Mr. Frans Timmermans
European Commission Executive Vice-President
Green Deal

Ms. Margrethe Vestager
European Commission Executive Vice-President
A Europe Fit for the Digital Age and Competition

Ms. Kadri Simson
European Commissioner
Energy

20 January 2022

Object: Recent legislative measures adopted by the Romanian authorities on the background of the energy prices increase

Dear Executive Vice-Presidents,
Dear Commissioner,

Against the background of an ongoing political crisis in Romania, and alongside the current energy price spike, the Romanian Parliament has recently adopted a new law, the so-called Emergency Government **Ordinance No 118/2021, which entered into force as of 1 November 2021**. It has further been approved via Law no 259/2021 and further modified through Emergency Government Ordinance 130/2021.

We address this letter to you as we are concerned this legislation **poses a serious threat to the sustainability of the Romanian electricity sector and, indirectly, the proper functioning of the European wholesale electricity market**. Specifically, it imposes:

- **A clawback mechanism on renewable and low-carbon power generators' revenues,** aimed at capturing revenues considered "excessive" in relation to current prices. This creates severe market distortions, discrimination and puts the energy transition at risk in the long run.
- **Compensation from suppliers to clients to bear part of their electricity consumption costs;** yet the mechanisms for subsequently reimbursing suppliers from public sources are neither clearly defined nor operational, thus leading to closure of some supply businesses and generating severe cash flow difficulties for others that thrive to maintain their operational status.

In addition, rising power wholesale prices lead to increases in DSOs' grid losses acquisition costs – the legislation adopted for dealing with the energy prices crisis does not foresee any possibility to transfer part of the burden to grid users or to the state budget. Neither did the Romanian regulatory authority intervene to transfer part of the burden to the grid users or to put in place mechanisms to safeguard the financial viability of the DSOs as public service providers, in order to ensure a balance between the interests of the state, of the consumers and of the industry investors.

As a strong supporter of the Commission's 'toolbox on energy prices', Eurelectric, along with its Romanian member IRE, call on you to engage with the Romanian authorities to insert clarity and balance in their public interventions in the energy sector.

How different measures are impacting power generation, power distribution and electricity supply is elaborated below:

1. For **Power Generation**, a windfall tax of 80% over the revenues of generators that exceed the amount of 450 RON/MWh has been instated. The most concerning element is that CO2 emitting power generators have been exempted from such obligations, leaving the burden on the shoulders of carbon-neutral and low-carbon power generators. This measure **will jeopardise the goals of the Green Deal and Fit for 55 package by profoundly undermining investors' confidence and rights, with a huge impact on much-needed RES investment as well as undermining the functioning of EU's Internal Electricity Market.**

2. Concerning **Power Distribution**, the Romanian legislative and regulatory framework exposes the DSOs to grid losses volume risk and price risk. The present level of wholesale electricity prices is some three times higher than the levels foreseen by ANRE when approving 2021 and 2022 distribution tariffs and the financial burden to DSOs will lead to their insolvency in case of no intervention from shareholders to back lending of working capital. Still, there is no mechanism in place to ensure reasonable recovery of such cash injection for the DSOs and their shareholders, in the coming years. Thus, providers of public service, in full observance of the Romanian legislation and regulation, expecting coverage of their costs and a reasonable profit, **are forced into financial losses, and might become insolvent in a matter of weeks**. As an illustration of the order of magnitude, presently the annual costs for grid losses acquisition of DSOs exceed 50% of a regular annual budget, while the level of losses is below the annual targets fixed by the regulator. For illustration purposes, the cash flow deficit may equal 30% of a normal annual budget of a DSO.

3. Lastly, on **Electricity Supply**, initial measures provided mechanisms of compensation for customers through energy suppliers covering part of household customers' energy bill, followed by reimbursement of said costs from the state budget. **Ordinance 118/2021**, then introduced an unclear supplementary mechanism of price capping in the invoice and included additional beneficiaries (e.g., SMEs, schools, hospitals and other public or private bodies). Further it introduced a range of state institutions involved in the reimbursement of costs to suppliers, thus **creating an enormous administrative burden for suppliers and state institutions**, while leaving the reimbursement mechanisms unclear and unlikely to be clarified promptly. **This not only delays the recovering of costs but also makes it uncertain whether suppliers will be ever fully compensated**. The **administrative burden for energy suppliers, especially for smaller ones, will become unbearable, generating high additional costs and risks of errors**. One has already noticed closures of supply businesses.

Nevertheless, the intervention of the Romanian state as legislated by the Government and Parliament appears to be a public intervention in the sense of Article 5 of Directive 2019/944/EU. It should therefore be investigated whether Romania should notify the European Commission of this intervention and abide by the other principles stated in the said Article 5.

We hope the above considerations have drawn your attention to the critical need to engage with the Romanian authorities and urge them to bring some clarity and balance to their public intervention in the energy sector.

We are available to provide additional information and work with your services to clarify the implications of the decisions of Romanian authorities on the internal energy market and the energy transition.

Yours sincerely,

Kristian Ruby
Secretary General, Eurelectric