation of the Methodological Norms for the application of the provisions of the Government Emergency Ordinance No. 34/2013 on the organization, management, and exploitation of permanent pastures and for the amendment and supplementation of the Land Fund Law No. 18/1991, approved by Government Decision No. 1,064/2013, as well as for establishing measures for their implementation, has been published in the Official Gazette, Part I, No. 1313 of 23 December 2024. (the “**GD No. 1700/2024**”).

In brief, as of July 2022, the development of renewable energy sources (“**RES Projects**”) up to 50 hectares on the *extra muros* agricultural land plots¹ having IIIrd-Vth soil quality has been allowed in the *extra muros* area subject to the following: (i) the approval for removal from the agricultural use and (ii) the building permit. While in case of (i) pastures and permanent grasslands, (ii) vineyards and orchards and (iii) land plots with land improvement infrastructure, the dual system has been allowed, the arable lands have been excluded from such application.

As per the GD No. 1700/2024 the use of permanent grasslands in a dual use system means conducting both grazing and fodder production activities, as well as electricity production from renewable sources, on the same area of permanent grassland, so as not to affect the proper exploitation of the grasslands (“**Dual Use System**”).

Further on, the GD No. 1700/2024 provides the definition of the proper exploitation of grasslands in the case of Dual Use System (the “**Proper Exploitation of Grasslands**”) as the predominant use of permanent grassland areas for agricultural activities, depending on the animals from bovine, ovine, caprine, and equine species. Specific objectives for producing electricity from renewable sources can be placed on these areas, provided that they do not affect the production of grass and other cultivated or spontaneous herbaceous forage plants, the nutritional value of the area on which the agricultural activity is carried out, the grazing capacity, or the measures for managing permanent grasslands established by pastoral arrangements or grazing regulations throughout the duration of these investment objectives. The height of the specific objectives for producing electricity from renewable sources and the distance between rows should ensure the movement, physical safety, and shelter of the animals.

In practice, since July 2022, implementing Dual Use System due to the lack of a cap on the area that can be used for renewable energy production, as well as due to the lack of ways to implement this business. Investors in energy do not usually perform agricultural activities, and vice versa. There has been no clear delineation of the area or a defined implementation process, creating uncertainty and operational challenges.

Now, the intention is to clarify and amend the legal provisions applicable in the case of dual use of permanent grasslands for both grazing and renewable energy production without compromising their agricultural productivity, providing clarificatory guidelines and *inter alia*, capping Dual Use area to 10 ha out of 50 ha per RES Project on permanent grassland.

D.1. Single vs multiple Holders Implementation of Dual Use Systems on Permanent Grasslands

As per the GD No. 1700/2024, when permanent grasslands are used in a Dual Use System, the two activities can be conducted as follows: either (i) by a single holder for both agricultural activities and the production of electricity from renewable sources or (ii) by two holders: one for agricultural activities and the other for the production of electricity from renewable sources. In this case, a legal deed for the use of the land area will be concluded if one of the holders is the owner of the grassland area, or two legal documents regarding the use of these areas for each of the activities.

¹ By means of agricultural land plots, the Law No. 254/2022 envisages the following (i) arable lands, (ii) pastures and permanent grasslands, (iii) vineyards and orchards and (iv) land plots with land improvement infrastructure

D.2. Approval of livestock breeders' associations for Dual-Use on Public or Privately Owned Grasslands

As per the GD No. 1700/2024, for grasslands in the public/private domain of the state, administered by the National Forest Administration-Romsilva, and in the public/private domain of communes, towns, cities, and Bucharest, contracts for dual-use can only be concluded with the approval of livestock breeders or their associations. This approval is required under the condition that the reduction of the grassland area due to the placement of investment objectives does not negatively impact the proper agricultural exploitation of the grasslands, grazing capacity, and access to the agricultural area of the grasslands.

D.3. Maximum 10 ha of 50 Hectares/res project Used in a Dual System in case of permanent grassland

The GD No. 1700/2024 specifies the procedure for partially removing land from agricultural use for renewable energy projects, ensuring continued agricultural activities on the remaining land. The remaining grassland area stays in agricultural use and is utilized for agricultural activities. The area proposed for removal from agricultural use must be documented at the level of each plot or parcel within a hectare, both in written documents and topographical plans.

The area occupied by these objectives must not exceed 20% of the total area of 50 hectares per RES Project used in the Dual Use System.

Moreover, the following provisions shall apply should the GD No. 1700/2024 enter into force: RES Projects are only placed on areas approved for removal from agricultural use. Occupying other areas used for agricultural activities in the Dual Use System is prohibited. For any changes to these areas that increase the area occupied by RES Project, approval for removal from agricultural use must be obtained.

This is an important aspect because non-compliance with this requirement may hinder the process of reception upon the termination of the construction works, Land Book registration of the RES Project (as a construction), and thus delay the commercial operating date.

D.4. Obligations and Compliance for Dual-Use Systems on Grasslands

D.4.1. The obligation to maintain the use of grasslands in a Dual Use System

As per the GD No. 1700/2024, to maintain the use of grasslands in a Dual Use System, the beneficiary of the RES Project must ensure that, throughout its operational period, the remaining agricultural area will be used for the works specified in the pastoral arrangements and for specific agricultural activities related to grasslands, such as grazing and/or fodder production.

The county Agricultural Directorates (in Romanian: *Direcțiile pentru agricultură județene*) are responsible for verifying compliance. They conduct yearly inspections throughout the existence of RES Project, starting from the date of the decision approving the removal from agricultural use with the dual-use mention. They check whether the conditions for dual use are being met and complete a verification report, which is also signed by the holder(s) of the grasslands.

D.4.2. The obligation to recover an equal area of unproductive land

The beneficiary of permanently removed *extra muros* grassland areas from agricultural use must recover an equal area of unproductive land. This recovery must be completed by the date specified in the removal approval to ensure no net loss of grassland area locally, county-wide, or nationally.

If no unproductive lands are available within the original administrative unit, recovery can occur in other units within the same county, with their agreement.

Upon completing the recovery, the beneficiary must:

- (iv) Introduce the recovered land into agricultural use as permanent grasslands;
- (v) Ensure a verification report by county agricultural directorates;
- (vi) Conduct a pedological and agrochemical study to confirm land quality;

E. PROPOSED AMENDMENTS TO ORDER NO. 12/2015 ON THE REGULATION FOR GRANTING LICENSES AND AUTHORIZATIONS IN THE ELECTRICITY SECTOR

The National Energy Regulatory Authority (the “**ANRE**”) has announced that Order No. 12/2015, which approves the Regulation for granting licenses and authorizations in the electricity sector, will be subject to amendments².

The proposed modifications are currently under public consultation. Below is a summary of the key proposed changes:

- (i) improving the process of granting/amending/suspending/revoking authorizations and licenses: Improving the process of granting, amending, suspending, and revoking authorizations and licenses for economic operators carrying out activities in the electricity sector by revising the conditions applicable to applicants.
- (ii) transparent and non-discriminatory criteria: transparent and non-discriminatory criteria for granting establishment authorizations and licenses in the electricity sector.
- (iii) introduction of new categories of economic operators prohibited from receiving authorizations/licenses: Economic operators whose shareholders/associates holding control and, where applicable, administrators/board members have held or currently hold similar positions within license holders for the supply of electricity or natural gas who have violated the legal prohibition provided in Article 58 (11) or Article 143 (1) (r) of Law No. 123/2012 on electricity and natural gas, as amended, by sending unilateral termination notices for electricity/natural gas supply contracts with final customers, a prohibition violated during their tenure. Economic operators sanctioned by ANRE within five years prior to the application date.
- (iv) aligning the Regulation with ANRE’s Order on Tariffs and Contributions: Correlating the provisions of the Regulation (currently approved by ANRE Order No. 12/2015) with the provisions of the ANRE president’s order approving the tariffs and monetary contributions levied by the ANRE, including the withdrawal of authorizations/licenses held as licensees. Economic operators whose financial situations indicate negative equity.
- (v) changes to document submission methods: amending legal provisions regarding how applicants for authorizations/licenses submit documents, prioritizing electronic means (portal provided by ANRE, email address published on ANRE's website, or uploading to the PCUe platform).
- (vi) changes to specialized personnel requirements: amending the requirements for specialized personnel of suppliers, traders, and electricity aggregators by imposing the condition of having at least three individuals with a minimum of three years of prior experience in the electricity sector (evidenced by REVISAL extracts, work certificates, CVs, or other relevant documents).
- (vii) changes to financial capability requirements: amending the financial capability requirements for suppliers, traders, and electricity aggregators by requiring financial resources necessary for the activity for which the license is requested, amounting to at least 1,000,000 RON, at the National Bank of Romania’s exchange rate valid on the first day of the month the license application is submitted.
- (viii) simplified Conditions for License Renewal: introducing simplified conditions for granting licenses after reaching their maximum validity.
- (ix) provisional Licenses: Introducing a chapter dedicated to provisional licenses.

² <https://anre.ro/category/documente-de-discutie/energie-electrica/>

- (x) offshore wind farm authorization: introducing a chapter dedicated to authorizing offshore wind power plants.
- (xi) Additional cases for revocation of establishment authorizations/licenses: revocation of licenses in cases where: the license holder for the activity of electricity supply violates the legal prohibition provided in Article 58 (11) of Law No. 123/2012 on electricity and natural gas, as amended, by sending unilateral termination notices for electricity supply contracts with final customers. The license holder does not pay the amounts owed to ANRE or cannot be contacted to pay the amounts owed to ANRE within one year from the invoice issuance date, in which case the license can be revoked without prior notice or notification.
- (xii) transitional legislative measures: The draft order contains legislative measures for resolving conflicts between successive normative acts, meaning that legal situations arising under the old regulation but not fully executed (such as establishment authorization/license applications submitted before the new order comes into force) will be resolved according to the provisions of the Regulation in force at the date the application was submitted.

Further assistance at:

Tatiana FIODOROV

Managing Partner

tatiana.fiodorov@afpartners.ro



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