

Investors can access Romania's quota from EU modernization fund for investments to modernize efficiency of energy systems and improve energy efficiency

On 4 May 2022, the Romanian Government adopted **Emergency Ordinance no. 60/2022 (EGO 60/2022)** on establishing the institutional and financial framework for the implementation and management of the funds allocated to Romania through the Modernization Fund, as well as for the modification and completion of some normative acts (published in the **Official Gazette no. 459 of 9 May 2022**).

Scope of application: establishing the institutional and financial framework for management of the funds allocated to Romania through the Modernization Fund, to allow the accessing of such funds for the modernization of the energy sector, in order to achieve the objectives of the European Green Pact.

The funds allocated to Romania from the Modernization Fund will be used to finance investments in the following priority sectors:

- generation of energy from renewable sources and improvement of the efficiency energy generation,
- energy infrastructure (electricity transmission and distribution networks, including the distribution of thermal energy),
- energy storage,
- high efficiency cogeneration;
- new energy generation capacities for coal replacement and a/the balancing network;
- nuclear energy, including research, innovation and development;
- production and use of green hydrogen;
- energy efficiency in industrial installations included in the EU ETS;
- biofuel production

Beneficiaries: public or private legal entities that have entered into a financing contract concluded with the Ministry of Energy or with the specialized central public authorities entrusted by the Ministry of Energy with the management of investments in the sectors mentioned above based on a delegation agreement.

Financing methods: financing provided under EGO 60/2022 is non-reimbursable and its granting is subject to state aid screening. If the financing represents state aid within the meaning of art. 107 para. (1) of The Treaty on the Functioning of the European Union (TFUE), the specific conditions and limitations imposed for the specific type of state aid or de minimis aid will apply.

Funds will be provided to investors through the following mechanisms:

- Grants,
- Guarantees
- Preferential loans
- Partial repayment of bank loans
- Additional interest payments on bank loans;
- Contracts for difference or cogeneration bonuses, etc.

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Procedure for selection of investment proposals: coordination and monitoring the implementation and management of funds allocated to Romania from the Modernization Fund is entrusted to a Supervisory Committee, that will be appointed by Order of the Minister of Energy within 30 days from the date of entry into force of EGO 60/2022, consisting of seven full members, respectively seven alternate members, employees within the Energy Ministry. The Supervisory Committee will set out inter alia the form of state aid granted through the Modernization Fund for each priority sector and type of financing mechanism, respectively grants or financial instruments.

EGO 60/2022 does not set the eligibility criteria for investments in priority sectors, as a minimum value of the investment or regional coverage.

The Supervisory Committee should prepare and submit to the Minister of Energy, with approval by subsequent Order, the documentation related to the selection procedures of the investment proposals and the related applicant's guidelines.

The investment, evaluation, contracting and implementation of investments will be carried out through an IT system dedicated to the management of the Modernization Fund.

Financing agreement: is an adhesion contract that establishes the legal framework for the contractual relationship between the Ministry of Energy or, as the case may be, between the specialized central public authorities to which the Ministry of Energy has delegated the management of investments in priority sectors, and the beneficiaries of the funds from the Modernization Fund.

The financing contract sets the corresponding rights and obligations of the parties in relation to the investment financing granted from the Modernization Fund and the timetable for the implementation of the investment.

The Ministry of Energy secures transparency and access to information in connection with financing grants, including by publication on its website, on a regular basis, of an updated list of all beneficiaries of financing from the Modernization Fund.

Granting of financing: is based on investors' applications for pre-financing (applicable in the case of direct grants) or for reimbursement, which are included as standard forms in the documentation of the selection procedure for investment proposals.

The Ministry of Energy transfers to the beneficiary all the amounts in lei, by the deadlines provided for in the financing agreement.

The amounts received from the Modernization Fund cannot be used for any purpose other than that for which they were granted. If this obligation is not observed the beneficiaries can be obliged to reimburse the grants in full or in part, at the request of the Ministry of Energy. The unspent portion from the amounts received from the Modernization Fund which remained unused at the end of the budget year shall be carried over to the following year.

The beneficiary has the obligation to submit requests for reimbursement, after receiving the invoices and supporting documents for the delivery of goods/provision of services/execution of works, and after payment of the respective costs. The period between two reimbursement applications may not exceed two years.

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EGO 60/2022 imposes on the beneficiaries the obligation to hire an independent financial auditor to verify the costs for which reimbursement is applied for from the Ministry of Energy.

Suspension of investment: investment is suspended, by an order/decision of the Minister of Energy and/or a delegated specialized central public authority, in any of the following situations:

- the investment has not been financed for more than two consecutive years;
- the total amount of revenue from the Modernization Fund, paid out for the investment, has not been spent within five years from the date of the relevant payment decision of the European Commission, unless it has been implemented through a multi-annual scheme.

Following a suspension decision, the Ministry of Energy notifies the beneficiary of the obligation to reimburse the unused pre-financing and the amounts granted for investments that have been suspended in a percentage from the total funding granted, that will be determined on a case-by-case basis, depending on the degree of achievement of the objectives set for each suspended investment.

If the beneficiary does not reimburse the Ministry of Energy the notified amounts by the deadlines specified in the notice of suspension, the recovery of such amounts will follow the regime applicable to state budget receivables.

Termination: a financing contract can be terminated at the initiative of the Minister of Energy and/or a delegated specialized central public authority if an irregularity, double financing or breach of the financing contract is identified.

The decision to terminate the financing contract will include the amounts to be reimbursed in lei by the beneficiaries and will constitute a writ of execution under the Fiscal Procedure Code.

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