ASSESSING THE PRESIDENTIAL EXECUTIVE ORDER ON OIL AND GAS REVENUES REMITTANCE INTO THE FEDERATION ACCOUNT

Brief Overview: *This article examines Executive Order 9 and its proposed reforms to oil and gas revenue remittances, including changes to NNPCL's management fees, frontier exploration funding and gas infrastructure funds. It assesses the Order's fiscal and commercial implications, questions surrounding its constitutionality, and the need for legislative amendments to ensure legal and policy certainty.*

Introduction

On 13 February 2026, President Bola Ahmed Tinubu signed Executive Order 9, titled the "Presidential Executive Order to Safeguard Federation Oil and Gas Revenues and Provide Regulatory Clarity 2026". The Executive Order (EO) took effect on the same day.

Executive Order 9 was issued further to Section 5 of the 1999 Constitution (as amended), which vests in the President the executive powers of the entire property and control of all mineral resources of the Nigerian state, to be managed as prescribed by the National Assembly. The objective of the EO is to eliminate multiple layers of deductions that are collected by the Nigerian National Petroleum Company Limited (NNPCL), other government agencies under the Petroleum Industry Act 2021 (PIA), and the various petroleum contracts, which erode revenue that ought to accrue to the Federation Account to enable the three tiers of government to execute critical development priorities.

These changes are outlined in detail below, including our assessment of the EO's impact on specific government agencies and activities.

Key Provisions

Executive Order 9 makes the following changes to the operation of the relevant government agencies in the oil and gas sector:

Removal of NNPCL's management fee and repositioning the company as a commercial enterprise: The EO provides that NNPCL will no longer be entitled to 30% of proceeds from the sale of profit oil and profit gas, which it earned as a management fee under production sharing contracts, profit sharing contracts, and risk service contracts. For context, the management fees NNPCL earned from production sharing contracts totalled approximately N669 billion in 2023 and N242 billion in 2024, according to the company's 2024 annual report.

NNPCL is also authorised under Section 53(7) of the PIA to retain 20% of its operating profits to grow its business. The EO determines that this is sufficient to support the company's functions; therefore, the management fee is duplicative. It also provides that all operators/contractors of oil and gas assets shall, from the EO's effective date, pay royalty oil, tax oil, profit oil, profit gas, and any other interest howsoever described, which is due to the Government of the Federation, directly to the Federation Account.

The executive order also aims to reposition NNPCL as a commercial enterprise. It identifies that the company's role as a concessionaire under production-sharing contracts and similar agreements, which allows it to influence operating costs, creates competitive distortions that undermine its transition to a fully commercial operator.

Restructuring the Frontier Exploration Fund (FEF): The EO provides that NNPCL's use of 30% profit oil and profit gas in production sharing, profit sharing, and risk service contracts to fund the FEF should cease, and the funds should be paid directly into the Federation Account. This is because, in the President's view, a fund of this size devoted to speculative exploration risks, while accumulating large idle cash balances, encourages inefficient exploration spending at a time when government resources are urgently needed for core national priorities.

The FEF is used for the exploration and development of frontier acreages. The Nigerian Upstream Petroleum Regulatory Commission (NUPRC), in December 2025, indicated that it approved the release of circa US$185 million and N14.9 billion from the FEF's escrow account for frontier exploration activities.

Restructuring the gas infrastructure fund under the PIA: Executive Order 9 also suspends payments of gas flare penalties to the Midstream and Downstream Gas Infrastructure Fund. The penalty fees are now to be paid directly into the Federation Account.

The Midstream and Downstream Gas Infrastructure Fund is partly funded by gas penalties imposed under Section 104 of the PIA, for environmental remediation and relief for host communities. Similarly, the Environmental Remediation Fund, funded by fees paid by licensees and lessees under the PIA, is earmarked for the rehabilitation or management of adverse environmental impacts arising from the activities and operations of licensees and lessees. Therefore, duplicate funds exist to address the same issue, necessitating the executive order's relevant provisions.

Commentary and Analysis

The implementation of the EO will have a varying impact on different stakeholders. For instance, the removal of NNPCL's management fees and the order for those payments to be paid directly into the Federation Account will significantly increase the account's liquidity and the subsequent allocation of funds to the Federal, State, and Local governments to meet their capital expenditure needs. However, the implication for NNPCL is that this will result in lower cash flow and may adversely affect its bankability and ability to provide payment securities to its transacting counterparties.

Executive Order 9 also emphasises the intention to position NNPCL as a strictly commercial enterprise, in line with Section 53(7) of the PIA, which provides that the company and any of its subsidiaries shall conduct their affairs on a commercial basis, in a profitable and efficient manner, without recourse to government funds. It appears that, from the President's perspective, the company's mop-up of funds payable to the Federation Account contravenes commercial principles and confers advantages on it that other limited liability companies do not enjoy.

Secondly, EO redirects the funds payable into the FEF to the Federation Account. This raises the question of how frontier exploration will be funded, given that the PIA and the Frontier Basins Exploration Administration Regulations 2023 do not provide for any alternative funding source for the fund. The absence of funding will likely reduce the rate of frontier exploration activities, particularly regarding the development and issuance of the NUPRC's 2026 Frontier Basin Exploration and Development Plan, which typically includes NNPCL's proposed exploration work programme for the year ahead.

While the EO is expected to boost revenue across the three tiers of government, its constitutionality remains in question, particularly in light of Sections 4, 5, 80, and 162 of the Constitution.

Section 4 of the Constitution confers the legislative powers of the Federation on the National Assembly, while Section 5 confers on the President the executive powers of the Federation. On its part, Section 80 (1) provides that all revenues or other monies raised or received by the Federation shall be paid into and form one consolidated revenue fund of the Federation, provided that such revenue or other monies are not payable under the Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose. However, Section 162(1) of the Constitution provides that the Federation Account shall be maintained by the Federation into which shall be paid all revenues collected by the Government of the Federation, save for income tax of the armed forces, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory.

Section 162(10) clarifies that 'revenue' in this context means any income or return accruing to or derived by the Government of the Federation from any source and includes (i) any receipt, however described, arising from the operation of any law, (ii) any return, however described, arising from or in respect of any property held by the Government of the Federation, and (iii) any return by way of interest on loans and dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body.

An argument can be made that the Frontier Exploration Fund and the Midstream and Downstream Gas Infrastructure Fund are special funds established under Section 80 of the Constitution and the PIA, and that any restructuring of these funds will require an amendment to the PIA by the National Assembly. The President cannot, by executive order, seek to amend the provisions of the PIA, as that will be considered unconstitutional. Nonetheless, the President, by Executive Order 9, is keeping to the intent and spirit of Section 162 of the Constitution that all revenue of the Federal Government should be paid into the Federation Account. On this basis, the President can be deemed to be acting in accordance with the constitutional dictates.

While different views have been expressed on the constitutionality of the Executive Order, our recommendation is that the Presidency pursue an immediate amendment to the PIA to align it with the Executive Order. This is especially as an executive order cannot amend an existing law enacted by the legislature.

Conclusion

Financial investment in any sector is strengthened by a clear and durable legislative framework with an objective process for amending the law. Where legal provisions are suspended or rendered inoperative by executive orders, even for a short period, investors may become cautious about policy volatility and its possible effects on their investments. Investors may, in such instances, suspend or delay investment until policy certainty is achieved.

Therefore, it is important to ensure that, while public financing interests are prioritised, the tenets of the legislative law-making procedure are not compromised. Balancing both interests requires careful consideration of the Constitution and existing legislation to ensure a clear, objective process is followed when making any necessary changes to repair faulty frameworks.

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