

Developing Renewables in Romania: PUZ or Pass?



One of the most frequent questions asked these days by renewables investors and developers is whether PUZ is still required for developing small renewable power projects in Romania (below 50 ha). The relevance of this question is huge as the answer impacts on the duration of the development process with up to 9 months.

To answer, brief preliminary comments should be made regarding the general construction permitting rules, depending on the various types of lands.

1. Types of lands

The following lands qualifications are relevant for the current topic:

- (i) from the perspective of their location, the lands can be (a) located *intra-muros* (within the buildable perimeter of the respective territorial administrative unit) or (b) located *extra-muros* (outside such perimeter);
- (ii) from the perspective of their destination, the lands can be, among others, (a) agricultural lands or (b) yards-constructions lands;
- (iii) from the perspective of their fertility class, the agricultural lands are split into 5 fertility classes, ranging from *very fertile land* (Class I) to *very low fertile land* (Class V); the fertility class is established based soil analysis made by experts within the county Office of Pedological Studies.

2. General construction rule

As a general rule, all constructions may be erected only on lands (i) located *intra-muros* and (ii) qualifying as “yards-constructions”.

If the targeted land qualifies as *extra-muros* and agricultural land (which is typically the case with the land suitable for renewable projects),

- (i) the land should be first requalified from *extra-muros* into *intra-muros* land by means of a PUZ;
- (ii) no additional formalities should be done for converting the land from agricultural land to “yards-construction” land, as such conversion occurs automatically through the issuance of the building permit.

3. Exception dedicated to renewable energy projects

Late July this year, an exception from the above rule was adopted, expressly allowing the construction of renewable power generation projects on *extra-muros* lands if the following conditions are met:

- (i) land has fertility class III, IV and V; and
- (ii) land does not exceed 50 ha.

Therefore, projects falling within the above limitations no longer need to obtain requalification of the land from *extra-muros* to *intra-muros* land through a PUZ.

4. Need of a PUZ in case of renewable projects below 50 ha

Therefore, do we still need or not a PUZ for developing renewable on land with fertility class III, IV and V which does not exceed 50 ha?

The practice of the authorities seems to differ: there are local authorities that request a PUZ for the issuance of the building permit, and authorities that no longer impose such an obligation through the urban planning certificate. We have also encountered a case where the authority changed its mind after having issued an urban planning certificate whereby no PUZ was requested.

Nevertheless, it should be mentioned that PUZ has multiple roles, not just the introduction of land into *intra-muros* area, as explained below:

- (i) according to the general construction law (with certain exceptions not applicable hereto), the building permit may be issued only if (a) there is an urban documentation approved regarding the respective land, setting out the legal, technical and economical regime of the land and (b) the envisaged construction is compatible with the rules set out by the respective urban documentation;
- (ii) all communes and towns in Romania must have an urban documentation approved – namely a *general urban plan* (“**PUG**”) adopted by the local authorities setting out (a) the function of each land (such as residential, industrial etc.) and (b) the applicable urbanism parameters and limitations (such as land occupation percentage, land occupation coefficient, height regime, etc.);
- (iii) PUG is a sufficient urbanism documentation for the issuance of a building permit if (a) it provides the legal, technical and economical regime of the targeted land and (b) the envisaged project is compatible with the regime set out thereby;
- (iv) if (a) the PUG does not provide the legal, technical and economical regime of the targeted land or (b) the envisaged construction is not compatible with the rules set out by the PUG for the targeted land or (c) there is no PUG in place (for example, it was never approved, it expired, it was cancelled in court or suspended), the **developer must obtain a zonal urban plan (“PUZ”)** whereby to adopt/amend the urbanism rules so that they are compatible with the project;
- (v) generally, PUGs do not regulate *extra-muros* land or do not establish an urbanism function/regime compatible with renewable projects;
- (vi) very recently, a new exception from the need to adopt an urbanism documentation was added in case of other specific types of constructions allowed on *extra muros* land.

Further to the above, PUZs are still needed for developing renewable projects on lands below 50 ha in order to establish the function and urbanism parameters of the respective land that are compatible with the envisaged project. Nevertheless, a case-by-case assessment should be made regarding the PUG rules applicable on the respective land. Such assessment should be made by the consultants of the developer, without simply relying on the assessment made by the local authorities when issuing the urbanism certificate.