



The Legal 500 Country Comparative Guides

Romania

RENEWABLE ENERGY

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This country-specific Q&A provides an overview of renewable energy laws and regulations applicable in Romania.

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ROMANIA

RENEWABLE ENERGY



1. Does your jurisdiction have an established renewable energy industry? What are the current production levels?

Our country has a solid renewable energy industry; the relevant framework begun to be developed since around 2008, when a dedicated renewable law, Law No 220/2008 (the **Renewable Law**) came into force.

Pursuant to further changes to the Renewable Law, in 2011, the Romanian state enacted an ambitious support scheme based on a green certificates trading mechanism combined with a mandatory green certificates acquisition quota. While it has been drastically amended mainly in 2014 and afterwards, the support scheme as amended is still available for projects which became operational by the end of 2016; for new renewable projects the Romanian state is currently assessing a new support mechanism based on contracts for difference.

According to available information^[1], the total electricity production registered in Romania in a specific time interval on 23 May 2022, including renewable, amounts to 6,584 MW, distributed as follows: (i) hydro – 2,362 MW; (ii) coal – 1,208 MW; (iii) wind – 304 MW; (iv) hydrocarbon – 1,284 MW; (v) nuclear – 695 MW; (vi) solar – 658 MW; and (vii) biomass – 73 MW.

In addition, according to the 2020 annual report^[2] of the Regulatory Authority, electricity from renewable energy sources (**E-RES**) generated in 2020 amounted to 25,882 GWh (normalised value), that accounts for a 44% share of the E-RES in the Romania's total gross final electricity consumption.

^[1] https://www.sistemulenergetic.ro/statistics/show_graph/2022/1/1/0/0/2022/5/23/23/59

^[2] <https://www.anre.ro/ro/despre-anre/rapoarte-anuale>

2. Who are the key regulators for

renewables industry in your jurisdiction? How do they impact the industry?

In Romania, the key regulators for the renewable energy sector are the Ministry of Energy and the National Authority in the Energy Field (ANRE).

In this regard, the Ministry of Energy is mainly responsible for developing the strategy to harness and promote E-RES and for assessing the potential for each type of E-RES, while ANRE is responsible for issuing the main authorisations and licences in the energy sector, enacting and enforcing secondary legislation governing the energy market as well as the general monitoring of the E-RES producers (including the administration of the current green certificates scheme). In addition, the Ministry of Energy and ANRE are jointly responsible for developing a unitary framework of rules and regulations on the use of E-RES.

On the other hand, there also are other authorities involved in regulating the renewables industry, *i.e.*, the Romanian Parliament and the Romanian Government, which (subject to the limits set under the Romanian Constitution) can approve laws with a major impact on the E-RES sector overall.

3. How are rights to explore/set up renewable energy projects, such as solar or wind farms, granted? How do these differ based on the source of energy, i.e. solar, hydropower, wind, geothermal and biomass?

There are three big streams/levels of permitting (which to some extent overlap) for all renewable projects irrespective of the source.

Civil construction permitting. A renewable energy facility must obtain the general approvals required under the Romanian law for the erection of any constructions.

This involves the procurement of an urban planning

certificate, which will determine whether the construction is possible on a specific site (depending on the site's legal regime), as well as any prior endorsements that are required to obtain a building permit (from public authorities, nearby utility providers and neighbours).

Environmental assessments. The construction phase is also, in principle, conditional upon an environmental impact assessment (EIA procedure), usually finalised with the issuance of an environmental approval. Except in certain cases expressly provided by law, which are automatically subject to the EIA procedure (i.e., thermal power plants, nuclear power plants), other facilities in the energy industry are subject to an initial screening stage pursuant to which the need for the performance of an EIA procedure is established by the authority.

The environmental assessment also determines the potential impact of the envisaged generation facility by reference to water bodies and protected natural areas, which may trigger the obligation to carry out other specific assessments and to obtain approvals for construction.

Energy-specific permitting. Some energy specific approvals must also be obtained in the construction phase of a generation facility, mainly:

- i. a grid connection permit, issued by the relevant transport / distribution system operator, necessary to connect the facility to the power grid; and
- ii. a setting-up authorisation, issued by ANRE which amounts to an "energy-specific" building permit.

The authorization process briefly described above is generally neither auction based, nor does it involve the granting of any concession or other public rights; whoever has an interest can develop a renewable energy facility provided it obtains the relevant permits including the one mentioned above.

In principle there are no main differences in the authorisation process based on the renewable energy source, without excluding however the possibility of encountering certain specificities in some phases of the authorisation procedure (e.g., endorsement from the Romanian Civil Aeronautical Authority for the erection of wind power plants, typically more environment related restrictions or issues in hydropower or biomass projects).

4. What does the energy split look like in your jurisdiction and how is this changing

as a result of the green energy transition?

In order to contribute to the achievement of the EU's climate targets for 2030, Romania has committed under the National Integrated Energy and Climate Change Plan 2021-2030 to reduce greenhouse gas emissions by 43.9% by the end of 2030 compared to 2005 values and to increasing the overall share of renewable energy in the gross final energy consumption by 30.7% (proposed to be raised to 34% in the context of the more ambitious targets contemplated by the EU Commission under the REPowerEU).

In this regard, according to public information provided by ANRE, on 23 May 2022, Romania had an installed capacity in electricity production facilities of 18,307.613 MW, including renewable, which is mainly distributed as follows: (i) hydro - 6,642.15 MW (36.3%); (ii) coal - 3,092.2 MW (16.9%); (iii) wind - 3,014.91 MW (16.5%); (iv) hydrocarbon - 2,615.91 MW (14.3%); (v) nuclear - 1,413 MW (7.7%); (vi) solar - 1,393.14 MW (7.6%); (vii) biomass - 106.896 MW (<1%).

5. Is the government directly involved with the renewables industry? Is there a government-owned renewables company?

The electricity generation sector is in fact dominated by state-owned companies, which, as a rule, are producers of conventional energy (coal, gas, nuclear, large hydro). For example, 2 of the largest Romanian electricity producers are (i) Hidroelectrica SA (approximately 80% state-owned), the largest hydro energy producer and system services provider in Romania, and (ii) Nuclearelectrica SA (approximately 82% state-owned), the owner and operator of nuclear power reactors.

Over the last couple of years, several large energy companies in which the state is a shareholder have strategically targeted E-RES production as a tool for diversification of sources and sustainability - Hidroelectrica (the largest electricity producer in Romania), Electrica (the largest supplier of electricity in Romania, which is 49% owned by the State) and CEO Oltenia (the largest coal-fired electricity producer). Thus, Hidroelectrica acquired a large operational onshore wind farm in 2021, Electrica also acquired a PV park in 2020 (and has pursued quite a few other opportunities since then) and CEO Oltenia intends to build several PV parks with financing from the Modernisation Fund to replace the old coal-fired plants.

6. What are the government's plans and

strategies in terms of the renewables industry? Please also provide a brief overview of key legislation in the renewable energy sector?

According to the Government's plans, among the priorities on the Romanian state agenda are ensuring the green transition and the digitization of the energy sector by promoting the production of E-RES and the development of the energy sector by building new generation facilities and by repowering and modernising the existing ones.

To that end, the Ministry of Energy has undertaken to strengthen the legal and regulatory framework to further enable investments in new renewable capacities, including by stimulating green financial instruments. There are ongoing or envisaged investment projects for the development of the renewable sector and for the achievement of the targets set under the 2021-30 National Energy and Climate Plan (PNIESC) and the National Recovery and Resilience Plan of Romania (PNRR). Also, the Government has under analysis support schemes to encourage further renewable investments.

More specifically, the PNRR provides for reforms including in the field of renewable energy. E.g., the PNRR envisages the development of a legislative and regulatory framework favourable to future technologies, in particular hydrogen and storage solutions, and the development of industrial chains for the production and/or recycling of batteries, photovoltaic cells and photovoltaic panels. It also foresees the adoption of a law that will include a binding timetable for coal replacement, including measures on the closure or preservation of mines.

Generally, the renewables industry in Romania is mainly governed by Law No 123/2012 on electricity and natural gas (the Energy Law) and the Renewable Law.

Title I (Electricity) of the Energy Law, which transposes several European directives, covers general aspects related to electricity promotion from renewable sources and the regime of prosumers owning renewable generation units.

On the other hand, the Renewable Law also transposes certain provisions of some European directives relevant for the renewables field and contains provisions mainly concerning the support scheme based on a green certificates trading mechanism combined with a mandatory green certificates acquisition quota, available only for renewable projects that became operational by the end of 2016. Therefore, the green certificates

scheme continues to apply only for projects that became operational before the end of 2016. As a result, a new scheme is currently under analysis for new projects (most likely, contracts for difference).

In addition to these pieces of legislation, the renewables industry in Romania is also governed by a robust secondary regulatory framework consisting of ANRE orders and decisions, whereby various regulations and/or technical standards are approved.

7. Are there any government incentive schemes promoting renewable energy? For example, are there any special tax deductions or incentives offered?

Under the Renewable Law, the Romanian state has encouraged renewable development in the context of the first renewable wave back in 2011, through a support scheme based on a green certificates trading mechanism, combined with a mandatory green certificates acquisition quota that is annually set by ANRE. However, as mentioned above, this support scheme continues to only be available for projects that became operational by the end of 2016, while for new renewable projects the Romanian state is currently assessing a new support mechanism based on contracts for difference.

In addition, in 2012, the Romanian Government adopted the support scheme for the promotion of high-efficiency cogeneration, also applicable to producers of combined heat and power from renewable sources, as long as they did not choose the green certificates. The scheme is based on the granting of a bonus to compensate for the difference between the costs of the production activity and the revenue from the sale. This scheme is also available only for cogeneration units registered with ANRE as eligible by the end of 2016.

Furthermore, recent amendments made to the Energy Law provide that individual prosumers owning renewable generation units with an installed capacity not exceeding 400 kW per place of consumption shall be exempted from paying taxes on the amount of E-RES used for self-consumption, as well as on the surplus of E-RES sold to suppliers.

8. How have private companies outside of the renewable energy sector responded to the renewables industry? Have you seen more companies set net-zero and/or science-based targets?

Given the increasing awareness of climate change and its harmful consequences (e.g., global warming, extreme weather events), there seems to be a trend in many companies for (at least) part of the electricity consumed to come from renewable energy sources. In this regard, there are companies outside of the renewable energy sector which, through sustainable development policies, try to integrate objectives of this type in their activities. However, strictly from a legal perspective, currently there are no express regulations and/or obligations concerning net-zero targets.

9. What are the key contracts you typically expect to see in a new-build renewable energy contract?

By way of background, the Romanian legislation has recently been amended by repealing the obligation to trade electricity exclusively on centralized markets. This basically put an end to the 10-year ban on the conclusion of directly negotiated bilateral power purchase agreements, an amendment intensely requested by market players.

Currently, the following types of transactions can be concluded on the wholesale electricity market: (i) directly negotiated bilateral transactions; (ii) transactions concluded following auctions on organized markets; (iii) electricity import and export transactions. In addition, long-term hedging products are now tradable on exchanges in a transparent manner, and long-term supply contracts may be negotiated on over-the-counter markets, subject to compliance with the European competition law.

These new legal provisions should make investors more confident in the Romanian electricity market and we do expect power purchase agreements (PPAs) to be used by investors in all forms, either physical PPAs (also called sleeved PPAs) or financial PPAs (also called synthetic PPAs or virtual PPAs).

10. Are there any restrictions on the export of renewable energy, local content obligations or domestic supply obligations?

Generally, export transactions with electricity (including from renewable energy sources) to other jurisdictions are permitted under the Romanian legislation. As mentioned above, electricity import and export transactions are among the transactions that can be concluded on the wholesale electricity market, in all timeframes.

The above also comes after a lesson learnt following a dispute between ANRE and the State-owned producer Hidroelectrica in case ECJ C-648/18, in the context of the obligation to trade electricity exclusively on the centralized markets (currently repealed). At that time, the energy producer faced certain indirect restrictions and was imposed sanctions in the context of the obligation in question. ECJ stated that a legal provision which requires national electricity producers to offer for sale all the electricity available to them on centralised markets (i.e., the platforms managed by the only operator designated for national electricity market trading services) constitutes a measure having an equivalent effect of a quantitative restriction on exports that cannot be justified on grounds of public security connected to the security of energy supply, in so far as such legislation is not proportionate to the objective pursued.

With regard to the domestic supply obligations, it is worth mentioning that (i) the provisions regulating the producers' (general) obligation to offer all available electricity on the competitive market in a public and non-discriminatory manner were repealed at the end of last year, and (ii) commercial transactions are wholesale or retail on the Romanian electricity market, and prices are set based on supply and demand, as a result of competitive mechanisms. In this context, we note that generally there are no domestic supply obligations incumbent on market players in the Romanian electricity market. However, in order to maintain an adequate liquidity of the electricity market, state-owned producers that are subject to the provisions of *GEO No 109/2011 on corporate governance of public enterprises*, are required to trade at least 40% of their annual electricity production under contracts on electricity exchanges, on markets other than Day-Ahead Market, Intraday Market and Balancing Market.^[3]

As far as local content obligations are concerned, we are not aware of any current requirements to use/ involve domestic goods and services in connection with renewable energy projects in Romania.

^[3] Generation capacities commissioned after 1 June 2020 are exempted from this obligation.

11. Does the regulatory regime include any specific decommissioning obligations? How do these obligations differ across solar, hydropower, wind, geothermal and biomass?

Pursuant to the applicable regulations, except for the nuclear power plants which are subject to a specific

decommissioning regime, there are no energy-specific requirements regarding decommissioning of generation facilities.

Decommissioning of a generation facility is however subject to the general civil engineering-related framework.

In addition, the general conditions attached to a licence for the commercial exploitation of power generating facilities provide a general obligation incumbent on such licence holders to gradually perform, based on economic grounds, the generation facilities' modernisation and refurbishment or their conservation or decommissioning, as the case may be.

12. Could you provide a brief overview of the major projects that are currently happening in your jurisdiction?

In terms of renewables, the restructuring plan of Complexul Energetic Oltenia is first worth mentioning, a state-owned company that produces electricity and heat from lignite. The plan is based on decarbonisation, ensuring a sustainable transition to low-carbon electricity generation by replacing lignite-based electricity generation with electricity from natural gas and renewable sources and includes the intention to develop:

- i. 8 projects for electricity production from renewable sources (photovoltaic parks), with an installed capacity of 735 MW, representing an investment of approximately EUR 671 mil., with 70% of the amount coming from the Modernisation Fund; and
- ii. two gas-fired generation units (Turceni and Işalniţa), with an installed capacity of 1325 MW, representing an investment of approximately EUR 841 mil., with 50% of the amount coming from the Modernisation Fund.

In addition, Hidroelectrica has approved a completely green investment plan, with the company planning new projects in the hydropower sector, as well as expanding its investment portfolio towards renewable sources of wind and solar energy. As mentioned above, it has already acquired a 108 MW wind project and according to public sources it continues to pursue other opportunities.

Considering the new European taxonomy, we would also mention Nuclearelectrica, that operates two nuclear units in the country, that is currently pursuing plans for the development of two more nuclear units based on CANDU technology as well as the possibility to

implement and operate small nuclear reactors.

Private investors have also made their mark in the field of green projects, with projects such as the development of a 441 MW wind farm that obtained the technical connection permit (in Romanian „*aviz tehnic de racordare*”) at the end of last year, representing an investment of approximately EUR 353 mil. Solar projects of significant size were also approved in 2021, with the largest solar park having a capacity of 134 MW.

13. Who are the key players that are driving the green renewable energy transition in your jurisdiction?

The green renewable energy transition in Romania is currently driven, either directly or indirectly, by all the major players active in the Romanian electricity market, such as foreign strategic developers, investment funds, local private developers, State owned entities (e.g., Hidroelectrica) etc.

14. Please can you give a summary of the key renewable projects in the pipeline in your jurisdiction?

Currently, the PNRR provides for several investment priorities in the renewable energy sector for which the Romanian state is granting support schemes and which should materialize in upcoming renewable projects (some important projects are already sponsored by various entities as shown above), such as:

- i. the state aid scheme aimed at supporting investments for the installation of new capacities for generation of electricity from wind and solar energy sources, in respect of which the call for tender for projects was launched on 31 March 2022;
- ii. the state aid schemes aimed at supporting (i) the construction of green hydrogen production capacities in electrolysis plants; and (ii) the flexible and high-efficient gas-fired combined heat and power generation (CHP) in district heating, which were published by the Ministry of Energy for public consultation in February 2022;
- iii. the state aid scheme aimed at supporting the development of battery, photovoltaic cells and panels production chain through a non-competitive call for projects, as well as the development of electricity storage capacities (batteries) through competitive tendering, which was published by the Ministry of Energy

for public consultation in May 2022.

Furthermore, in May 2022, the Government adopted new rules whereby the Modernisation Fund will finance, among others, key programs that focus on investments in the renewable energy sector, such as the construction of new power plants and heating&cooling systems based on renewable energy sources and the production of green hydrogen.

15. What are the key issues facing the renewables industry in your jurisdiction across solar, hydropower, wind, geothermal and biomass?

Although an important part of the power generation in Romania and of the overall economy in general, the renewable sector still poses certain issues to investors, such as (i) the administrative authorization process (which may sometimes prove difficult due to excessive bureaucracy and the lack of flexibility of certain public authorities – it remains to be seen whether the new European roll out ambitions under the RePowerEU plan will ultimately translate in smoother authorizations procedures), (ii) the connection to the grid (in some cases connection may involve the need to invest in network reinforcements when the available grid capacity is insufficient), (iii) the lack of a support mechanism for renewable energy projects (for new renewable projects the Romanian state is currently assessing a new support mechanism based on contracts for difference but this is not yet enacted), and (iv) the funding mechanisms that are often difficult to access due to the conditions imposed on developers.

16. How has the consequences of the Covid-19 pandemic particularly impacted the renewables industry?

While the Covid-19 pandemic may be just one of the factors, the energy sector in Romania (including the electricity component) is currently facing challenging times. Both domestic and international factors, such as the international quotations of CO2 emission certificates, the significant increase of electricity consumption in 2022 compared to the pre-pandemic period contribute to this effect.

By disrupting the supply chains, both local and international, and the workforce availability, the Covid-19 pandemic has impacted the renewable projects that had already been approved as well as the ongoing renewable projects.

However, given the current market context and the trend of increasing awareness of climate change and its harmful consequences, the demand for renewable energy is increasing and the difficulties should not prevent projects from actually happening.

17. How do you think the impact of foreign investment and changes in regulation will affect investment in the renewables industry?

Just as in other industries, frequent and unpredictable changes in legislation can slow down the development of renewable energy projects. However, the involvement of foreign investors in the Romanian renewables industry may prove of the essence, considering that such investors generally partner with local developers who are in charge of bringing the renewables projects to a certain level (e.g., the ready to build phase), followed by the takeover of the construction and/or operation of the projects by foreign investors.

18. How has your jurisdiction performed against its commitments as part of the Paris Agreement?

In order to support and contribute to the achievement of the objectives proposed under the Paris Agreement, as well as to contribute to the fulfilment of the objectives set by the Energy Union Strategy, the Romanian Government adopted the PNIESC.

Following the recommendations of the European Commission and the provisions of the Clean Energy Package, Romania has undertaken to develop additional renewable energy capacities of approximately 6.9 GW compared to 2015, and thus achieve a quota of 30.7% of renewable energy within the total energy mix by 2030. The development of such capacities will be achieved both through the installation of additional wind and solar capacities and by repowering existing capacities.

In order to reach the target mentioned above, Romania has committed to adopting policies and measures to increase the renewable energy share in electricity generation and transport. Additionally, the PNIESC also foresees measures that contribute on a secondary level to the production of E-RES in the long term and the achievement of the mentioned quota by 2030. Some of the measures are:

- i. digitization of the energy system;
- ii. development of a Contracts for Difference (CfD) type support mechanism;

- iii. conclusion of long-term power purchase agreements with customers outside the centralized markets;
- iv. measures to increase the use of renewable energy in the residential sector;
- v. measures to encourage the development of prosumers in order to increase the amount of E-RES;

19. How has the government used COP26 as an opportunity to drive the green energy transition?

Among the initiatives presented during COP26, the Romanian state has pledged to act in order to end deforestation and to reach the net zero carbon goal by 2050.

In this regard, on the sidelines of COP26, Nuclearelectrica signed a new commercial partnership with NuScale Power, which has the potential to advance the deployment of Europe's first small modular reactor in Romania by the end of the decade (aiming to help support the plan to phase out coal-fired energy

production by 2032).

20. How is the government stepping up its commitment as a part of the COP26 agreement?

As per the information released by the Ministry of Foreign Affairs, Romania, alongside more than 100 leaders from states covering over 86% of the world's forests, has adopted the Glasgow Leaders' Declaration on Forests and Land Use, with the aim to stop land degradation by 2030.

In addition, according to a statement made by the Romanian President, Romania also joined the Agriculture Innovation Mission for Climate, an initiative that seeks to address climate change and global hunger by increasing investments in climate-smart agriculture and food systems innovation between 2021 and 2025.

However, it seems that the Romanian state has not formally started to develop a strategy or plan for implementing the above following the COP26 agreement.

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