

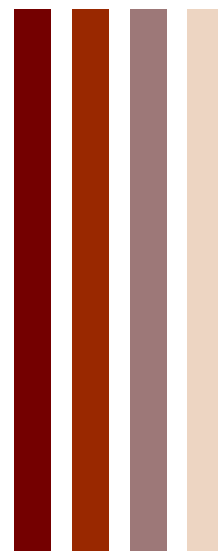
Analysis of the Presidential Executive Order to Safeguard Federation Oil and Gas Revenues

Regulatory Clarity and Commercial Impact

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Introduction

On 13 February 2026, His Excellency, Bola Ahmed Tinubu, GCFR, President of the Federal Republic of Nigeria, pursuant to sections 3(1), (4), and (5) of the Petroleum Industry Act 2021 (the “PIA”) and section 5 of the Constitution of the Federal Republic of Nigeria 1999, issued the Presidential Executive Order to Safeguard Federation Oil and Gas Revenues and Provide Regulatory Clarity 2026 (the “Order”).

The Order seeks to strengthen the fiscal framework established under the PIA by eliminating certain statutory deductions that it considers inconsistent with the constitutional revenue allocation structure. In particular, it redirects revenues previously earmarked for the Frontier Exploration Fund (the “FEF”) and the Midstream and Downstream Gas Infrastructure Fund (the “MDGIF”) to the Federation Account for the benefit of all Nigerians. Its objective is to arrest the persistent decline in oil revenue inflows attributed to off-budget allocations and deductions under the PIA.

In addition, the Order aims to enhance regulatory clarity and stability within the petroleum sector by directing the Nigerian Upstream Petroleum Regulatory Commission (the “Commission”) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the “Authority”) to establish a Joint Project Team (the “JPT”) in relation to integrated petroleum operations. The Order further sets up an Implementation Committee to oversee the effective execution of the Order.

This article explores the legal and fiscal implications of the Order which are significant for operators and other stakeholders in the Nigerian petroleum industry.

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Highlights of the Order

Effectively suspends the Nigerian National Petroleum Company Limited’s (the “NNPC”) collection and management of the 30% of profit oil and profit gas allocated to the Frontier Exploration Fund (the “FEF”), and mandates that the 30% be remitted directly to the Federation Account.¹

- Further suspends, with immediate effect, the payment of 30% of profit oil and profit gas revenues to the NNPC for the management of production sharing, profit sharing, and risk service contracts, and mandates payment of these profits directly into the Federation Account.²
- Directs that all profit oil and profit gas revenues received by the NNPC as concessionaire in production sharing, profit sharing, and risk service contracts, be transferred to the Federation Account.³
- Directs operators and contractors under oil and gas production sharing contracts to remit Royalty Oil, Tax Oil, Profit Oil, and Profit Gas, and any other interest due to the Government, directly into the Federation Account.⁴
- Directs the Commission to cease remitting gas flaring penalties into the Midstream and Downstream Gas Infrastructure Fund (the “MDGIF”) and pay these proceeds into the Federation Account. Furthermore, any expenditure from the MDGIF must be undertaken in accordance with applicable public procurement laws, regulations and policies.⁵
- Mandates the Commission and the Authority to constitute a Joint Project Team for technical regulation of integrated petroleum operations, with the Commission as the primary interface with licensees and lessees. The Joint Project Team, supervised by the Special Adviser to the President on Energy, is tasked with developing operational guidelines for integrated facilities, identifying the applicable licences, permits and fees, facilitating information sharing, and proposing a framework for allocating regulatory fees between the Commission and the Authority based on activity classification.⁶
- Establishes an Implementation Committee charged with coordinating inter-ministerial and inter-agency actions required for the implementation of the Order, monitoring institutional compliance, and providing periodic implementation updates and recommendations to the President.⁷

¹Paragraph 1 of the Order.

²Paragraph 2(1) of the Order.

³Paragraph 2(2) of the Order.

⁴Paragraph 2(3) of the Order.

⁵Paragraph 3 of the Order.

⁶Paragraph 4 of the Order.

⁷Paragraph 5 of the Order.

Validity of the Order

The issuance of the Order raises broader constitutional issues around the scope and validity of Executive Orders in Nigeria, particularly where such orders are issued in respect of matters covered by existing statutory provisions. Executive Orders are administrative instruments through which the President gives direction to executive agencies that implement government policy. Although they derive authority from section 5 of the Constitution, they do not possess the status of primary legislation and therefore cannot ordinarily override or amend provisions of an Act of the National Assembly.⁸

In *Elephant Group Plc v. National Security Adviser & Anor*,⁹ the Court of Appeal defined an Executive Order as “an order or regulation issued by the President or some administrative authority under his direction for the purpose of interpreting, implementing, or giving administrative effect to a provision of the constitution or of some or treaty. It is indeed an effective instrument or tool for good governance and administration by the Government.”

The Order itself proceeds from the premise that the fiscal architecture created under certain provisions of the PIA has resulted in substantial petroleum revenues being diverted from the Federation Account through statutory deductions and earmarked funding arrangements. According to the Preamble of the Order, these mechanisms have contributed to declining distributable inflows to the Federation Account.¹⁰ The Order therefore directs that specific petroleum streams be paid into the Federation Account.

The constitutional context grounding this directive is section 162(1) of the Constitution, which provides that all revenues collected by the Government of the Federation shall be paid into the Federation Account, subject only to limited exceptions.¹¹ The provision embodies a fundamental fiscal principle of constitutional order: that revenues accruing to the Federation are centrally collected and subsequently distributed among the three tiers of government in accordance with constitutionally determined allocation principles.

Considering this constitutional framework, it may be argued that certain statutory funding arrangements created under the PIA such as the FEF and the remittance of gas flaring penalties into the MDGIF, operate as statutory earmarks that redirect portions of petroleum revenues to other funds rather than the Federation Account. From this perspective, the Order may be viewed from the prism of an executive attempt to reinforce the constitutional requirement that revenues of the Federation be paid into the Federation Account.

In our jurisprudence, the supremacy of the Constitution is unassailable. Section 1(3) of the Constitution provides that where any law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and the other law shall be void to the extent of the inconsistency. Public authorities are therefore bound to act in accordance with constitutional provisions even where conflicting statutory provisions remain extant. Within this framework, the Order may be viewed not as an attempt to override the PIA, but rather as an administrative directive to executive agencies to comply with the constitutional revenue framework established under section 162 of the Constitution.

However, while the Executive may validly direct its agencies to comply with constitutional provisions, Executive Orders do not legally amend or override statutes enacted by the National Assembly.¹² Therefore, it is arguable that the relevant provisions of the PIA are unaffected by the Order and remain extant. An amendment of section 9(4), for example, and section 52(7)(d) of the PIA is the appropriate mechanism to bring the PIA into alignment with section 162 of the Constitution. A competent Court may also grant an Order declaring these provisions null and void to achieve the same effect. The Executive Order, without more, will not be sufficient.

⁸See *A.G. Abia State & Ors v. A. G. of the Federation (2022) LPELR-57010 (SC)*.

⁹(2018) LPELR-45528(CA) pp 85 – 86.

¹⁰See the Preamble to the Order.

¹¹Proceeds from the personal income of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.

¹²In *A.G. Abia State & Ors v. A. G. of the Federation (2022) LPELR-57010(SC)*, the Supreme Court noted that: “Section 5(1) of the Constitution is very clear as to its intention and range; it is made subject to the Constitution and it empowers the President to make Executive Orders to guide the various agencies of the Federal Government to execute its policies particularly where legislation is unclear or non-existent on the point. Before specific laws are put in place, it is merely a hand maid to the President in ensuring by publication of policy directions, the agenda of the Presidency on matters with respect to which the National Assembly can make laws...”

The co-existence of these statutory provisions with the directives contained in the Order may therefore give rise to legal and operational uncertainty within the petroleum industry. Accordingly, while it may be understood that the objective of the Order is to reinforce the constitutional primacy of the Federation Account, legislative alignment between the PIA and the constitutional revenue framework would provide the clearest and most durable resolution. Such alignment would eliminate any residual uncertainty regarding the status of the affected statutory provisions and ensure coherence within Nigeria's petroleum fiscal regime.

Other Commercial and Regulatory Implications of the Order

a. The Frontier Exploration Fund

The FEF is established under the PIA¹³ to support the exploration and development of petroleum resources in Nigeria's frontier basins. Under the PIA, the FEF is to be financed through a statutory allocation of 30% of the NNPC's profit oil and profit gas from production sharing, profit sharing and risk service contracts, ensuring a predictable funding source for capital-intensive frontier exploration activities.

Paragraph 1 of the Order directs that this portion that would otherwise have been allocated to the FEF be remitted instead to the Federation Account. The immediate effect is the suspension in practice of the statutory funding stream contemplated under the PIA, raising questions about the operational viability of the FEF, particularly as no alternative funding source is provided in any law.

The shift from a dedicated to an uncertain funding structure may undermine the strategic objective of the FEF, which was designed to insulate exploration financing from short-term fiscal pressures by tying it directly to upstream petroleum revenues. Reduced funding certainty could slow geological data acquisition and exploratory drilling.

In addition, implementation of exploration programmes previously reliant on the FEF may require reconsideration.

For example, where the NNPC undertakes further testing and drilling under section 9(2) of the PIA, it may adjust timelines, seek alternative financing arrangements, or reprioritise basins, potentially affecting efforts to expand and diversify Nigeria's petroleum resource base.

b. Gas Flaring Penalties

The PIA establishes the MDGIF as a financing avenue for the development of gas infrastructure in Nigeria. The MDGIF is designed to support midstream and downstream gas infrastructure projects necessary to expand domestic gas utilisation and support the Federal Government's broader gas development objectives.

Under the PIA, the MDGIF is funded from multiple sources, including levies, grants, and other monies that may accrue to the MDGIF.¹⁴ Significantly, the PIA also provides that gas flaring penalties paid by upstream operators are to be remitted into the MDGIF.¹⁵ The rationale for this arrangement is to ensure that penalties imposed for environmentally harmful practices such as gas flaring are channelled toward the development of gas infrastructure that would enable the capture, processing, and commercial utilisation of gas that might be otherwise flared.

Paragraph 3(1) of the Order alters this funding arrangement by directing the Commission to cease remitting gas flaring penalties into the MDGIF and instead pay those proceeds into the Federation Account. The Order further provides that any expenditure from the MDGIF must be undertaken in accordance with applicable public procurement laws, regulations, and policies.¹⁶

One implication of this directive is that the Order does not significantly alter the MDGIF itself, which remains a statutory fund established under the PIA. However, the Order removes one of the key revenue streams that the PIA expressly designates for it. The practical question is whether the remaining statutory funding sources will be sufficient to support the infrastructure projects contemplated under the PIA.

Another issue concerns the link between gas flaring penalties and environmental remediation. Under the PIA, such penalties are intended not only as a deterrent but also as a mechanism for addressing the environmental and social impacts associated with such practices.

¹³Section 9(4) of the PIA.

¹⁴Section 52(7) of the PIA.

¹⁵For the purpose of environmental remediation and relief of the host communities of the settlers on which the penalties are levied. See section 52(7)(d) of the PIA.

¹⁶Paragraph 3(2) of the Order.

Thus, their redirection to the Federation Account suggests a shift in which environmental remediation may be addressed through other statutory mechanisms, such as the Environmental Remediation Fund.¹⁷ If that is the case, the effect of the Order may be to refocus the MDGIF more narrowly on its primary objective of financing gas infrastructure development rather than environmental remediation activities.

c. Joint Project Team

One of the overarching objectives of the PIA is to establish efficient and effective governing institutions, with clearly delineated regulatory responsibilities across the petroleum value chain. In furtherance of this objective, the PIA establishes the Commission and the Authority as separate regulators for upstream and midstream and downstream petroleum operations collectively.

However, the PIA recognises that certain petroleum activities may span multiple segments of the value chain.¹⁸ In particular, integrated projects such as upstream gas production linked to processing plants, export terminals, or other midstream facilities, may involve operational activities that fall within the regulatory remit of both the Commission and the Authority.¹⁹

Prior to the issuance of the Order, a Presidential directive dated 26 June 2023 (the “Directive”) issued pursuant to sections 7(ee) and 32 of the PIA, sought to clarify the regulatory interface between the Commission and the Authority. It provides that the Commission is the exclusive technical and commercial regulator for upstream petroleum operations and facilities, covering activities from the point of extraction up to crude export terminals and gas processing delivery points. Conversely, the Authority oversees operations from the exit point of crude export terminal and the entry gate of natural gas processing plants.

The Directive further provides that where petroleum operations span both upstream and midstream segments in an integrated manner, such activities may be treated as upstream operations and therefore fall within the regulatory authority of the Commission. In this regard, the Commission is empowered to classify facilities as integrated facilities based on established guidelines and objective criteria, while both regulators are expected to maintain close consultation to prevent regulatory overlap pending any legislative amendment of the PIA.

Against this background, paragraph 4(2) of the Order mandates the Commission and the Authority to constitute a Joint Project Team (the “JPT”) for the technical regulation of integrated petroleum operations, with the Commission as the primary interface with licensees and lessees. The JPT is tasked with developing guidelines for integrated facilities, identifying applicable licenses, permits and fees, facilitating information, and proposing a framework for allocating regulatory fees based on activity classification.²⁰

The establishment of the JPT represents a pragmatic administrative response to one of the complex structural consequences of the PIA: the bifurcation of regulatory oversight across value chains that are commercially and operationally integrated. Through coordinated technical review and regulatory collaboration, the JPT may help streamline the regulatory engagement and reduce the risk of duplicative oversight.

Nevertheless, the implementation of the JPT raises important questions regarding licensing and regulatory coordination under the PIA. Integrated petroleum operations, by their nature, combine upstream and midstream/downstream activities within a single project structure, often in a manner that is technically and commercially inseparable. Therefore, applying the regulatory framework in the PIA will not always align seamlessly as the PIA’s regulatory framework was designed to apply to distinct value chain segments.

The practical issue, therefore, extends beyond whether multiple licences will be required. It raises the more fundamental question of whether a licence granted in respect of one segment of an integrated project can effectively accommodate activities that would ordinarily fall within the regulatory remit of another regulator. In other words, where upstream and midstream/downstream functions are operationally intertwined, it remains unclear whether the existing licensing structure can be applied in a strictly segmented manner without creating duplication, inefficiency, or regulatory uncertainty.

Although the Directive contemplates that certain integrated operations may be classified as upstream under the Commission’s purview, this approach does not fully resolve the licensing implications for project components that would ordinarily require authorisation from the Authority.

¹⁷Section 103 of the PIA.

¹⁸Section 2(a) of the PIA.

¹⁹Sections 7(ee), 8(d), 79(3) and 79(4) of the PIA.

²⁰Paragraph 4(3) & (4) of the Order.

Conclusion

Also, it is uncertain whether regulatory frameworks for standalone upstream or midstream/downstream activities will apply unchanged to integrated operations, or whether bespoke regulatory approaches will be required. For instance, it is unclear whether the tariff structures, permitting requirements, and technical standards applicable to midstream infrastructure would apply in the same manner where such infrastructure forms part of an integrated upstream project. The absence of clarity on this point may create uncertainty for operators in structuring projects and forecasting regulatory costs.

Thus, the designation of the Commission as the primary interface for licensees and lessees will streamline administrative engagement and underscores the importance of the JPT's role in developing operational guidelines for integrated facilities to resolve these uncertainties. As a joint body comprising both regulators, it is well positioned to develop coordinated regulatory approaches, which may subsequently be formalised through instruments issued pursuant to the respective statutory mandates of the Commission and the Authority.

The Order represents a significant shift in Nigeria's petroleum governance by redirecting key oil and gas revenues to the Federation Account, thereby reinforcing the constitutional mandate under section 162 that all Federation revenues be centrally collected. Nevertheless, it also highlights tensions with existing statutory funding mechanisms under the PIA, creating some legal and operational uncertainty. Resolving this tension through legislative amendments would provide greater clarity and stability. At the same time, the Order has practical implications, including potential changes to the financing of frontier exploration and gas infrastructure, as well as regulatory coordination through the JPT for integrated operations. Ultimately, its effectiveness will depend on how well its fiscal and regulatory adjustments are aligned with the PIA, ensuring regulatory certainty, investor confidence, and long-term stability in Nigeria's petroleum sector.

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