

Law 21/2023 Amending Construction Law no. 50/1991 –NEEDED CLARIFICATION FOR DEVELOPMENT OF RENEWABLE ENERGY PROJECTS IN ROMANIA

Law 21/2023 Amending Construction Law no. 50/1991 ("Law 21/2023") was published in the Official Gazette on 10 January 2023, and entered into force on 13 January 2023.

Scope of Application: to correct inadvertencies between two previous amendments to Construction Law no. 50/1991 in relation to the permitting process for renewable energy projects created following the enactment in 2022 of: (i) Law no. 254/2022 Amending Construction Law no. 50/1991 and other Normative Acts ("Law 254/2022"); and (ii) Law no. 262/2022 Amending Land Law no. 18/1991 and Construction Law no. 50/1991.

Law 254/2022 (published in the Official Gazette on 21 July 2022) created by its Art. 92 paragraph (2) letter j) of Land Law no. 18/1991 an exception to the restriction on building projects on lands outside buildable city limits (i.e., agricultural lands, pastures, vineyards, orchards, as well as land benefitting from improvements) of fertility quality classes III, IV and V.

This exception targeted investments in new (i.e., projects initiated after July 2022) renewable energy projects (i.e., solar, wind, biomass, bioliquids and biogas energy production capacities, electricity storage units, transformer stations or other similar systems) which would cover a maximum land area of 50 hectares.

According to Art. 92 paragraph (2) of Construction Law no. 50/1991, such projects could be developed in a simplified procedure, only upon a building permit and the approval of the change of agricultural use of the land on which the investment objectives were located, without the obligation to obtain the prior approval of urban planning for such projects (which was the most time-consuming element in the approval procedure for renewable energy projects).

Despite this new rule applicable to renewable energy projects, Law 262/2022 (published in the Official Gazette on 28 July 2022) failed to list renewable energy projects amongst the construction developments to which the amended Art. 11 of Construction Law no. 50/1991 applies, allowing for the issuance of building permits without prior approval by urban planning documentation, and mentioning only the exceptions included in letters c) and e)1 of Art. 92 paragraph (2) of Land Law no. 18/1991.

Because of this inadvertent regulation, concerns were raised as to which extent paragraph (2) of Art. 92 of Land Law no. 18/1991, as amended by Law 254/2022 could be considered also an exception from the general provisions of Construction Law no. 50/1991 and of Urbanism and Territorial Planning Law no. 350/2001, which regulated before 2023 the issuance of building permits for construction projects, conditional upon the existence of a General Urbanism Plan (PUG) or the amendment to an existing PUG by a Zoning Plan (PUZ) tailored to a specific construction project.

PETERKA PARTNERS

THE CEE LAW FIRM

Because renewable energy projects were not expressly listed by neither Law no. 50/1991, nor Law 350/200, the predominant interpretation of paragraph (2) of Art. 92 of Land Law no. 18/1991, as amended by Law no. 254/2022, was that this provision grants the possibility to build such renewable energy projects on agricultural land, but a PUG or a PUZ would still be required under Law no. 50/1991 and Law no. 350/2001 in order to regulate the urbanism parameters applicable to such projects.

Following the clarification achieved by this recent amendment of Law no.50/1991 introduced by Law 21/2023, starting from 13 January 2023, construction development projects for the production of electricity from renewable sources (i.e., 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 should become buildable on agricultural land with fertility quality classes III, IV and V, based only on a building permit and the approval of the change of agricultural use of the land, without the need of the prior approval of a Zoning Plan (PUZ) for such projects.

It remains to be confirmed by the practice of the local authorities how this new amendment to Law no. 50/1991 will be interpreted and applied, since Law 21/2023 does not contain any transition rules to clarify how the projects undergoing various permitting phases (having planning certificates already issued or a procedure in progress for approval of a PUZ) will be addressed, nor does it amend Law no. 350/2001 to provide expressly for 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.

PETERKA & PARTNERS Romania remains at your full disposal to provide more information and any related legal assistance connected to this topic.

www.peterkapartners.com

The article has been prepared by Dan Aurelian Ciupala, Leader of Energy at PETERKA & PARTNERS.

No information contained in this article should be considered or interpreted in any manner as legal advice and/or the provision of legal services. This article has been prepared for the purposes of general information only. PETERKA & PARTNERS does not accept any responsibility for any omission and/or action undertaken by you and/or by any third party on the basis of the information contained herein.