Potential removal of the 50-hectare limit - a step forward for renewable projects in Romania

On March 25, 2025, a draft law amending and supplementing certain legislative acts was registered with the Romanian Senate under number B95/2025 (hereinafter referred to as "Legislative Proposal" or "Proposal").

1. Background

According to the explanatory memorandum underpinning the Legislative Proposal, its main purpose is to „facilitate and accelerate the development of the necessary energy transition infrastructure for renewable energy generation and/or energy storage, together with the related technical infrastructure, by introducing derogations and procedural simplifications regarding the use of agricultural land, the authorization of construction works and compliance with the urban planning documentation in force."

The Legislative Proposal aims to amend the following laws: (i) Land Law No. 18/1991 ("Law 18/1991"); (ii) Law No. 50/1991 regarding the authorization of construction works ("Law 50/1991"), and (iii) Law No. 350/2001 regarding territory development and urban planning ("Law 350/2001").

2. Main proposed changes

We highlight below the main changes brought by the Proposal:

2.1 Removal of the 50-hectare limit currently applicable to renewable energy projects

Currently, according to Law 18/1991, renewable energy projects (consisting in electricity generation capacities from renewable sources such as solar, wind, biomass, bioliquids and biogas energy generation plants, electricity storage units, transformer stations or other similar systems) can be built on certain categories of agricultural land located in the extra muros area, subject to a limit of maximum 50 ha of land per investment objective. This possibility was specially introduced by Law No. 254/2022 amending Law 18/1991 ("Law 254/2022").

The Legislative Proposal removes this 50-hectare land limit, which means that a project can be built on any surface of extra muros land needed (to the extent it is included in the categories for which the law allows the erection of constructions – quality classes III, IV and V, for instance).

This amendment would be very useful for wind and solar projects that are often developed on surface areas larger than 50 hectares and would eliminate the remaining uncertainties of the current solution developed in practice to

overcome the 50-hectare challenge.

Thus, a market practice implicitly accepted by the relevant authorities has emerged based on the correlated interpretation of certain provisions of Law 18/1991 and Law 50/1991 and a consistent terminology used in both pieces of legislation ("investment objectives"). Thus, the 50-hectare limitation under Law 18/1991 applies to an "investment objective", a term used by Law 50/1991 to define the subject-matter of a building permit while a provision

introduced in Law 50/1991 in 20231 expressly allows the issuance of separate building permits for several investment objectives developed on the basis of the same urban planning certificate (thus basically recognizing the possibility to split a project into several sub-projects as regards the building permit application process).

Many larger projects have been developed/structured and permitted based on such interpretation, usually without objections from the authorities, but such practice has not been expressly confirmed by any relevant authority (e.g., Ministry of Energy or Ministry of Agriculture and Rural Development) or courts of law.

Indirectly related to the same topic, the Legislative Proposal does not amend the deadline until which Law 254/2022 (which has introduced the possibility of renewable projects to be built in extra muros areas) produces effects, that is 31.12.2026. If this deadline is not changed, it follows that the express possibility to build renewable projects in the extra muros areas might no longer be available for projects that have not been permitted until the said legal deadline (the law does not contain a transitory provision to the benefit of the projects subject to ongoing permitting procedures but not yet finalized at the expiry of the legal deadline).

Also, we further note that the possibility to build on extra muros land introduced by Law 254/2022 has not been recognized for green hydrogen production facilities as well (e.g., electrolysers) and this aspect has not been addressed by the Proposal.

Last but not least, we note that a derogation from the 50-hectare limit had already been granted under Government Emergency Ordinance No. 91/2023 to the benefit of investment objectives of national interest developed on extras muros land of quality class IV and V belonging to the public and private domain of the State and managed by the State Property Agency, a derogation which was criticized for distorting competition by favoring state-owned producers. Now the Proposal removes this limitation for everyone else.

2.2 Clarifications regarding the specific objectives that can be built in the extra muros area

The Legislative Proposal clarifies that both standalone storage capacities (connected only to the public grid) and those collocated (added to an electricity generation capacity) can be placed in the extra muros area.

Also, it extends the derogation to nuclear and hydroelectric generation capacities allowing for their construction on extra muros land, and details by way of examples the components that can be placed on extra muros land (i.e., transformer stations, inverters, cables and items of the connection installation as well as other ancillary systems).

The same itemization is also replicated in Law 50/1991 and Law 350/2001, in the context of the implementation of provisions allowing for the construction of renewable electricity, green hydrogen generation capacities and electricity storage capacities in the absence of a dedicated territorial and urban planning documentation.

2.3 Exemption from the principle of compliance with the pre-approved territorial planning and urban planning documentation

Also, the existing exemption from a dedicated urban planning documentation for renewable electricity and green

hydrogen production projects (introduced in 20232) has been clarified/extended by way of an express derogation from the principle of compliance with the approved urban territorial and urban planning documentation.

Thus, pursuant to this newly extended exemption, the right to build renewable electricity and/or green hydrogen generation capacities as well as electricity storage capacities will be granted in the absence of (dedicated) urban planning documentation and without being subject to the provisions of the pre-existing urban planning documentation and the local urban planning regulations in force.

Currently, the existing exemption seems to refer to a dedicated territorial and urban planning documentation (such as PUZ/PUD) but it might be argued that it does not exempt the projects from compliance with pre-existing urban planning documentation / regulations, if any (such as the local urban planning regulation - in Romanian "regulamentul local de urbanism").

3. Conclusions

The proposed legislative changes extend and reconfirm the simplification of the permitting process for all renewable projects irrespective of their size, in line with the EU renewable directive (RED III) as well as useful clarifications of the existing legal framework.

As the Legislative Proposal is in the early stage of the approval procedure, it is difficult to estimate whether and/or when it will be adopted. However, the fact that it has been initiated by the current majority in the Parliament, thus having a relatively solid support of the political environment, makes it likely to be approved relatively soon, hence the importance to closely follow this topic.