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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: RENEWABLE ENERGY 2023 ROMANIA



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1. SUMMARY

The development of renewable energy projects is going through a new boom in Romania in recent years. In line with the country's commitment to increasing the share of renewable energy in its energy mix and achieving its renewable energy targets, and catalyzed by the geo-political and climate change context, there is a lot of activity in the local renewable energy field.

According to data provided by the Romanian National Regulatory Authority in the Energy Field (ANRE), at the beginning of June 2023, Romania had approximately 18,931 megawatts installed in power production capacities, out of which around 4,450 megawatts in wind and solar projects.

In addition, according to information published by Transelectrica, the Romanian power transmission grid operator, as of April-May 2023 there were more than 49 gigawatts booked into the grid for wind and solar projects under development (including those developed by prosumers). The size of projects under development varies from a few megawatts to around one thousand megawatts in envisaged installed capacity. For example, a photovoltaic project of approximately 1,000 megawatts is now in the construction phase in the western part of Romania.

Developers tend to be mostly local individuals or companies, although an increasing number of international players are also stepping in and getting more and more involved in the development phase. Investors interested in acquiring renewable projects include large international energy companies, investment funds, and other local and international companies.

As more and more projects reach the ready-to-build stage, discussions with potential financing banks have also become more frequent. While there is a lot of interest from credit institutions to support renewable projects (including in relation to their own ESG targets), Governmental measures related to power prices taken as a consequence of the war in Ukraine slowed down the conclusion of power purchase agreements, a necessary instrument for the bankability of such projects.

Currently, there is no dedicated support scheme for renewable projects in Romania (the previous green certificates scheme was applicable for projects commissioned up to the end of 2016). However, renewable projects may be eligible to receive EU funds under various schemes, including the *Recovery and Resilience Plan*. In addition, the Romanian Government has been working on a Contracts for Difference scheme, for which renewable projects would also be eligible. The rules on this scheme are still work-in-progress, being expected to come into force this year.

Some of the issues faced by renewable projects in the previous development wave (mainly prior to 2013) are still relevant. For example, projects and developers are still competing for available connection capacity in the grid which has not been upgraded at the pace necessary to accommodate all new projects. Permitting also continues to be quite an intricate and lengthy process.

However, with a view to facilitating investments, several legal changes have been brought recently (although some of them are enforced by certain authorities in misalignment with their intended purpose, thus creating bottlenecks for the development of projects).

2. OVERVIEW OF THE COUNTRY'S RENEWABLE ENERGY SECTOR

2.1. Legal Framework

The rules relevant to the development and operation of renewable energy projects are set out in various legal provisions (including laws, ordinances, orders, and regulations of various regulatory authorities) and refer to matters such as capacity allocation, grid access, environmental impact assessment, power purchase agreements, operation and maintenance, distribution/transmission tariffs, electricity storage and securing land for renewable energy projects. Some of the relevant pieces of legislation apply specifically to energy/renewable power projects, while others apply generally to the energy industry or to the development of any building and/or infrastructure project.

Support Schemes

Romania complies with the general EU principles applicable to state aid. Any support scheme, including in the renewable energy field, must be notified and approved by the European Commission. As mentioned above, no dedicated support scheme is currently in force in relation to renewable power projects.

Access to Grid

Generally, access to the public power grid is regulated by ANRE. The connection to the grid is a mandatory service performed by the power transmission system operator and the power distribution operators. There are specific rules in place in relation to the booking of grid capacity and the situations in which access to the grid may be denied (mainly if the connection affects the security of the national energy system) or would require additional costs (e.g., related to grid reinforcement works).

Interconnectivity and Power Purchase Agreements

Romania's power grid is interconnected to those of the neighboring countries. Moreover, additional steps have been taken by the Government for cooperating with the Republic of Moldova in order to develop projects of common interest for developing the necessary grid infrastructure for exporting energy also in this country.

After almost 10 years in which over-the-counter power purchase agreements on the whole-sale market were prohibited in Romania, they have been allowed again since 2021. However, the PPA market is not very liquid yet, with very few long-term over-the-counter power purchase agreements having been concluded recently. This is partly due to the difficulty of setting power prices for the long term, given Governmental control on power prices in the context of the war in Ukraine.

Distribution/transmission tariffs

Transelectrica S.A. is the Romanian transmission and system operator (TSO), a state-controlled company. In addition, Romania is split into eight distribution regions, with one concessionaire operator holding exclusive rights to operate the distribution grid in that area.

Distribution and transmission tariffs are regulated by ANRE, being annually and individually approved for the TSO and each distributor, based on a specific procedure. Therefore, the transmission tariffs apply throughout Romania, while distribution tariffs may differ depending on the area the project is located.

Securing Land

Land for the permanent structures in a renewable power project must be secured based on rights *in rem* – typically ownership or superficies. Superficies rights (granting the right to use the land and own the construction erected on it) tend to be the preferred choice due to several factors, including costs, restrictions to transfer of ownership over agricultural land, termination rights in case of non-viability of the project (for example due to non-issuance of an essential permit in a given deadline).

Permitting Process

The permitting process for renewable power projects entails numerous permits, authorizations, and procedures, including, in some cases, the environmental impact assessment. Generally, renewable power projects must submit an application to the competent environmental authority which will decide whether the project must undergo the environmental impact assessment process.

Operation and Maintenance

After the commissioning of the project, the developer usually enters into operational and maintenance (O&M) arrangements with various service providers.

Electricity Storage

Electricity storage is not mandatory for projects developed in Romania. Certain provisions and regulations on this topic have been recently introduced in the legislation. Nonetheless, ANRE has recently recommended to those interested in investing in renewable energy sources to consider that at least 20% of the generation capacity should also have a storage component.

Domestic Sales and Imports/Exports

Romania aims to increase the share of renewable energy sources in its energy mix, including through the development of new renewable projects.

While there are no clear targets for the import/export of renewable energy, the Romanian authorities have multiple times stated that one of the main focuses is achieving energy independence. Romania's energy targets include increasing its domestic production of renewable energy, reducing reliance on fossil fuels, and improving energy security, in line with the EU guidelines.

Grid capacity, including in relation to export and import, is still limited, with new production capacities competing for this. Although various works are ongoing for the upgrade of the grid (including the power transmission grid), the implementation calendars sometimes exceed the planned or desired commissioning dates for certain renewable projects.

2.2. Foreign Investment and Participation

Under the Foreign Direct Investment (FDI) regime in Romania adopted in 2022, investments in the energy sector may be subject to screening by the local authority (namely the Commission for the Examination of Direct Foreign Investments – CEISD) if the following conditions are met:

a. The investment amounts to either:

i. a foreign direct investment, aimed to establish direct links between the foreign investor and the undertaking (i.e., the SPV that develops the project and is intended to be acquired by the foreign investor), conferring control (within the meaning of competition legislation) over the management of the undertaking to said foreign investor. This also covers the scenario where there is an indirect change in control (the ownership structure of the shareholders is changed, resulting in a foreign

investor controlling the Ro-manian entity).

ii. a new investment (greenfield) – namely an initial investment into tangible or intangible assets linked to (i) launching a new undertaking, (ii) extending the capacity of an exist-ing undertaking or (iii) diversifying the production of an undertaking (new prod-ucts/processes).

b. The investment is made by a foreign investor

A foreign investor is (i) a legal entity or natural person established outside of the EU or (ii) a legal entity established in the EU, but which is controlled by a legal entity or natural person established outside of the EU.

According to changes in legislation published in June 2023, FDI screening is mandatory also for EU investors.

c. The investment exceeds EUR 2 million

Foreign direct investment may be subject to FDI clearance even if below the EUR 2 million threshold if it is likely to affect security or public order. Aspects such as the foreign investor being controlled by governments of non-EU countries or prior involvement in activities affecting security or public order in a Member State may be considered when qualifying investments as likely to affect security or public order.

2.3. Protection of Investment

Romania is a party to several international treaties and agreements in the energy sector.

As a member state of the European Union, Romania is bound by the EU treaties and regulations that govern various aspects of the energy sector, including renewable energy. These include the *Treaty on the Functioning of the European Union* (TFEU) and, therefore, all the European legislation, including directives such as the *Renewable Energy Directive* (RED) and the *Energy Efficiency Directive* (EED). These EU regulations set renewable energy targets and establish common frameworks for the promotion of renewable energy across member states.

Romania is a party to the UNFCCC, which aims to address climate change through international cooperation, and has also ratified the *Paris Agreement* in 2017.

Romania is also a member of the Energy Community, an international organization that promotes energy cooperation among its member states. The *Energy Community Treaty* aims to create an integrated energy market, increase energy security, and promote sustainable development in the member countries. It also includes provisions related to renewable energy promotion and targets.

These international treaties and arrangements influence the

regulatory policy on renewable energy in Romania. They provide guidance, set targets, and establish common frameworks for renewable energy development. Romania's renewable energy legislation and policies must align with the provisions and objectives of these international agreements to ensure compliance, promote renewable energy deployment, and contribute to global climate and energy goals. For example, a recent transposition of EU legislation for promoting renewable energy projects (namely *Directive (EU) 2019/2001*) is represented by the *Emergency Government Ordinance no. 163 dated 29 November 2022 for the completion of the legal framework promoting the use of renewable sources energy*.

3. DEVELOPMENT OF RENEWABLE ENERGY PROJECTS

3.1. Granting of Grid Connection Rights

In order to secure grid connection rights, the developer must obtain technical connection approval from the operator of the grid to which the project is envisaged to be connected. In view of applying for the technical connection approval, the developer must first obtain the urbanism certificate issued for obtaining the building permit.

(i) Technical Connection Approval: The technical connection approval is the grid operator's offer to the developer's connection request and includes the technical and financial conditions for the connection. It is issued based on the connection solution identified through the solution study and chosen by the user (if several such solutions have been identified). The technical connection approval is one of the most important documents when developing a renewable project, the main purpose being to reserve the much-coveted capacity in the grid.

(ii) Connection Agreement: Following the issuance of the technical connection approval, renewable energy project developers must enter into a Connection Agreement with the grid operator. The agreement typically sets out the works that need to be carried out in relation to connection, its calendar, and payment deadlines.

(iii) Connection Certificate: Following the construction of the project and connection to the project grid, the connection certificate attests to such connection, being valid for as long as the production capacity is maintained under the same parameters.

The connection certificate is issued by the grid operator, and it certifies the fulfillment of the requirements for connection and sets out the technical conditions for the use of the grid after the final connection.

3.2. Ownership by Foreign Companies

Both Romanian and foreign investors may develop renewable power projects. Please see Section 2.2 in relation to the FDI regime. There is no tender process for development rights per se.

However, the development, construction, and commissioning of renewable projects require obtaining various permits, authorizations, licenses, and consents. These are typically issued by relevant authorities (e.g., environmental, municipalities, ANRE) and third parties holding special rights (e.g., grid operators).

Rights to renewable projects (including those under development) are typically transferred via the transfer of the shares in the project company. While transfers of assets are also possible in theory, they are more difficult to achieve, as they would entail obtaining consent from third parties – including in relation to the transfer or re-issuance of permits, certificates and permits, authorizations, licenses, and consents. Moreover, certain permits or rights (e.g., concession rights over land) cannot be transferred.

3.3. Stages of the Development Process

In Romania, the development of renewable energy projects typically involves obtaining various authorizations and permits at different stages of the project. The specific authorizations and their validity terms may vary depending on the type and scale of the project, as well as the location of the project. However, there are several common authorizations to be obtained for almost every project, as follows:

I. Land Securing:

The development of renewable energy projects starts with securing adequate rights on the relevant land. These typically are rights *in rem*, such as ownership or superficies right (which allows the development of a construction on the land belonging to another owner and use of the relevant land). These rights must be secured based on agreements in notarized form and therefore notarial fees would apply.

The terms and conditions, including duration and financial obligations, are negotiated between the parties, with superficies rights being usually secured for durations or at least 30 years from the commissioning of the project.

In case the relevant land is owned by the state or the administrative-territorial units, the land can be secured via concession agreements, and awarded following a public tender procedure.

II. Grid Access

See Section 3.1.

III. Construction Permits

The process for obtaining the building permit for a renewable project is kick-started with the issuance of an urbanism certificate. The urbanism certificate is issued by the local municipalities in the area where the project is developed and informs the applicant on the legal, economic, and technical regime of land and existing buildings, establishes the urban planning requirements to be fulfilled, and provides a list of legal endorsements and permits necessary to be obtained as a prerequisite for the building permit. In short, the urbanism certificate should contain information about the possibility to develop a renewable energy project on the envisaged land. The urbanism certificate is the document that initiates the procedure for obtaining the building permit, as well as one of the prerequisites for obtaining the technical connection approval (see Section 3.1.).

The prerequisites listed by the urbanism certificate may include:

(i) Change of Land Use Category: This authorization is required in view of developing the renewable energy project, to the extent the use category of the land is not already suitable for this purpose (for example in case the land use category of the land is agricultural instead of buildable). It usually involves obtaining approval from the relevant authorities for changing the land's current use category to accommodate the project and is subject to several limitations depending on the applicable regime.

Per recent amendments, renewable energy projects (energy-producing capacities of solar and wind energy, biomass, bioliquid and biogas, electricity storage capacities, transformer stations, or any other similar systems) may be developed on poorly productive (soil class quality III-V) *extra muros* agricultural land of maximum 50 hectares having the land use categories arable, orchards and vineyards. Prior to this amendment entered into force in July 2022, in general, renewable energy projects could be developed on *extra muros* land only if such land was converted to *intra muros* through a zonal urbanism plan (in Romanian plan urbanistic zonal or PUZ). Following this amendment and also following the amendment of Law 50/1991 for the authorization of construction works, the renewable energy projects meeting the criteria above can be developed in *extra muros* without having the obligation to priorly prepare and approve urbanism documentations such as zonal urbanism plans (PUZ) and even without such documentation being in force in relation to the envisaged land.

(ii) The Environmental Approval (*acord de mediu*): The environmental approval is the administrative act with both technical and legal nature which sets forth the conditions related to environmental protection for carrying out a certain project. The environmental approval is issued based on the environmental impact assessment. The need to obtain an environmental approval depends upon the impact of a certain project on the environment.

In addition, depending on the location and other features of the project, multiple other prerequisites may have to be obtained, e.g., from neighbors, aeronautical authority (especially in the case of wind projects), Ministry of Defense, operators of various grids and infrastructures, etc.

Setting-up Authorization: The development and commissioning of any electricity generation capacity having an installed power above 1 megawatt requires the approval of the competent authority, namely ANRE, through the issuance of the setting-up authorization.

Building Permit (*autorizație de construi*): The building permit is the act issued by the relevant local public authority, setting out the parameters within which the relevant project may be built (specific location, height, layout, surface, etc.). The building permit is issued further to the request filed by the holder of the ownership right, superficies right, or concession right. Please refer to Section 3.3. I for more details in this respect. The building permit must be obtained within 12 months of the conclusion of the connection agreement, but no longer than 18 months of the issuance of the technical connection agreement. If the building permit is not obtained and presented to the grid operator within the two deadlines, the technical connection approval ceases to be valid and the connection agreement is terminated, in both cases automatically.

IV. Operational Permits

In view of operating the renewable energy project, the developer must obtain the following main permits and/or authorizations:

(i) Power Generation License: After the development, construction and commissioning of the project, the developer must request and obtain the power generation license to commercially exploit the plant (i.e., perform the electricity generation activity). The power generation is typically issued for a term of 25 years (which is also the maximum term). Prior to its expiry, the holder may apply to obtain a new license.

(ii) Environmental Authorization: Commissioning and operating a renewable power project is conditional upon obtaining the environmental authorization, which sets out the conditions and/or the parameters in which the respective activity can be

performed from an environmental standpoint. The authorization must be obtained by the entity performing the power generation activity (i.e., by the entity exploiting the project) before starting to perform the respective activity and must be maintained throughout the entire period of time during which the authorized activity is conducted by the operator. The environmental authorization must be obtained prior to filing a request to obtain the power generation license.

3.4. Obligatory State/Public Participation

In Romania, the state or public/municipal bodies do not typically have an ownership interest or seek direct participation in the development of renewable energy projects. An increasing interest in direct involvement (mainly via setting up incorporated joint ventures) in developing renewable projects has been signaled by some local authorities.

The state is indirectly involved in the development of renewable projects via state-owned entities. For example, Complexul Energetic Oltenia, a state-owned operator of several coal-powered electricity production capacities, has selected via tender OMV Petrom S.A. and Tin-mar Energy S.A. as joint venture partners to develop eight solar projects with an aggregate installed capacity of approximately 730 megawatts.

However, the state indirectly benefits from foreign participation in the renewable energy sector through various fees and tariffs for permits, especially considering that local investors do not have the liquidity to undertake certain investment works such as grid reinforcement works, issuance fees, and taxes. In addition to all the taxes paid during the development phase, generally, a holder of a power generation license must pay each year a contribution which as of 2023 is computed by applying a percentage of 0.1 to their turnover in 2022.

3.5. Risks to be Considered

The development of renewable energy projects in Romania entails various risks that must be assessed by investors when deciding to develop such projects, among which we note:

i. Regulatory and Policy Risks: The legal regulatory framework is frequently amended, creating unpredictability and uncertainty in certain situations. Changes in renewable energy regulations or government policies can impact project economics and viability. For example, following the recent amendments to the construction laws referred to in Section 3.3. III (i), the Ministry of Agriculture took a very narrow interpretation which effectively resulted in it not allowing the development of projects on land with a surface area larger than 50 hectares. This leads to delays in the development of larger renewable power projects. Generally, the uncertainty created by frequent legal and regulatory changes and their implementation by

various authorities may negatively impact the development of renewable power projects.

ii. Permitting and Approval Risks: Obtaining the necessary permits, licenses, and approvals can be a complex and time-consuming process. Delays, changes in relation to applicable procedures, or lack of uniformity in relation to the approach of the authorities on issuing the necessary permits represent challenges that might ultimately lead to project delays and increased costs.

iii. Grid Connection Risks: Securing grid connection and obtaining access to the transmission or distribution network can pose challenges, being the most important aspect of developing a renewable project. Given that Romania currently has limited or even lacks grid capacity in certain areas, investors may face delays or additional expenses for grid connection when developing a project.

iv. Market Risks: The electricity market dynamics, including pricing, demand-supply imbalances, uncertainty regarding the long-term stability of power purchase agreements (PPAs), and even lack of practice in concluding such PPAs, can affect the revenue streams of renewable energy projects and therefore their bankability and viability.

v. Environmental and Social Risks: Environmental impact assessment requirements and community acceptance can present risks to project development. Addressing environmental and social aspects adequately is crucial to mitigating reputational and operational risks.

vi. Legal and Contractual Risks: Contractual arrangements, such as superficies agreements, supply contracts, and PPAs, can entail different risks if not properly structured, leading to disputes or unforeseen liabilities.

To mitigate these risks as much as possible, investors in renewable power projects should take a hands-on approach to the development activity and should carry out a thorough due diligence analysis.

4. RENEWABLE ENERGY CONSTRUCTION AND PRODUCTION

4.1. RTB Status

In Romania, a renewable energy project is typically deemed to have reached the ready-to-build (RTB) stage, once several key authorizations, agreements, and permits are obtained/concluded: (a) the technical connection approval and the related grid connection agreement; (b) the building permit, including all pre-requisites such as environmental approval and the decision approving the removal from the agricultural circuit and/or preparing and approving urbanism documentation); and

(c) the setting-up authorization. For more information on such permits, please refer to Section 3.3.

In contractual arrangements (e.g., between the developer and a potential buyer) the parties typically agree in detail when the RTB milestone is reached, also taking into account the specifics of the project and potential remedial actions that need to be implemented.

4.2. Construction of Renewable Energy Projects

The construction of renewable energy projects in Romania entails specific matters and associated risks that must be taken into account by developers, investors, and providers of financing.

I. Specifics:

a. Permitting and Regulatory Compliance: Construction activities must adhere to relevant permits, authorizations, and regulations. Failure to comply or flaws in the relevant permits may create the risks of challenges against them (with potentially grave consequences such as the works being stopped or suspended).

b. Infrastructure and Equipment: Construction involves the installation and integration of renewable energy infrastructure, such as solar panels, wind turbines, or biomass facilities. Regarding the roads infrastructure used for the access to and from the project, in some cases, the development of renewable energy projects may entail the performance of works (e.g., to consolidate or widen them or to build new road curves either temporarily or on a permanent basis), especially if the developer envisages transporting high tonnage equipment like wind turbines.

c. Grid Connection: Ensuring a successful connection to the power grid is essential. This involves coordinating with the grid operator and implementing the necessary infrastructure and technical requirements for grid integration (such as grid reinforcement works). Moreover, in certain cases, different developers and/or investors must cooperate to develop the connection infrastructure for the project they are developing in a specific area, which may entail additional contracts and related liabilities.

d. Construction Timeline: The construction timeline is an important consideration, as delays can impact project economics, financing arrangements, and compliance with regulatory deadlines such as the validity term of the building permit. Efficient project management and coordination among contractors, suppliers, and stakeholders are crucial to meet construction timelines.

II. Risks:

a. Technical and commercial risks: Construction projects can experience delays due to various factors, including adverse weather conditions, equipment delivery delays, permitting issues, or labor disputes. These delays can result in increased costs and postponed project commissioning. Moreover, construction costs can exceed initial estimates due to unforeseen circumstances. Renewable energy projects may also encounter technical challenges during construction, such as inadequate site assessment (for example identification of buried irrigation infrastructure that must be preserved or identification of objects of archaeological importance) which may delay the construction works or increase the development costs.

b. Health and Safety Risks: Construction sites pose inherent health and safety risks. Romanian legislation in the field of health and safety is complex, comprising specific requirements for construction sites. Implementing comprehensive health and safety protocols and ensuring compliance with relevant regulations is vital to safeguard workers' well-being and mitigate potential liabilities. Depending on the overall workforce volume and the length of the construction phase, prior notification of the local labor authority may be needed before starting the construction works. While certain health and safety services may be outsourced during the construction phase, the liability of the employer is not excluded. Specific requirements must be observed when several contractors and/or subcontractors operate on the same construction site.

c. Environmental Impact: Construction activities can have environmental impacts, such as noise, dust, and disruption to local ecosystems. Proper mitigation measures and compliance with environmental permits are necessary to minimize adverse effects and maintain environmental sustainability.

d. Contractual and Legal Risks: Construction contracts and agreements play a significant role in managing risks associated with timelines, costs, quality, and dispute resolution. Understanding and properly managing contractual obligations and potential legal risks are essential during the construction phase.

To mitigate these risks, project developers should conduct thorough due diligence, and implement effective project management and risk mitigation strategies. Adhering to best practices, regulatory requirements, and industry standards can contribute to the successful construction and commissioning of renewable energy projects in Romania.

4.3. Granting of Renewable Energy Production Licenses

The rules regarding the power production license are set out in *Law no. 123/2012*, as well as in implementing dedicated regulations issued by ANRE. The power generation license is issued by ANRE. Please see Section 3.3. IV (i) for additional information.

The granting of power generation licenses in relation to offshore wind projects is expected to be separately regulated, based on dedicated pieces of legislation.

4.4. Renewable Energy Production by Foreign Investors

There are generally no specific limitations or restrictions on foreign investors obtaining renewable energy generation licenses. However, per the *Licenses Regulation*, a foreign legal entity from outside the European Union can request the granting of authorizations/licenses only if it has established in Romania a secondary headquarters for the entire period of validity of the authorization/license, necessary to carry out its activities. Due to various reasons, the development of projects is anyway done via special purpose companies set up in Romania (whose shareholders may be foreign persons). Please see Section 2.2. for FDI clearance requirements.

4.5. Operation and Maintenance of Renewable Energy Projects

Regulations governing the operation and maintenance of renewable energy projects are generally covered by the applicable legal framework (please refer to Section 2.1. for more details). However, the general practice for developers and/or investors is to outsource such matters by entering into operation and maintenance agreements with specific rights, obligations, and split of liabilities.

4.6. Decommissioning Process

In Romania there are several general requirements regarding the decommissioning of renewable energy projects, as follows:

1. Environmental Permit Obligations: The environmental authorization may include several provisions regarding the decommissioning of the renewable energy project which can include obligations and procedures for decommissioning, obligations regarding site restoration, and disposal of equipment.

2. Decommissioning Plan: Investors should develop a decommissioning plan that outlines the process and measures for safely dismantling and removing renewable energy equipment. The plan should also address environmental remediation.

3. Environmental Impact Assessment (EIA): Depending on the scale and nature of the project, an EIA may be required in view of obtaining the demolition permit from the local authorities. The EIA assesses the potential environmental impacts of the project, including decommissioning activities, and provides recommendations for mitigating and managing those impacts.

4. Waste Management: The disposal of renewable energy equipment, such as solar panels or wind turbines, may be subject to waste management regulations. Investors must comply with the proper handling, treatment, recycling, or disposal of equipment in accordance with applicable waste management laws.

5. Site Restoration: After decommissioning, investors are generally required to restore the project site to its original or agreed-upon condition. This may involve removing infrastructure, restoring natural habitats, re-seeding vegetation, and addressing any soil contamination or erosion issues. The contractual arrangements for securing the relevant land (e.g., superficies or concession agreements) may also include specific obligations on the state in which the land must be returned.

6. Financial Provisioning: In some cases, investors may be required to provide financial assurance or security to cover the costs of decommissioning and site restoration. This ensures that the necessary funds are available for the proper closure of the project.

It is important for investors to closely follow the specific legal requirements and obtain guidance from relevant authorities, such as the environmental agency or local planning authorities, to ensure compliance with the decommissioning obligations. Failure to comply with these requirements may result in liabilities for the investor.

4.7. Risks to be Considered

The development and operation of renewable energy projects in Romania entail various risks that investors should consider as further detailed in Section 4.2. II above. Moreover, the operation of renewable energy projects may entail production risks such as performance variability and operational issues. Meeting regulatory compliance obligations, including environmental standards, reporting requirements, and contractual obligations, is crucial to avoiding penalties and maintaining project viability. Moreover, ensuring the safety of personnel involved in the operation and maintenance of renewable energy projects is essential. Failure to maintain proper health and safety practices can result in accidents, injuries, and/or legal liabilities, including criminal proceedings against the persons responsible for incidents.

Decommissioning risks can include:

i. Environmental Liability: Inadequate decommissioning and site restoration can result in environmental liabilities, including soil contamination, habitat disruption, or failure to meet decommissioning obligations as specified in permits. Under Romanian law, the general principle governing environmental liability is “the polluter pays.” Thus, the operator will be solely liable for any damages brought to the environment, although part of such liability, mainly pertaining to waste management, may be delegated through certain contractual arrangements.

ii. Financial Provisioning: Insufficient financial planning and provisioning for decommissioning activities can pose risks to investors, particularly if the costs of dismantling, waste disposal, and site restoration exceed expectations.

It is important for investors to conduct thorough risk assessments, develop appropriate mitigation strategies, and seek professional advice to address these risks effectively. Understanding and managing these risks can enhance the success and financial viability of renewable energy projects in Romania.

5. BALANCING OF RENEWABLE ENERGY PROJECTS, STORAGE, SALES

5.1. Balancing of Renewable Energy Projects

The main rules on balancing renewable energy projects primarily are set out in secondary legislation, part of it issued with a view to implementing EU rules. Applicable obligations and rules are also set out in technical grid codes. The main requirements related to balancing concern the following:

i. Balancing Responsibility: Renewable energy project operators are financially responsible for the balance between their generated electricity and the electricity injected into the grid. They must ensure that the production of renewable energy matches the agreed schedules and forecasts.

ii. Balancing Market Participation: Renewable energy project operators may participate in the balancing market to manage deviations between the scheduled and actual electricity generation. Participation in the balancing market allows them to buy or sell balancing services to maintain grid stability.

iii. Curtailment and Limitation of Production: In certain situations, renewable energy projects may be subject to curtailment or limitation of production, based on dispatch orders by the transmission system operator (TSO) to ensure grid stability.

5.2. Storage

The legislation related to storage facilities for renewable power projects is not that developed yet, although certain changes in this respect have been recently implemented. These refer specifically to the development and operation of electricity storage facilities. Certain technical provisions on this matter have also been recently introduced in legislation.

5.3. Sales

There are no general limitations on the sale of power produced by renewable power projects. However, based on certain pieces of legislation issued in the context of the war in Ukraine, for a limited period of time, production capacities commissioned prior to April 1, 2022, must sell the majority of the energy produced through a centralized mechanism.

Leaving to one side the specific rules set out above, power producers may sell their production either via centralized markets or via over-the-counter power purchase agreements. For more information on the PPAs, please consult Section 2.1.

In addition, certain producers, benefitting from the previous renewable support scheme introduced in Romania, may trade the green certificates.

6. ROOFTOP, OFFSHORE, FLOATING AND AGRICULTURAL RENEWABLE ENERGY PROJECTS

6.1. Offshore Wind and Floating Photovoltaic Projects

Currently, there are no specific rules in place in relation to offshore wind and floating photovoltaic (PV) projects. Effectively, the development of offshore projects is not possible right now, while the development of floating photovoltaic projects on waters such as lake is conceivably possible.

However, Romanian authorities are currently working on a legal framework in relation to off-shore wind projects.

6.2. Rooftop Photovoltaic Projects

Rooftop photovoltaic projects may be developed in Romania based on the general legal framework for renewable energy projects. Lately, several such projects have been developed, by various consumers (commercial, industrial, and households), a large part of them having been registered as prosumers.

Prosumers benefit from an exception to the obligation to obtain a building permit in case of developing a rooftop photovoltaic project. An essential condition to be a prosumer is that electricity production does not represent the specific activity carried out by the interested investor.

6.3. Agrivoltaic Projects

There is no specific legislation specifically dedicated to agrivoltaic projects. However, recent amendments to the Construction Laws introduced the possibility of having dual use of *extra muros* land, for both agricultural activities and energy production, although more detailed guidelines as to how this is implemented in practice are still to be issued.

7. TRADING OF GREEN CERTIFICATES/ CERTIFICATES OF ORIGIN

7.1. Certification

The production of renewable power is certified based on an electronic document issued by ANRE to electricity producers, whose sole function is to provide a final customer with proof that the relevant quantity of power has been produced from renewable sources or in high-efficiency cogeneration. Guarantees of origin (GO) are issued for each power unit (i.e., 1 megawatt hour) of power produced and delivered to the grid and are valid only for a year following the production date of the power they are referring to. GOs are obtained based on an application submitted with ANRE based on the applicable procedures.

7.2. Trading

ANRE is entitled to transfer the guarantee of origin at the request of the holder of the guarantee of origin, based on a transfer request. Guarantees of origin are transferred as follows: (i) from one producer to another power producer; (ii) from a producer to a power supplier; (iii) from a supplier holding guarantees of origin to another supplier. Guarantees of origin can also be transferred to energy market participants from EU member states. Guarantees of origin may be transferred together with the power physically delivered or without.



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