

Romania: Law 21 / 2023 for the Amendment of the Construction Law no. 50 / 1991 – One Step Closer to Legislative Clarity for Renewable Energy Projects

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Law 21 / 2023 for the Amendment of the Construction Law no. 50 / 1991 ("**Law 21 / 2023**") was published in the Official Gazette on 10 January 2023 and will enter into force on 13 January 2023. Law 21 / 2023 is intended to bring legislative clarity to the development of renewable energy projects in Romania.

Specifically, this law corrects certain inconsistencies that existed between two pieces of legislation which were passed in the summer of 2022 in relation to the permitting process for renewable energy projects: (i) Law no. 254 / 2022 for the Amendment of the Construction Law no. 50 / 1991 and other Normative Acts ("**Law 254 / 2022**"); and (ii) Law no. 262 / 2022 on the Amendment of the Land Law no. 18 / 1991 and of the Construction Law no. 50 / 1991 ("**Law 262 / 2022**").

Law 254 / 2022 (published in the Official Gazette on 21 July 2022) introduced in art. 92 paragraph (2) letter j) of the Land Law no. 18 / 1991 an exception to the restriction to build projects on *extra muros* land (i.e. agricultural lands, pastures, vineyards, orchards, as well as land benefitting from improvements) having soil fertility quality classes III, IV and V. Specifically, this exception related to **investments in those projects for the production of electricity from renewable sources (solar, wind, biomass, bioliquids and biogas energy production capacities, electricity storage units, transformer stations or other similar systems) and which projects fit within a maximum surface area of 50 hectares**. According to the new provisions of art. 92 paragraph (2) of the Construction Law no. 50 / 1991, such projects could be developed based upon simply the **building permit and the approval of the change of agricultural use of the land** on which the investment objectives were located.

Law 262 / 2022 (published in the Official Gazette on 28 July 2022) failed to reference this new exception introduced by Law 254 / 2022 when amending art. 11¹ of the Construction Law no. 50 / 1991, which allows the issuance of building permits without the prior approval of a territory planning documentation and/or urbanism documentation. Instead, it only references the exceptions included in letters c) and e)¹ of art. 92 paragraph (2) of the Land Law no. 18 / 1991, and **not also to the investment objectives described in letter j) of the same article**.

¹Letter c) of art. 92 paragraph (2) of the Land Law no. 18 / 1991: „*servicing agricultural activities and/or related services, respectively: mineral or natural fertiliser stores, composting buildings, feed silos, sheds, silos for the storage and preservation of seeds for consumption, including the administrative premises relating thereto, platforms and storage areas for primary agricultural products, animal shelters and livestock holdings/livestock farms, greenhouses, solar, nurseries, mushroom farms, specific objectives for the production of electricity from renewable sources, exclusively for the purpose of providing energy for the holding's own consumption, located on farms, premises for the processing/processing/marketing of crop and livestock products, buildings for agri-tourism purposes for projects financed by European funds*”;

Letter e) of art. 92 paragraph (2) of the Land Law no. 18 / 1991: “*household annexes of agricultural holdings as defined in point 4 of Annex no. 2 to Law no. 50 / 1991 on the authorisation of construction works, republished, with subsequent amendments and additions*”.

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Law 21 / 2023 amends art. 11¹ of the Construction Law 50 / 1991, which now includes all three exceptions of letters c), e) and j) of art. 92 paragraph (2) of the Land Law no. 18 / 1991. This means that starting from 13 January 2023, **investment objectives specific to the production of electricity from renewable sources (solar, wind, biomass, bioliquids and biogas energy production capacities, electricity storage units, transformer stations or other similar systems) of a maximum land surface area of 50 hectares are allowed to be built on *extra muros* land, having soil fertility quality classes III, IV and V, based only on the building permit and the approval of the change of agricultural use of the land, without the need of prior approval of a Zoning Plan (PUZ) for such projects.**

After last summer's legislative changes, legal practitioners raised questions as to which extent this paragraph (2) of art. 92 of the Land Law no. 18 / 1991 could be considered also an exception from the general provisions of the Construction Law no. 50/1991 and of the Urbanism Law no. 350 / 2001, which require the prior existence of a General Urbanism Plan (PUG) or of a Zoning Plan (PUZ) as a condition precedent for the issuance of a building permit.

From this perspective, the majority of legal practitioners interpreted paragraph (2) of art. 92 of the Land Law no. 18 / 1991 as a provision granting the possibility to build such renewable energy projects on *extra muros* land, while a PUG or a PUZ would still be required under the Construction Law no. 50/1991 and the Urbanism Law no. 350 / 2001 for establishing the projects' urbanism parameters. This is because no exception was expressly included in these laws regarding these projects. Therefore, in this interpretation, the changes brought by Law 254 / 2022 consisted of a facility granted only for the purpose of eliminating the condition to obtain a PUZ for the extension of the city limits to include the land related to these projects (changing the land from *extra muros* into *intra muros*).

In practice, there appears to have existed at the level of the Ministry of Agriculture an aberrant interpretation whereby the construction of renewable energy projects on *extra muros* land surface areas of more than 50 hectares would be forbidden, even if the investor/developer would have undertaken the zoning procedure of changing the land from *extra muros* into *intra muros*.

It is yet to be seen how this new amendment will be interpreted and applied in practice by the Romanian authorities, since Law 21 / 2023 does not contain transitory norms regarding projects which are already in the permitting phase (having planning certificates already issued or undergoing a PUZ procedure), nor does it amend the Urbanism Law no. 350 / 2001 to also specifically provide therein a similar exception to the rules which require the prior existence of a General Urbanism Plan (PUG) or of a Zoning Plan (PUZ) as a condition precedent for the issuance of any building permit.

It should be noted however that members of the Romanian Parliament are closely scrutinizing those issues impacting renewable energy projects and seem keen to urgently resolve legislative inconsistencies and ambiguities in relation to this strategic sector (especially given energy independence and security concerns). There was unanimity among the voting Parliamentary members to approve Law 21 / 2023 as a matter of urgency. There is also another legislative proposal being considered in the emergency approval process to allow for further permitting derogations for renewable energy projects (e.g. construction works for the production and storage of electricity and hydrogen from renewable sources located *intra muros* and *extra muros* areas of localities, including transformer stations, cables and installations for their connection to the public grid). This proposal also seeks to align all applicable provisions of the Construction Law no. 50 / 1991 and the Urbanism Law no. 350 / 2001.

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