



tpa

WIND ENERGY

AND OTHER RENEWABLE ENERGY SOURCES
IN ROMANIA

2021 EDITION

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INTRODUCTION

Climate change is here to stay. No matter how long we have been trying to ignore it, climate change will be one of the two or three subjects that will dominate economic debate in the coming decades. And with climate change there come new practices in terms of how we produce and consume energy.

After years of discussion, it seems that the age of fossil fuels is coming to an end. And the options to replace them are limited: we can either invest in nuclear, which causes pollution in the form of radiation; or we can replace a large portion of today's fossil fuel-based energy production with renewables.

Romania has a huge potential in terms of alternative energy use. With the exception of hydro, for many decades this potential was overlooked until the quite extraordinary boom in renewable investments that took place in the period 2008-2012, when most of what is in existence today was built.

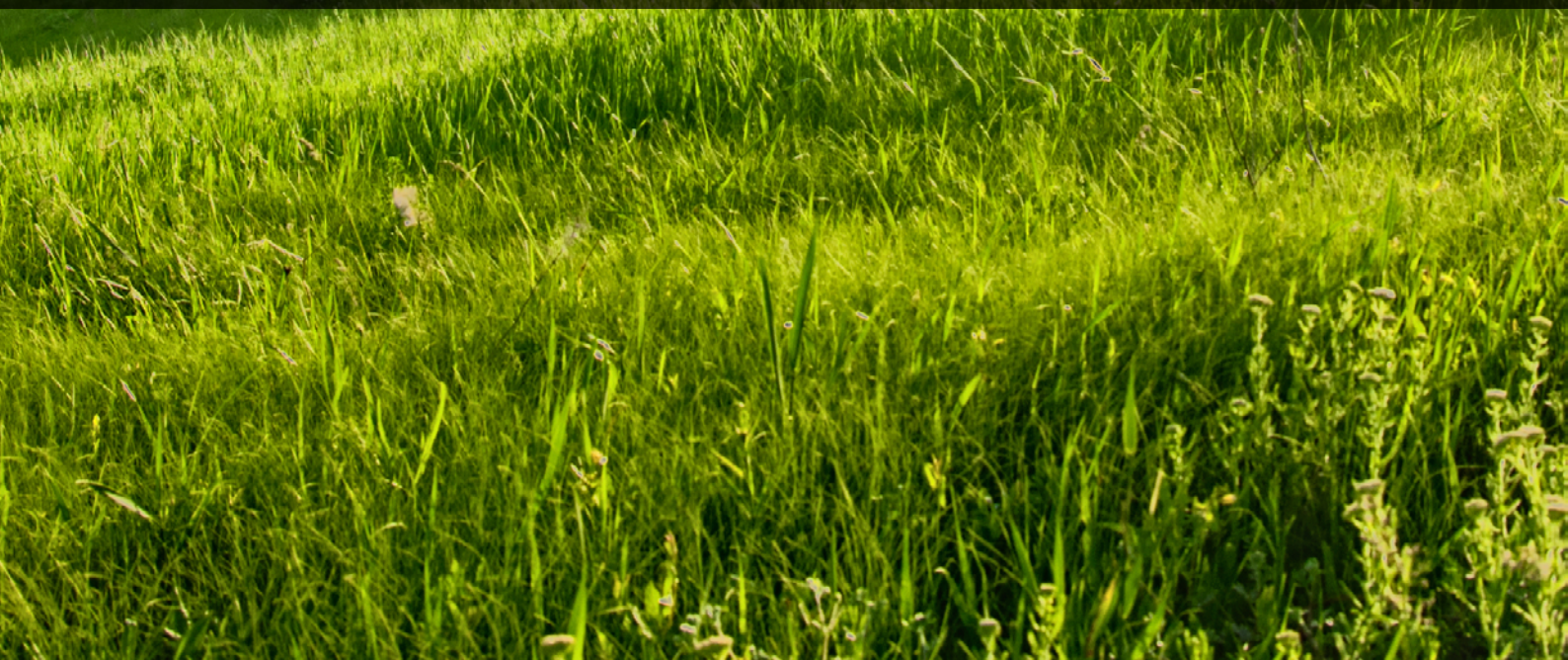
However, in that period investments in renewable energy were expensive and failed to achieve profitability without public subsidies. The Romanian government introduced a very attractive green certificate support scheme that triggered the aforementioned boom. But once the minimum targets for renewable energy production imposed by the European Union had been achieved, the green certificates scheme was initially cut back and shortly afterwards abolished entirely, resulting in an immediate halt in investments. At the time, Romania was an exporter of electricity and had little interest in further increasing electricity production at the expense of the higher production costs of renewables.

Today, the situation has changed. Investment costs for wind energy and photovoltaics have decreased significantly over the past decade and the production of renewable energy is no longer more expensive than energy from fossil fuels. Electricity prices in Romania have also increased. Moreover, Romania has become an importer of electricity and therefore requires additional production capacities. Adding to the situation, some of its old production facilities will need to be closed down within a reasonable period of time due to their outdated technology. The opportunities to invest in Romanian renewables have therefore only become greater.

This document summarises the legal, tax and market conditions affecting renewable investments in Romania. With terms and conditions frequently changing, we will keep the information updated with the latest developments on www.tpa-group.ro. If you have any specific questions regarding your project, please contact us at office@tpa-group.ro.



RENEWABLE ENERGY IN ROMANIA, EUROPE AND WORLDWIDE



1. The wind energy sector situation worldwide

Global wind power installation increased by 93 GW in 2020, bringing the total installed capacity up to 743 GW. The growth of 53% compared with 2019 came from approx. 87 GW of new installed onshore capacity, with the remaining 6 GW coming from offshore. According to the Global

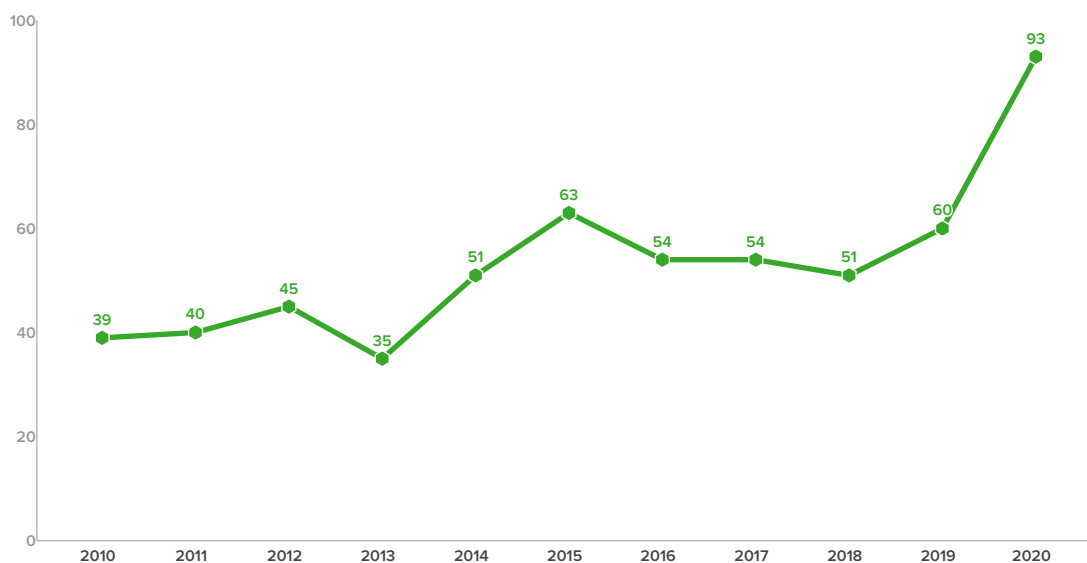
Wind Energy Council, 2020 was the best year on record for the global wind industry. However, specialists estimate that 180 GW of new capacity must be installed every year to reach to zero CO₂ emissions by 2050.

Table 1. Global wind capacity

Year	Installed capacity of wind installations [GW]	Annual increase [GW]
2009	159	-
2010	198	39
2011	238	40
2012	283	45
2013	318	35
2014	369	51
2015	432	63
2016	486	54
2017	539	54
2018	590	51
2019	650	60
2020	743	93
Total	743	584

Source: GWEC

Annual increase in installed capacity of wind installations [GW]



The most significant growth was reported by China, which together with the US, Germany, India and Spain accounts for 73% of global wind power installations.

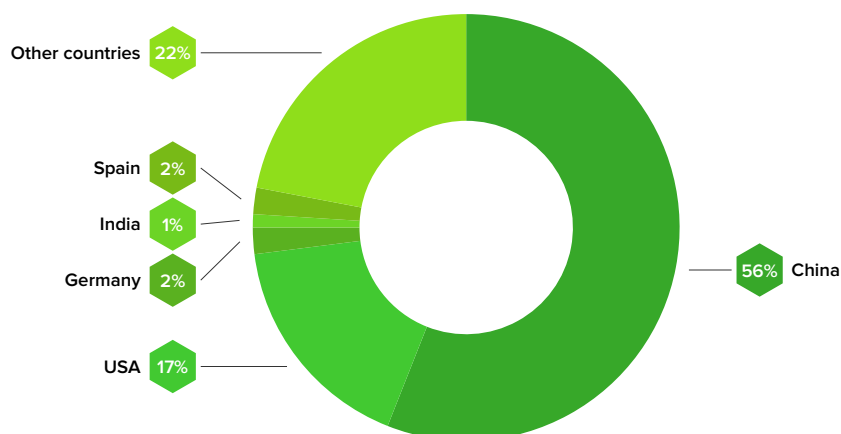
For many years, China has been the world's leading global wind energy producer, reflecting its commitment to use of clean energy sources.

Table 2. Largest wind energy installed capacity by country worldwide

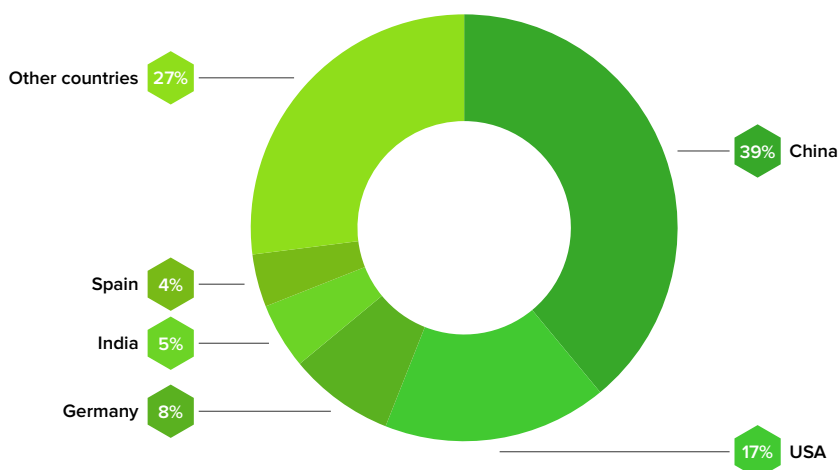
Country	New Installed capacity 2020 (MW)	Total installed capacity 2020 (MW)	Share of country
China	52,000	288,320	39%
USA	16,205	122,317	17%
Germany	1,668	62,850	8%
India	1,119	38,625	5%
Spain	1,400	27,259	4%
Other countries	20,608	203,318	27%
Total	93,000	742,689	100%

Source: GWEC

New Installation 2020 (MW)



Total installed capacity worldwide in 2020 (MW)



2. Wind energy across Europe

Having reached the milestone of a total installed wind capacity of 220 GW in 2020, with 195 GW coming from onshore and 25 GW from offshore, the renewable energy sector in Europe must now continue its expansion and grow faster than ever before.

Installed wind energy capacity in Europe increased by 14.73 GW in 2020. Germany and Spain are leading the way, with the UK following closely behind.

Germany remains the leader in Europe with the largest amount of installed capacity (62.6 GW), followed by Spain, the UK and France.

Table 3. New installations and total installed capacity in Europe in 2020

Country	New installations (MW)	Cumulative capacity (MW)	Percentage of wind power
Germany	1,668	62,627	29%
Spain	1,400	27,264	12%
United Kingdom	598	24,167	11%
France	1,318	17,949	8%
Italy	137	10,852	5%
Sweden	1,007	9,992	5%
Turkey	1,224	9,305	4%
Netherlands	1,979	6,784	3%
Denmark	136	6,180	3%
Portugal	21	5,486	2%
Belgium	858	4,719	2%
Ireland	196	4,351	2%
Greece	517	4,113	2%
Norway	1,532	3,980	2%
Austria	25	3,120	1%
Romania	0	3,029	1%
Finland	302	2,586	1%
Ukraine	144	1,314	1%
Russia	713	905	0%
Croatia	152	803	0%
Luxembourg	30	166	0%
Bosnia and Herzegovina	48	135	0%
Switzerland	12	87	0%
Other countries	714	9,632	4%
Total (Europe)	14,731	219,546	100%

Source: WindEurope

Total installed capacity Europe in 2020 (MW)



In terms of new installed capacity, remarkable progress has been taken by the Netherlands, with 2 GW of new capacity installed in 2020, followed by Germany with 1.67 GW, Norway with 1.53 GW, Spain with 1.40 GW and France with 1.32 GW.

With Spain planning to install 3 GW of offshore capacity and setting out the offshore wind roadmap, Austria aiming to achieve 100% renewable energy consumption by 2030 (up from 75% today) and many other projects in the pipeline in other European countries, we can conclude that Europe is continuing to set itself new goals and is moving in the right direction.

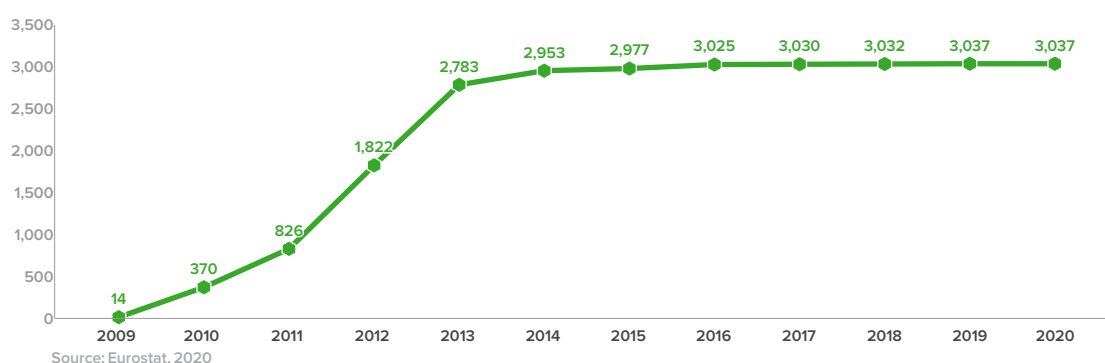
The European Commission has tabled for adoption the "Fit-for-55 package", a series of legislative proposals aimed at delivering the EU's upwards-revised target of a 55% reduction in emissions by 2030. The package includes this higher target as well as new rules to support the expansion of renewables. The various legislative proposals that make up the Fit-for-55 package will have to be negotiated and agreed by the EU Member States and the European Parliament. This package of laws contains changes to over 10 pieces of European legislation, including the Renewable Energy Directive, the Energy Tax Directive, the Alternative Fuels Infrastructure Directive and the EU Emissions Trading System.

3. The wind energy sector in Romania

Total wind installed capacity in Romania amounted to 3 GW at the end of 2020, with wind power thus remaining one of country's most important renewable energy sources with a 14% share of total energy production.

The original target of 24% renewable energy in total energy consumption was achieved prior to the target date of 2020. This was possible due to the balanced mix of renewable energy sources found in Romania – hydro, wind, photovoltaic, geothermal and biomass. At the end of 2020, the reported net generating capacity of the Romanian Energy System based on renewable sources was 10.9 GW, of which around 3 GW came from wind power, 6.6 GW hydropower and 1.4 GW solar power.

Wind power installed capacity in Romania [MW]



Nonetheless, new investment in wind energy, among other sources, more or less came to a halt in 2013, when the support scheme for Green Certificates was dramatically cut back.

Romania's operational wind farms are mainly located in the Dobrogea region, on the Black Sea coast, where average wind speeds can reach 7 m/s at an altitude of 100 m. The region is flat and sparsely populated, which has facilitated the installation of some 2.5 GW of capacity, representing more than 80% of the country's total wind power installed capacity. The next two regions in terms of amount of installed wind power capacity are Moldavia with 0.26 GW, followed closely by Muntenia with 0.22 GW. This concentration of wind energy developments in the east of the country places a lot of stress on the grid, which has reached the limit of its capacity, thus leaving little room for further investment in that geographical area.

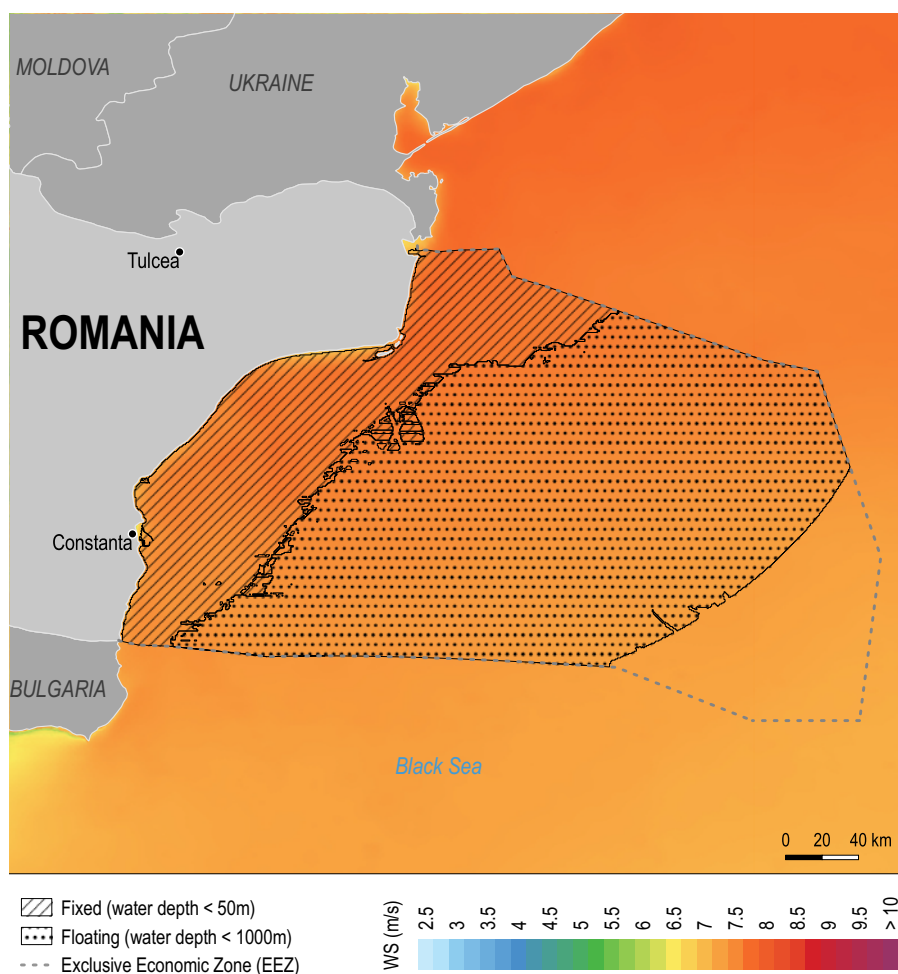
Unlike wind farms, solar power plants are distributed differently around the country, with Muntenia the regional leader with 0.73 GW of installed capacity, followed by Transylvania with 0.28 GW, Oltenia with 0.20 GW, and Crişana with 0.1 GW.

The main industry players in Romania today are discussing the second, larger wave of renewables in view of the European Union's strategy of decarbonising the continent by 2050.

In addition to the older plans for onshore investments, there is now increased interest in offshore developments, with Romania having a high wind power potential in the Black Sea.

However, in order to develop new wind capacity in the Black Sea, certain legislative steps need to be taken before making investments plans. Apart from the legal framework, which still needs to be adapted to enable offshore investments, some

Offshore Wind Technical Potential in Romania

**RISE score: 8 |****Fixed: 22GW | Floating: 54GW****Total: 76 GW**

This map shows the estimated technical potential for fixed and floating offshore wind in Romania in terms of installed power capacity in megawatts (MW) within 200 kilometers of the shoreline. It is provided under a World Bank Group (WBG) initiative on offshore wind that is funded and led by the Energy Sector Management Assistance Program (ESMAP). For more information and to obtain maps for other WBG client countries please visit: <https://esmap.org/offshore-wind>. For further details on the RISE score provided please visit: <https://rise.esmap.org/>.

The methodology used to create this map is described in the WBG report published in October 2019 titled *Going Global: Expanding Offshore Wind to Emerging Markets*. The wind resource data is from the Global Wind Atlas (version 3.0), a free, web-based application that provides data with a 250 m resolution based on the latest input datasets and modeling methodologies. For more information: <https://globalwindatlas.info>.

The World Bank and ESMAP do not guarantee the accuracy of this data and accept no responsibility whatsoever for any consequences of their use. The boundaries, colors, denominations, and other information shown on any map in this series do not imply on the part of the World Bank any judgement on the legal status of any territory or the endorsement or acceptance of such boundaries.

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of the more important issues still to be resolved include the unstable electricity transmission infrastructure and the low level of the power demand in the region.

According to the National Energy and Climate Plan (NECP), Romania plans to add 6.9 GW of new capacity to its existing renewable energy sources in order to meet the target of 30.7% clean energy in total energy consumption by 2030.

Increasing the share of green energy in total energy consumption and achieving high energy efficiency will continue to be some of the most important objectives for our planet, and Romania still has a long way to go towards implementing a comprehensive, coherent and transparent legislative framework, as well as in defining a medium- and long-term strategy of concrete investment measures and solutions.

Speaking of the major institutional barriers in Romania when it comes to the development of the wind energy sector, one important investor on the Romanian wind energy market concluded that the social and political system continues to represent a very important external factor for the business environment. During the development of every renewable power plant there are several constraints that can potentially harm the profitability or even bring the development of an investment to a halt. After the potential for delays in the acquisition of permits and the building phase, the greatest barriers lie in the operational phase. Changes to the energy trading system, changes to CO₂-compensation measures or the virtualisation of renewable power parks demand high flexibility and market knowledge of every operator.

But not everything is negative. According to the same investor, given that the wind power sector is still undergoing a form of transformation despite being nearly 100 years old, there are some positive aspects (legislative, economic, technical etc.) observable in other east-European countries that could also be implemented in Romania. And besides the technical innovations presented year after year by wind turbine producers which make turbines ever more efficient, there are also other positive developments from a legislative and economic perspective. For example, making the markets (balancing, DAM, ID) more flexible and intervals shorter may help investors to be able to predict the economic behaviour of wind parks almost in real time.

In addition, the form of CO₂ compensation renewables receive has changed over the years. In recent years, market premiums became the main legislative solution for the future, while improved technology and reduced investment costs made the entire sector less dependent on subsidies.

A new concept was recently introduced into domestic legislation: the so-called aggregate entity model. The greatest advantage of this model is the potential cutting of balancing costs in an aggregated entity in comparison with individual wind farms.

Flattening out those expenses is highly desirable. This is not only helpful to the plant operator, but also traders, who are able to aggregate their entire portfolio, thus exploiting these advantages on an even greater scale.

By using the aggregation business model, groups of companies that invest in renewable energy production can increase their profitability thanks to the decrease in costs they enjoy most of the time. Moreover, since the energy market is an open market, it will regulate itself.

A reduction of costs will not only benefit a single market participant – the saving will be shared among the operators, traders and other participants. It can therefore be assumed that the first-time effect will flatten out within the following years.

The profitability of renewable energy projects commissioned up until the end of 2016 was based on the Green Certificates scheme. This scheme was initially very attractive for RES (renewable energy sources) investors, but this became less so later on, leading to a dramatic fall in investor confidence due to the significant decline in the profitability of their projects.

There is currently no support scheme in place for newly built projects, but Romania is working on implementing a new support mechanism based on tenders, the so-called Contract for Differences (CFD) mechanism. This could become operational within two years and is aimed at eligible producers of clean energy using low-carbon technologies such as hydropower, wind power, solar power etc., as well as nuclear power and fossil fuels by means of storage technologies.

This mechanism is based on tenders and is subject to individually negotiated Contracts for Differences. With this commercial instrument, eligible producers enter into a private contract (a CFD) with a nominated counterparty and agree on a 'strike price' (Romanian: 'preț de exercitare'). The electricity is then sold at the market price on the centralised power exchange.

If the market price drops below the strike price, the counterparty reimburses the difference to the producer. If the market price exceeds the strike price, the producer reimburses the difference to the counterparty.

Once implemented, the CFD scheme will run in parallel with the Green Certificates system, which continues to operate until 2031.

Among the objectives of Romania's National Energy Strategy for 2019-2030, with the perspective of 2050, the following strategic investments of national interest are intended to help increase the share of green energy and energy efficiency, as well as making Romania a regional energy security provider:

- » Construction of the hydropower and pumped storage project in Tarnița-Lăpușești
- » Creation of the 600 MW group in Rovinari
- » Construction of the Turnu-Măgurele–Nicopole Hydrotechnical Complex.

LEGAL REGULATIONS

1. Legal title required when developing a renewable energy plant¹

The first step in developing a renewable energy project is choosing an area suitable for the construction of the planned energy plant. Under Romanian legislation, any installation for energy generation requires a building permit. A building permit will be issued only if a defined real right (in real law) can be established over the land on which the power plant is to be built. There are a variety of options available under Romanian law and we hereby detail such real rights.

1.1 Ownership right and its legal forms

In Romanian law, the owner has the unrestricted right to use, possess and sell the real estate he/she owns. This also includes the right to build any permanent or temporary structure on said real estate, either above or below it.

The ownership right is usually established by means of an agreement executed in notarised form for validity purposes and registered with the Land Book Register so that it can be challenged by third parties and may be demonstrated using ownership documents, such as sales, donation, succession agreements etc.

With the exception of cases where special laws have been passed establishing different rules, the citizens of an EU member state who are not resident in Romania, stateless people who are not resident in Romania but are resident in another EU member state, and legal entities who are not resident in Romania, but which were incorporated according to the laws of another EU member state, may all acquire ownership rights over land in Romania.

Given that in Romania most renewable energy projects are built on out-of-town land, which is often agricultural land, the new legal provisions on the sale of agricultural land located outside built-up areas must be considered. In view of this, legislation passed in 2020 introduces new categories of preemptor and new rules regarding the sale procedure.

Furthermore, lessees who are natural persons/legal entities/associations must prove that they have been domiciled/resident in Romania for a period of 5 years prior to registration of the offer of sale vis-à-vis agricultural land located outside built-up areas. In the case of lessees who are legal entities and whose shareholder is another legal entity, the shareholders in control of the company must prove they have had a registered/secondary office in Romania for a period of 5 years prior to registration of the offer of sale vis-à-vis agricultural land located outside built-up areas.

Also introduced was a prohibition on the alienation of agricultural land for a period of 8 years, with the exception of agricultural land located outside built-up areas that may still be alienated, by sale, prior to the passage of 8 years from the date of purchase and under certain conditions.

All these conditions must be carefully observed given that the law provides for harsh penalties, including the absolute nullity of acts of alienation by sale of agricultural land located outside built-up areas that do not respect the right of preemption or which are concluded without first obtaining the approvals required by law. Non-observance of preemption rights with respect to the sale of agricultural land is also sanctioned by fine of between RON 100,000 and RON 200,000.

1 – All references to legal/tax provisions were considered up to 6 September 2021

1.2 Superficies right

A superficies right encompasses the following: (i) the right to have or erect a building on, beneath, or above another person's land; (ii) the ownership right to the building; and (iii) the right to use the land belonging to the building. The superficies right differentiates between the ownership of the ground and the ownership of the structure built on, beneath, or above it.

There is no restriction regarding foreign citizens. It is only stipulated that a superficies right can have a maximum duration of 99 years, with an option for renewal, as per the Civil Code.

Any superficies right includes a right of use over the portion of land on which the structure is built. If a landowner only grants a third party a right of use through a letting/lease or other arrangement, the third party is not allowed to build a permanent structure on the land.

The right over a superficies is established by way of an agreement executed in notarised form for validity purposes and registered with the Land Book Register so that it can be challenged by third parties.

1.3 Usufruct right

The legal right to use and profit from someone else's property as long as the property's substance is preserved is known as usufruct. The usufruct is a real right to use another's property for a limited time. If the usufructuary is a natural person, the usufruct is limited to 30 years if the usufructuary is a legal person, or a maximum duration equal to the usufructuary's lifetime if the usufructuary is a natural person.

Like the superficies right, the usufruct right may be established by means of an agreement executed in notarised form for validity purposes and registered with the Land Book Register so that it can be challenged by third parties.

1.4 Conventional and statutory rights of usage and easements

The holder of a right of usage has the right to use and enjoy the property in question, as well as the right to benefit from the fruits of said property, provided he/she and his/her family are not harmed. An easement right affords the beneficiary access to another person's property, with the goal of facilitating the use of nearby land owned by a different person and expires after 10 years of non-use.

The investor must possess rights of easement over land over which access roads or cables pass during and after completion of the construction works, or with respect to the route of electric cables crossing a third party's property.

Depending on the stage of construction of the energy plant, the rights of usage or easements may be established (i) by concluding a notarised agreement, or (ii) by virtue of law.

The developer is awarded specific rights of usage or easements over plots of land surrounding the energy plant, valid for a limited period, as per the Energy Law, which regulates the rights of usage and easements granted in law. Such rights affecting land owned by the state and municipal governments are awarded free of charge for the duration of the energy plant's existence, while those affecting third-party assets are subject to special rules as outlined in the Energy Law. Following amendments passed in 2020 to the Energy Law, investors are now allowed to directly negotiate bilateral power purchase agreements (PPAs) outside of the centralised market. It can be argued that this amendment does not respect the principle of transparency of the energy market, given that to date all wholesale electricity transactions had to be concluded exclusively on the centralised markets in a transparent, public, competitive and non-discriminatory manner, with limited exemptions generally with regard to small generators.

1.5 Exercise of rights of usage and easements over third owners' properties

Developers may be asked by the owners of affected lands to execute the framework agreement regulated by law. The duration of the agreement will, in theory, include the time required to build the energy plant, as well as the time required for its maintenance and operation.

The maximum amount of compensation to be paid to the owners is to be determined by the parties in all cases where agreements exist and must not

exceed the level of minimum rent set by the local authority for one square metre of land of the same category and must only be calculated based on the surface area of land directly affected by usage and easement rights.

If the local authority has not set a minimum rent, the level of compensation must be determined by an approved expert chosen by the parties and paid for by the developer. Apart from compensation, affected landowners will also be compensated for any damages caused by the energy plant, which will be assessed based on a given set of criteria.

2. Problems that may interfere with or delay the investment process

2.1 Public ownership

Under Romanian law, real estate possessed by the state and local governments falls under one of two categories, namely: public or private domain real estate.

Establishing which category the land required for an energy plant belongs to determines the type of agreement that can be used to secure the land, with land in the public domain typically being obtained through a concession agreement.

A public tender is used for the sale, concession (for a period of 49 years) or leasing of plots of land belonging to the state's public or private domain or administrative units. If a local government transfers real estate rights to a party without holding a public tender, the contract with that party may be ruled null and void.

2.2 Litigation

Most real estate litigation concerns the expropriations/nationalisations that occurred between 1945 and 1989 and it is extremely difficult to investigate the legal status of any such real estate due to a lack of accurate records and the partitioning and unification of the plots of land in question. As a result, it is recommended that official enquiries be made to the relevant local authorities (with a view to the filing of reparation claims) to minimise future risks that could prolong the investment process.

Similarly, enquiries should be made to establish whether the property in question is subject to any other lawsuits that might influence the construction of the renewable energy project.

2.3 Historical monuments

According to Romanian law, a private owner may only transfer his/her title to a property designated as a historical monument after showing due regard for the Romanian State's preemption right to purchase such property. Any transfer paperwork signed in violation of this preemption right is void. Any interested party may bring this nullity to the attention of the courts at any moment.

It is recommended that an official inquiry by the appropriate Directorate for Cultural Heritage and the Romanian Ministry of Culture be requested in order to minimise this risk.

2.4 Archaeological sites

The owners of land located within the boundaries of archaeological sites are required to respect the relevant legislation and restrictions in order to safeguard and recover the archaeological heritage.

Any works with an impact on archaeological sites performed without an archaeological clearance certificate, as well as any destruction or damage caused to archaeological sites, is considered a criminal offence punishable by law. Documents establishing the archaeological status of the land should be obtained in order to minimise such concerns.

2.5 Urbanism certificates

All notarised documents relating to real estate that have as their purpose (i) the partitioning or unification of plots of land for the purposes of undertaking construction works, or (ii) the establishment of easements of passage must be accompanied by an urbanism certificate. In the absence of an urbanism certificate, such acts are deemed null and void.

In the case of land subdivision, the creation of a zonal urban plan is required for the partitioning of land into three or more plots.

It is also necessary to obtain an urbanism certificate (i) for the drawing up of cadastral documentation for the unification or partitioning of real estate into at least three plots, where the unification or partitioning is required for the performance of construction or infrastructure works, and (ii) for the creation of easements of passage.

2.6 Soil quality certificates

Romanian law stipulates that all landowners (individuals, legal entities, associations or public authorities/institutions), regardless of land type (agricultural, forest, urban, unincorporated), have the obligation to ensure the conservation, improvement and protection of the soil.

Moreover, the obtaining of a soil quality certificate is mandatory upon the completion of any works in which the soil was affected, as well as when there is a change of owner of the land or when the land is alienated, or where the land has been affected by the following types of activity: (i) agricultural, forestry and zootechnical (pre-existing or new), (ii) industrial and economic (pre-existing or new) with a significant impact on the soil and (iii) military with a significant impact on the soil.

3. Necessary permits

The construction of a RES project involves obtaining a variety of different permits, including civil permits and technical connection permits, as listed below:

3.1 Building permits

Building Permit <i>(Authority: Local City Hall or County Council, depending on land location/ Issuing deadline 30 days or more)</i>	<p>The building permit allows you to begin the construction of your renewable energy project, as well as the necessary electrical connection work, internal roadways and other infrastructure.</p> <p>The building permit may additionally stipulate when construction must begin (usually within 12 months) and end (usually within 24 months from commencement).</p>
Setting-up authorisation <i>(Authority: ANRE/Issuing deadline: 60 days)</i>	<p>This is the administrative document that must be obtained for all installed capacities higher than 1 MW. It has a one-year validity. This permit can only be obtained after all other criteria and permits have been met/obtained and the developer must be in possession of it before any energy capacity development can commence.</p> <p>After obtaining a setting-up authorisation, the plant will enjoy distinct statutory rights over third-party property necessary to the plant's development and construction.</p>
Urbanism Certificate for the Urban Zonal Plan (UZP) <i>(Authority: City Hall/Issuing deadline: 30 days)</i>	<p>The legal, economic and technical criteria of the property on which the RES plant is to be built are detailed in this certificate.</p>
Urban Zonal Plan (UZP) <i>(Authority: Local City Hall or County Council, depending on land location / Issuing deadline: 30+ days)</i>	<p>A UZP is always necessary unless there is a General Urban Plan (GUP) in place that already allows for the construction of RES projects in the region.</p>
Environmental Permit for the UZP Phase & the Building Permit Phase <i>(Authority: Local Environmental Authority / Issuing deadline: up to 6 months, depending on project complexity)</i>	<p>This is an administrative permit that allows an investor to increase energy capacity while also safeguarding the environment. If an environmental impact assessment report is required, it is issued during the project screening stage and is valid for the duration of the construction works.</p>
Environmental Impact Assessment (EIA) <i>(Authority: Local Environmental Authority/Issuing deadline: 60+ days)</i>	<p>An EIA establishes the environmental standards and regulations that must be observed throughout the development and construction of renewable energy plants, grid connections, road infrastructure and substations, among other things. The final decision of the environmental authority should be communicated to the local community.</p>

3.2 Grid connection permits

Emplacement Permit <i>(Entity: Distribution System Operator (DSO)/Issuing deadline: 15 days)</i>	<p>This permit certifies that the planned configuration is compliant with the local energy system and infrastructure.</p>
Solution Sheet/Solution Study <i>(Entity: DSO/Transmission System Operator (TSO) / Issuing deadline: (i) 3 months in the case of connections to a grid with an electrical voltage of 110kV or higher; (ii) 30 days in the case of connections to medium or lower voltage electricity lines)</i>	<p>The solution sheet assumes only one grid connection possibility and is intended for capacities of under 30 kVA. A solution study compares two connection options for capacities that need to be connected to a grid with a nominal voltage of 110 kV or higher. The investor's chosen solution is certified by the DSO's technical, economic and social committee.</p>
Technical Connection Approval (ATR) <i>(Entity: DSO/TSO/Issuing deadline: 10 days for a solution study; 30 days for a solution sheet)</i>	<p>For locations with an installed power of up to and including 50 MW, the ATR is issued by the grid operator, while for locations with an installed power greater than 50 MW, the ATR is issued by the national transport system operator.</p> <p>The ATR expires after 3 months if the investor has not submitted a financial guarantee, after 12 months if the connection agreement has not been completed and the period of validity of the approvals/authorisations under which the ATR was issued has expired, or if they have been cancelled by judicial decision as part of a court case.</p>
Grid Connection Agreement <i>(Entity: DSO/Issuing deadline: 5 days)</i>	<p>This document verifies the choices made in the ATR, thereby converting the offer into a contract. It also specifies a completion date for the work and how the connection fees will be paid.</p>

3.3 Post construction permits

Before applying for a connection certificate, the following must be completed: the commissioning of the RES (*renewable energy sources*) facility and

the activation of the usage installations. Both tasks are handled by the DSO in accordance with the connection agreement.

Operational Licence <i>(Entity: ANRE/Issuing deadline: 60 days)</i>	<p>After the RES is completed and connected to the grid, you must apply to the ANRE for a commercial exploitation licence, which permits the energy facility to be used. This licence is valid for a period of 25 years.</p>
Connection Certificate <i>(Entity: TSO/Issuing deadline: 3 days)</i>	<p>After construction and testing is completed, a Connection Certificate is issued to certify that all requirements for a grid connection have been satisfied.</p>
Environmental Authorisation <i>(Entity: Local Environmental Authority. Issuing deadline: 90 days)</i>	<p>This permit specifying the environmental requirements that must be met for electricity generation to commence should be acquired as soon as the RES is put into service</p>

4. Sale of energy

The producer can begin selling energy once the RES installation becomes operational. Wholesale trade takes place on OPCOM-hosted and -managed centralised markets. To operate on the OPCOM platforms, the RES producer must conclude a participation agreement, a leasing agreement for the USB token key and a REMIT contract with the market administrator in order to keep track of all transactions to which the RES producer is party.

Following recent amendments, electricity producers and suppliers are now exempt from trading on OPCOM platforms under certain circumstances:

- » RES producers can enter into PPAs for energy generated as new RES capacity even if they do not yet have a licence (which must, however, be obtained by at least 60 days prior to their first delivery)
- » Market participants who mix various sources of electricity or the loads of several customers may enter into bilateral aggregation agreements with the owners of said sources or their suppliers after 1 June 2020, subject to compliance with competition rules.

What's more, investors now have access to a new way of trading, namely the ability to conclude PPAs without possessing a manufacturer's licence in order to obtain funding (on the condition that they obtain a licence by at least 60 days prior to their first delivery).

According to representatives of the Ministry of Energy, the legislation is not yet harmonised and PPAs, vital for financing new production capacities, are yet to be concluded.

PPAs allow for the purchase of energy in advance, a mechanism that can be used in conjunction with banks. Sales can take place over a period of 6-7 years, allowing companies to enter into a special relationship with a bank that agrees to use this mechanism.

ANRE recently declared that as far as they were concerned everyone has the right to conclude PPAs, on the condition that these contracts are accepted by the financiers. Issues currently preventing the conclusion of these contracts must be observed, these being the following: (i) the obligation to trade on the centralised markets, (ii) the projects to be put into operation after 1 June 2020 and (iii) the application of Regulation (EU) 943/2019.

Similarly, the Coalition for the Development of Romania (CDR) points out that it is very important to unblock the legislative framework to stimulate investment in new electricity generation capacities by guaranteeing the right of investors to sign long-term negotiated bank contracts outside of the centralised market.

The CDR argues that this facility should be extended unconditionally to all participants in the electricity market regardless of the year of production, otherwise there is a major risk of exacerbating the blockage experienced during the last 8 years, especially given that the investment situation in the sector is still stagnant.

As an exemption from trading on the centralised markets, economic operators that combine multiple sources of energy or the loads of numerous customers are allowed to enter into bilateral aggregation agreements with the owners of these sources, as well as with their customers and suppliers.

Furthermore, OPCOM's new centralised market platform for concluding PPAs was created to provide long-term power trading options for renewable energy investors yet to receive their commercial operating licences.

5. Green certificates trading

A producer of electricity from renewable energy sources (E-RES) receives green certificates (GCs) for power supplied to suppliers or directly to end consumers under the green certificates support scheme. For a predicted energy consumption of 44 TWh, the ANRE has set an estimated mandatory quota for the acquisition of green certificates for economic operators that have an obligation to acquire GCs in 2021 at 0.4505 CV/MWh. Failure to meet the yearly required GC acquisition quota carries a penalty of Euro 110 (subsequently indexed) for each GC not acquired.

Even during the testing phase, E-RES producers will benefit from the GC support scheme if they have been accredited by the ANRE (preliminary accreditation). Transelectrica S.A., the transport and system operator (TSO), issues the GCs.

GCs may be traded on OPCOM's centralised green certificates market, as well as on the market for bilateral GC contracts. Producers may enter into bilateral sale-purchase agreements for GCs directly negotiated with suppliers to end consumers, similar to energy trading.

Green certificates are traded at a price that fluctuates within a range established by Government Decision. A minimum price is set in order to protect producers, and a maximum price in order to protect consumers.

In 2016, the support scheme for GCs came to an end, which means that new projects no longer have GCs. However, investors who built before December 2016 will continue to be able to trade GCs until December 2031.

GCs can also be traded on the anonymous centralised market, the organised GC trading framework, which is served by a trading system that allows each participant on the GC market to introduce their own firm offers in terms of quantity and price for the sale or purchase of GCs without their identity being revealed to other participants in the trading session and also to

know the quantities and prices offered for sale by the other market participants, starting from the moment the offers are introduced and based on rules approved by the ANRE.

Anonymous centralised markets are held separately for the spot trading of GCs, with their allocation being commensurate to the GC sale/purchase offers, agreed between parties based on results communicated by OPCOM, as well as for the forward trading of GCs, agreed between parties based on the applicable standard contract and the results communicated by OPCOM.

Economic operators will purchase from the centralised anonymous spot market for GCs, on both an annual and quarterly basis, at least 50% of the number of GCs required to fulfil the mandatory annual quota for GCs, with the exemption of bilateral contracts concluded before March 2017.

Economic operators that develop installations to produce electricity from renewable sources with an installed capacity of more than 250 MW and that meet the conditions for the application of the promotion system must draw up and submit the necessary documentation for the individual notification of the support measure to the European Commission.

They will benefit from the promotion system only after authorisation by the European Commission and only in respect of the technologies used in the production of electricity from renewable sources mentioned in the authorisation decision.

In addition, the Government is considering Contracts for Differences (CFDs) as a means of providing support. Since 2019, public consultation was carried out on a document presenting this new support mechanism in the form of a scheme based on paid capacity tenders similar to the Contracts for Difference scheme.

The proposed scheme is inspired by the British CFD system, which is aimed at both renewables and nuclear and clean technologies in general. Through this mechanism, eligible producers may enter into a private law contract (CFD contract) with the nominated counterparty and agree on a “strike price”. Producers sell electricity on the competitive market, with differences arising between the market price and the strike price being subject to settlements. Finalisation of the legal framework is long-awaited, and the business community is keen to see a clear governmental stance on future investment priorities and a long-term commitment to the sustainable energy mix and, in general, market development in line with international technologies and practice. In any case, long-term investments, such as those in the electricity generation sector, require financial instruments able to provide financing of the magnitude required by these projects.



SOURCES OF FINANCING RENEWABLE ENERGY INVESTMENTS

1. EU Policy

Europe will turn green, and we will experience an economic transformation, a disruption of old habits comparable only to the first industrial revolution two centuries ago. The target is to reach climate neutrality by 2050, but along the way a reduction in CO₂ emissions of 55% by 2030 – and the elimination of combustion engines by 2035 are the main milestones. Energy politics lie at the very core of these changes, and Romania, with its huge potential for renewables, will play a key role in the region.

Let's quickly summarise the policies and targets agreed upon so far:

Green Deal:

In December 2019, the European Commission presented its one trillion-Euro deal to achieve climate neutrality during the next decade. The Green Deal is a multi-faceted programme: it covers biodiversity, sustainable food systems, sustainable agriculture, sustainable industry, building and renovation, sustainable mobility, the elimination of pollution and, of course, clean energy.

The Green Deal strives to achieve three main goals:

- » Net-zero emissions: all economic sectors shall contribute to reducing emissions, with energy being at the very centre of this endeavour, since energy makes up more than 75% of the EU-27's total greenhouse gas emissions. To reach this goal, the share of renewable energy in the EU's energy mix will have to increase substantially.
- » Decoupling growth from resource exploitation. Without reducing the consumption of resources, these targets cannot be achieved. Technology alone will not solve the problem: without changing our lifestyle and some of the basic principles on how society functions, we will not succeed.
- » Mitigating social effects of the transition: not everybody will come out a winner in this transition, and so to ensure no one is left behind the Just Transition Mechanism was

created, providing between Euro 65 and 75 billion over the period 2021-2027 to alleviate the socio-economic impacts of the transition.

The one trillion-Euro deal is the largest financial facility ever offered by the European Union. However, with a few exceptions, these funds will not represent additional funding, with most of the financing being earmarked for climate measures coming from existing financing facilities, such as the Multiannual Financial Framework 2021-2027, with its budget of 1,074 billion Euro, of which 30% must be used for climate related activities, and the Recovery and Resilience Facility (RRF), a 672.5-billion Euro programme to bring the European economies back on track after Covid, of which each country must use at least 37% for climate related measures. Another source of financing is the EU Emissions Trading Scheme. And then, of course, there are the national budgets, which will have to cover part of the remaining amounts.

As impressive as these numbers are, they are far from sufficient in terms of achieving the target of climate neutrality. According to the European Strategy for Financing the Transition to a Sustainable Economy published in July 2021, the European Commission estimates that achieving the 2030 climate, energy and transport targets will require Euro 350 billion of additional annual investment compared to the amounts invested in 2011-2020, with a further Euro 130 billion a year to be spent on other environmental objectives: *"Investment in unsustainable activities and assets are increasingly likely to become stranded, as climate and environmental challenges become ever more material. The insufficient integration of these risks hampers reallocation of resources and risks leading to disruptive readjustments in the future, with implications for financial stability."*

The magnitude of this investment challenge calls for the mobilisation of both private sector and public funds in a cost-effective manner. This will affect all sectors and therefore the economy as a whole.

Fit for 55

The Green Deal must be transformed into reforms and policy actions, and this is precisely the aim of the “Fit for 55” programme introduced by the European Commission in July 2021. Although currently just a proposal awaiting approval by the Member States, it outlines very well which parts of EU legislation will need to be adapted. Here are just a few examples:

- » revision of the EU emissions trading system (EU ETS), including its extension to shipping, and revision of the rules for aviation emissions and establishment of a separate Emissions Trading System for road transport and buildings
- » revision of the Regulation on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry (LULUCF)
- » revision of the renewable energy Directive

- » recasting the energy efficiency Directive
- » revision of the Directive on the deployment of alternative fuels infrastructure
- » amendment of the Regulation setting CO₂ emission standards for cars and vans
- » revision of the energy tax Directive
- » creation of a social climate fund
- » creation of an EU forest strategy

The most visible elements of the programme are the proposals to ban combustion engines for new cars and vans by 2035 and to reduce car emissions by 55% by 2030. It also increases the targets for the reduction of final and primary energy consumption to 36-39%, and the share of renewable energy to 40% by 2030. These targets will generate huge opportunities for European industry by creating markets for clean technologies and products. Energy efficiency projects in buildings alone are expected to create 160,000 new jobs by 2030.

2. EU Funds in Romania

Romania directly receives EU funds from two different sources: the Multiannual Financial Framework 2021-2027 (MFF; Euro 46.6 billion) and the Recovery and Resilience Facility (RRF; Euro 29.2 billion). A large part of both programmes has to be used for climate related investment and reforms: at least 30% of the funds obtained via the Multiannual Financial Framework 2021-2027 and 37% of the Recovery and Resilience Facility budget must be used for climate change-related measures – in total about Euro 25 billion.

Exactly what activities these funds will be used for is still a matter of discussion between the Romanian government and the European Commission, but it is very likely that a large part of these funds will be used for investments in renewable energy projects, increasing energy efficiency, the renovation of private and public buildings, investment in sustainable transport, as well as a range of smaller programmes, from charging stations for electric vehicles and bicycle lanes in urban areas to reforestation projects.

Like any other Member State, Romania can also access programmes managed directly by the European Commission that provide financing for innovative energy projects, such as the Modernisation Fund, the Innovation Fund, Invest Europe, IPCEIs or Horizon Europe. Proposals submitted to these programmes compete directly with proposals submitted by other Member States. It is perhaps this as well as the fear of not being able to draw up sufficiently relevant and innovative proposals that has hindered the Romanian authorities and private entities in submitting proposals under these programmes in the past. The reality is that with respect to all the aforementioned programmes, Romania has submitted either the lowest or one of the lowest numbers of proposals and has had an even smaller proportion of its projects approved, and therefore has scarcely been able to benefit from these programmes. Nonetheless, these programmes represent a very attractive means of obtaining financing, and the hope is that their utility will be better recognised in the future.

3. Multiannual Financial Framework (MFF; Euro 46.6 billion)

The purpose of the MFF is to bring the less developed EU countries closer to the European average. Like all European budgets, the MFF is also subject to a 7-year cycle. The MFF 2021-2027 is the third cycle of European Funds that Romania will be able to benefit from. The Euro 46.6 billion budget for grants and financial instruments for Romania is still under discussion and will most likely not be finalised before well into 2022.

The first MFF Romania was able to benefit from – covering the period 2007-2013 – allowed for generous subsidies for investments in renewable energy, with projects able to receive grants of up to Euro 18 million, independent of the renewable's technology used in the investment. The second MFF – 2014-2020 – was more restrictive, with only geothermal, biomass and biogas projects being eligible for funding, since Romania had already achieved its 2020 targets for the other technologies in 2013. Subsidies could reach up to Euro 15 million for each project.

The current drafts of the energy-related chapters of the Romanian MFF 2021-2027 are based on the Romanian National Plan for Energy and Climate Change 2021-2030 ("Planul Național Integrat în domeniul Energiei și Schimbărilor Climatice 2021-

2030", PNIESC), which was drawn up in 2019 and includes targets that when launched were still in line with EU policies. But being pre-"Green Deal" and pre-"Fit for 55", many of its targets are now no longer relevant and have simply been overtaken by more radical European approaches. Therefore, the current draft of the Romanian MFF 2021-2027 cannot be regarded as anywhere near the final document. It does, however, provide some useful indications:

- » Euro 600 million are earmarked for "Promoting energy efficiency, smart energy systems and networks and storage solutions" in the form of grants and financial instruments directly available for companies
- » In the programme for "Just Transition", investments in wind farms and photovoltaics are mentioned as eligible investments, but since this programme is yet to progress beyond the stage of some preliminary outlines, information such as scope and eligibility criteria is unavailable at this moment
- » Renewable energy is mentioned in several programmes only as an eligible component of larger projects, such as photovoltaic installations on rooftops, but not as eligible for individual projects.

4. Recovery and Resilience Facility (RRF; Euro 29.2 billion)

The RRF is the EU's response to the Covid crisis – a Euro 672.5 billion package of reforms and measures to bring the European economy back on track, 30% of which will be raised by Green Bonds. Its focus is on climate change mitigation (at least 37% of RRF funds) and digitisation (at least 20% of RRF funds).

Unlike the MFF, the RRF is much less focused on investment. Member States implement reforms that make Europe more resilient and fit for the future. Investments are just the result of these reforms, not the main purpose of the programme. Countries have until the end of 2026 to implement these reforms, and any projects not finalised by then will not receive financing. The time pressure associated with the drawing up of projects is even higher – 70% of all financing contracts must be signed by the end of 2022, and the remaining 30% by the end of 2023.

The draft of the Romanian RRF plan foresees a multitude of reforms and measures related to climate change and environmental protection that together will account for 37% of the RRF budget, as demanded by the European Commission. As to renewables, Romania has pledged to increase its wind energy capacity by 1,581 MW by 2025, which means an increase in current capacity of about one third, and the capacity of its photovoltaics facilities by another 2,031 MW. Euro 600 million will be earmarked for renewables. But it is not only renewables that will receive funding, at least 100 MW (200 MWh) of electricity storage capacity, to be used to balance the electricity transmission system and integrate solar and wind capacities into the network, will also be implemented under the RRF.

Moreover, under the current draft of the RRF, Romania has reserved Euro 640 million for the development of green hydrogen projects.

The Romanian RRF is still being discussed between the government and the European Commission. A final version of the document is expected in October 2021.

BUSINESS LIMITATIONS AND PROSPECTS



1. Corporate

When considering the purchase or sale of a project through a share transaction, the history of the company holding the project is relevant. Corporate, financial and tax risks are all common when it comes to a company with a long history. Furthermore, it is very uncommon for investors to utilise the same business vehicle in many different projects.

Regulatory problems and other administrative legal limitations are frequently triggered by this derivation process, which should be evaluated on a case-by-case basis.

In Romania, the majority of RES projects are developed and operated by LLCs, with joint stock companies not used to any great extent, all the more so as the structure of a limited liability company is simple and the transfer of shares in an LLC to third parties can take place within any time frame established by the parties outside of the 30-day period in which the creditor is entitled to express opposition. In addition, if the articles of association allow for the transfer of shares to third parties, LLCs will no longer require the approval of shareholders representing at least three quarters of the company's share capital.

At the same time, the preferred acquisition structure remains a share purchase, with the full procedure entailing the drawing up of a detailed due diligence report covering aspects such as trading assets and related rights, authorisations and licences owned, associate structure, and so on. The due diligence report is a recommended and even mandatory preliminary procedure that allows the buyer to acquire a well-functioning energy project.

It is also worth noting that in the annual report for 2020 (published in March 2021) the Romanian Competition Council reiterated its intention to resume/continue the process of inter-ministerial approval and follow-up of the status of draft normative acts with respect to the adoption, in national legislation, of the measures necessary for the application of the European Regulation establishing a framework for the verification of

foreign direct investments (FDI) in the European Union.

If they take place under the new FDI system, all transactions and new investments worth more than Euro 2 million must be reported to the FDI Verification Commission. This means that non-EU nationals and firms (including administrators), non-EU controlled EU enterprises and/or non-EU legal entities planning to invest will be required to register an FDI deposit.

As a result, all new RES projects will be subject to the following regulations:

- » FDI verification may be required for transactions above the Euro 2 million threshold applicable during the development phase
- » Because EU-based firms managed by non-EU entities are subject to the FDI screening system, the structure of the investor's shareholding must be reviewed up to and including the ultimate beneficiary
- » FDI valuations should be conducted throughout the life of an investment, since future events such as changes in the upstream control of an existing investor or increases in share capital may trigger an FDI value
- » When determining the closing date and the associated long stop date, the timetable for the FDI investigation must be considered. The FDI Control Commission has 60 days to examine the submission under the present version of the FDI bill; this period can be extended if additional authorities (such as the Supreme Council for State Defence – CSAT) need to be contacted. Decisions must be communicated within 45 days of their issuing date.

It is also worth mentioning that the Ministry of Energy is drafting a new law on electricity that will transpose into domestic legislation Directive (EU) 2019/944 on common rules for the internal market in electricity and will ensure harmonisation and correlation with the existing framework, with the draft law being already put out for public debate.

2. Grid capacity and connection

Connection to the grid only takes place if, following the issuing of the Technical Connection Permit (ATR), a connection agreement is signed and the connection fee paid within a certain time after the ATR has been issued. It's all about timing.

Before signing the connection contract, various processes (such as the obtaining of building consent) need to be completed first. Payment of the connection fee, which is usually quite high, implies that financing is already in place.

3. Amendments to technical specifications

Another issue arises when investors acquire projects that are already in the development stage and wish to make technical adjustments to them. Each permit issued for the establishment of a renewable energy unit takes into account the technical specifications of the project as a whole and its components, such as turbines, panels,

wiring, transformer station and so on. Any change to the various technical specifications of a project may require a new permit or for the existing permit to be amended, as each permit issued for the establishment of a renewable energy unit considers the technical specifications of the project as a whole and its components.

4. Insurance

Depending on the current stage of the project, the risks associated with renewable energy sources (whether wind, solar, hydro, biomass, biogas or biodiesel etc.) can be divided into three categories: development, construction and operational.

Development phase – obtaining the title to the property on which the investment is to be made is a challenge for all projects during this stage. Title insurance, which offers protection in terms of ownership of the land title, including ownership of future projects developed on the site in question, provides the solution to this sort of problem.

Construction phase – the risks associated with transporting equipment (solar panels, turbines, poles, blades etc.) from the manufacturer nation to the investment location can be significant. In such circumstances, the best approach is to ensure the component products in order to cover any risks associated with their transport. Property damage, physical injury or accidents on site, third-party responsibility and financial losses incurred due

to project delays are among possible hazards that may arise during the building process. The solution is to insure against all building and construction-related risks.

Operational phase – material damage, damage caused by external factors (e.g. extreme weather events, landslides, floods etc.) and damage to vehicles caused by internal factors are the primary risks during this phase. An operational policy covering all operational risks provides the solution in this situation. The main benefit of this kind of policy is the broad coverage it provides against all potential risks impacting the single point of contact project.

It should be emphasised that the range of risks associated with any renewable energy project is so broad that they can only all be covered by a comprehensive insurance policy that offers complete control over these risks. Consequently, to ensure the stability of a project, all renewable energy initiatives should undergo legal, financial, fiscal and technical due diligence.

5. Tax matters

5.1 Setting up

Profit/income tax: Two main tax regimes apply to Romanian companies: Micro-enterprise tax on income (taxed at 1% or 3%) and corporate tax (16% tax on profits).

Newly incorporated companies are required to pay the so-called micro-enterprise tax on their income, which amounts to:

- » 1% for micro-enterprises that have at least one employee, or
- » 3% for micro-enterprises that have no employees.

A company can voluntarily switch from the micro-enterprise tax regime to corporate tax regime if:

- » its share capital is of minimum RON 45,000 (approx. Euro 10,000) and
- » it has at least two full-time employees

The transition from the micro-enterprise tax regime to the profit tax regime becomes mandatory when an entity generates income greater than Euro 1 million during the year.

Apart from the applicable tax rate, there are other important differences between these two tax regimes, such as:

- » Tax losses: corporate tax payers are allowed to carry forward their tax losses over a 7-year period (no carry-back applies), while micro-enterprises are not allowed any subsequent utilisation of their losses. This matter is of particular importance for multi-year projects which require significant investments during the start-up phase, in which case it is generally recommended to register as payers of profit tax as early as feasible. The tax deductibility of financing costs is also not permitted for micro-enterprises.
- » Tax incentives: these are generally available to corporate taxpayers (e.g. exemptions for reinvested profits and accelerated tax

depreciation – see the following sections for more details).

- » Eligibility for withholding tax exemptions under EU directives: dividend/interest/royalty payments made by micro-enterprises are not eligible under EU directives, whereas profit tax payers are eligible (see the following sections for more details).

VAT: Romanian companies doing business in Romania are required to register for VAT purposes if:

- » they have an estimated annual turnover greater than RON 300,000 (i.e. around Euro 60,000)
- » the turnover they accumulate during the year exceeds this threshold
- » their turnover is lower than the threshold, but they opt to register for VAT purposes, or
- » they intend to carry out intra-Community acquisitions.

Once the VAT registration application and related documents have been filed with the tax authorities, a VAT number is promptly issued. The tax authorities then carry out a thorough analysis of the application and decide whether to maintain the company's VAT number.

5.2 Development

Tax deductibility of financing costs: Financing costs subject to deductibility restrictions include a wide range of costs, such as interest on financial leases, payments under profit participating loans, interest capitalised in the book value of assets or the depreciation of capitalised interest, notional interest under derivative financial instruments, financing related commissions, foreign exchange losses etc.

Profit tax payers may deduct financing costs within the following limits:

- » up to an annual amount of Euro 1 million
- » amounts exceeding this threshold may be deducted within the limit of 30% of the

borrower's gross profit, adjusted for certain items (minus non-taxable income, add back financing costs and tax depreciation). Carry-forward is available for financing costs which exceed the annual deductibility limitations.

The only exception to these deductibility restrictions applies to profit tax payers who are not part of a group and have no affiliates or permanent establishments.

Acquisition of properties: The sale of 'new' buildings (i.e. sold during the year of commissioning or by the end of the following year) and of buildable land is subject to VAT. The sale of 'old' buildings and of non-buildable land is exempt from VAT without credit (the seller may still opt to treat the sale as VAT taxable).

VAT reverse charging applies on the taxable sales of buildings and land, provided both parties to the asset deal are registered for VAT purposes in Romania; this means that the buyer books input and output VAT without actual payment of VAT being made between the parties.

Additionally, the transfer of real estate properties is subject to taxes of 0.5% of the value of the transaction for registration with the Land Book Register, plus notary fees of a similar value.

Recovery of input VAT: Should the company be registered for VAT and accumulate significant recoverable VAT on acquisitions, it may claim a refund of any such VAT from the Romanian tax authorities. A refund may be awarded following a tax audit (e.g. for newly incorporated entities, for higher-risk taxpayers) or subject to performance of a tax audit after the funds are paid (e.g. for lower-risk taxpayers, under certain conditions).

5.3 Operating phase

Corporate tax depreciation: Tax depreciation is claimed over the useful life of the asset as provided for by law (the enterprise chooses the depreciation period within the range specified for each category of asset). Depreciation is claimed monthly by applying the relevant method: the straight-line for buildings; and straight-line, accelerated or reducing balance method for other assets.

Taking the example of wind turbines, tax depreciation may be claimed over the following useful lives:

- » Foundation and tower: 24-36 years
- » Turbine, transformer and roads: 16-24 years.

Corporate tax incentive for reinvested profits:

Profit reinvested in new plants, equipment, computers and peripheral equipment, and software and software rights used for business purposes, either acquired under straightforward sale or financial leasing, may be exempt from tax. Profit tax payers benefiting from this incentive cannot apply the accelerated tax depreciation regime for the equipment in question.

VAT: Under certain conditions, supplies of electricity towards electricity traders and the transfer of green certificates are subject to the reverse charge mechanism until 30 June 2022; this means that cash may flow more smoothly between businesses, as VAT is recorded as both input and output VAT, without it being paid by the customer to the seller.

For investors this may mean that they can accumulate significant input VAT on acquisitions, not countered-balanced by output VAT on sales, and may need to request VAT refunds from the Romanian tax authorities.

Local taxes: Energy projects come with the obligation to pay local taxes on buildings and land, as follows:

- » Buildings deemed to include foundations and the towers of wind turbines are subject to the local tax on buildings of 0.2-1.3%. The tax base is taken to be one of the following: the most recent value declared to the authorities, the value determined in a valuation report, or the final value of the construction works (for new buildings). A 5% penalty rate applies to buildings which have not been revaluated during the past five years.
- » The local land tax is determined based on the surface area, location and category of use. For buildable land, the annual tax varies between RON 140 and RON 21,000/hectare.

There is no local tax on electric vehicles.

Taxation of dividends, interest & royalties: The rate of domestic withholding tax on dividends currently stands at 5%, while the domestic withholding tax rate on interest and royalties is 16%. These tax rates may be reduced or even eliminated by virtue of the tax treaty concluded between Romania and the home country of the income beneficiary (in the case of non-treaty jurisdictions, the domestic rate applies).

For Romanian companies with EU shareholders, the holding quota is one of the conditions for applying the provisions of the EU directives related to the payment of dividends, as well as interest and royalties:

- » Dividend payments: under the EU Parent-Subsidiary Directive, dividends are exempt from withholding tax in Romania so long as the EU shareholder has owned at least 10% in the Romanian subsidiary for a minimum of one year as at the date of payment and subject to the fulfilment of other conditions.
- » Interest and royalty payments: under the EU Interest and Royalties Directive, payments are exempt from Romanian withholding tax provided that the income beneficiary has continuously held at least 25% of the shares in the Romanian company for a minimum of 2 years as at the date of payment and subject to the fulfilment of other conditions. The same regime applies in the event that the income beneficiary is an EU company with the same EU shareholder as the Romanian payor, on condition that the common EU shareholder has held a minimum 25% share in both companies for at least 2 years.

Note: some of the other conditions for applying the EU directives on the payment of dividends/interest/royalties are as follows: the Romanian payor should not qualify as a micro-enterprise; both payor and payee should qualify as profit tax payers; the payee should be the beneficial owner of the income etc.

In view of the restrictions to applying tax exemptions, the structuring of the investment should take into consideration not only the shareholding structure, but also the intra-group financing structure and related tax considerations.

Business reorganisations: mergers, spin-offs, transfers of assets (as a going concern in exchange for shares) and exchanges of shares between Romanian companies or between Romanian and EU companies may be neutral in terms of corporate tax and VAT, provided certain legal provisions are observed. Transfer taxes of 0.5% and notary fees of a similar value still apply on the real estate transferred.

Negative equity: in cases where the equity of a Romanian company is lower than 50% of the subscribed share capital, specific action needs to be taken to restore the equity position. Different options may be available for equity restoration, depending on each company's particular circumstances, for example:

- » Revaluation of immovable properties
- » Contribution to share capital
- » Reduction of the share capital to cover accumulated losses.

Failure to restore the equity position may trigger a risk, in the sense that any interested entity (for example, a company's creditor) may request in court the dissolution of the company.

Other tax matters to consider: transactions carried out with related parties (e.g. loan financing, supplies of goods and/or services) should observe the arm's length principle. Transfer pricing documentation requirements may also apply.

In addition, transactions entered into by the Romanian investment vehicle with either related or independent parties should be thoroughly assessed for tax purposes, with a focus placed on the following matters:

- » the tax deductibility of service charges and related VAT at the level of the Romanian recipient
- » an assessment of the risk that the activities carried out in Romania by a foreign entity, either directly or via subcontractors, may give rise to a Romanian permanent establishment (i.e. for corporate tax purposes)
- » the methodology for settling VAT liabilities that may arise for the foreign entity doing business in Romania, e.g. VAT registration of the foreign provider prior to commencing their activity, fixed establishment of the foreign supplier for VAT purposes, VAT reverse charge booking by the local service recipient (the assessment will depend on the contractual provisions).

Should the exit be structured in the form of an asset deal, the following tax matters would be relevant for the Romanian selling company:

- » corporate tax of 16% applies to the taxable profit (assuming the seller is a profit tax payer)
- » the VAT regime may differ depending on the specific circumstances:
 - » the transfer of a going concern between two VAT taxable persons falls outside of the scope of VAT
 - » the transfer of assets that do not qualify as a going concern are subject to the regular VAT regime: reverse charges on the transfer of the real estate if both parties to the deal are registered for VAT; the regular 19% VAT rate for all other transfers
- » Transfer taxes of 0.5% and notary fees of a similar value will apply to the transfer of real estate properties.

5.4 Exit strategies

Capital gains: Capital gains derived by local or foreign shareholders from the sale of shares in Romanian companies are exempt from tax, provided the seller has held a minimum 10% of the shares over an uninterrupted period of at least one year and that a tax treaty is in place between Romania and the shareholder's country of residence.

Unless these criteria are met, the domestic 16% capital gains tax rate will apply. However, it should be noted that for non-resident sellers this tax may not apply by virtue of the tax treaty entered into between Romania and the seller's home country (particular attention should be paid to tax treaties containing a real-estate clause, as these may grant the taxation rights to Romania).

SOME THOUGHTS ON GREEN ENERGY – THEN AND NOW

Ten years ago, renewable energy was booming in Romania. Within only a few years, dozens of large wind energy projects had placed Romania on the European map of renewable energy. Investors were pouring into the country, attracted by a support scheme that granted a high number of Green Certificates to clean energy producers. But suddenly it all came to a halt. Within a short space of time, the sector underwent a sharp decline, mainly generated by a reduction in the support scheme, the lack of liquidity and, most of all, a lack of predictability in the legislative framework that would discourage investors from continuing to develop their scheduled projects.

Ten years ago, cutting emissions was optional for many. Today, it has become an urgent necessity. We now find ourselves having to press down on the accelerator pedal in order to increase investment in new renewable energy production capacities, build storage capacities, strengthen networks, and increase energy efficiency and energy security.

Increasing the share of green energy in the total amount of energy consumed and achieving high energy efficiency are some of the most important targets that need to be met in order to safeguard our planet. Romania still has many steps to take towards implementing a complete, coherent and transparent legislative framework, as well as in defining a medium and long term strategy involving concrete investment measures and solutions.

In this report, we provided an overview of the main recent legislative developments, the current plans and strategies of the government, and the available funding and financing options. We also touch on a few new developments we recently started discussing with our clients.

In the past, our reports were all printed on paper. Now, we've chosen to produce an online-only report. Things change quickly in the world of renewable energy, and being online allows us to constantly update our report and provide you with fresh information about the latest developments.

Acronyms

ANRE	Romanian Energy Regulatory Authority
ATR	Technical Connection Permit
CFD	Contract for differences
DAM	Day-Ahead Market
EIA	Environmental Impact Assessment
Energy law	Law no. 123/2012 on energy and natural gas, as amended by Government Emergency Ordinance no. 74/2020
E-RES	Energy from renewable energy sources
EU	European Union
GC	Green certificates
GW	Gigawatt
GWEC	Global Wind Energy Council
ID	Intraday Market
IPCEIs	Important Projects of Common European Interest
LLCs	Limited liability company – Romanian SRL
m/s	Metres/second
MW	Megawatt
MWh	Megawatt hour
OPCOM	Romanian power market operator
PPA	Power Purchase Agreements
REMIT	Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency
RES	Renewable energy sources
RON	Romanian Leu
sqm	Square metre
TSO	Transelectrica SA, Transport and system operator
TWh	Terawatt hour
VAT	Value Added Tax

Accounting

The traditional model of an accountant has changed. Our people today do not just possess financial acumen. They are also required to balance accounting, managerial and leadership skills. We perform our accounting services in an efficient and proactive manner by supporting our clients in their decision making and advising them on the impact of their transactions for their financial statements. Our reactions to customer enquiries are fast and precise, client-oriented and comprehensive.

Audit

TPA Auditing, besides audits of financial statements and special audits, also offers you expert knowledge in business consultancy and international accounting (IFRS/US-GAAP).

Advisory

In our business consulting service we focus on the measureable advantages available to our clients. In order to meet the challenges facing every company, regardless of size, we place the utmost importance on assisted and transparent project development. The basis of our business consulting services is a client-adviser relationship based on trust, highly experienced specialists in the advisory field, sophisticated, qualitative methods and a high level of expertise in the Tax and Audit fields. Only in this way can new ideas be developed and the highest possible reliability achieved when it comes to tailor-made solutions of direct relevance to decision-making.

European and National Funds

The TPA network offers specialist service packages to facilitate access to funding for applicants from the public and private sector. TPA and its partners prepare all the required documentation and offer assistance to

applicants during each stage of the process, from the definition of a project through to its implementation and monitoring, as well as with investment structuring, the creation of a business plan, the preparation and filling out of financing applications, intermediate reports and requests for reimbursement, and legal assistance during the signing of the agreement or during the project audit.

Legal Advisory

Legal services through our affiliated law offices. Our legal services include corporate law assistance, contract law, civil and commercial law, real estate transactions, energy transactions, employment law, competition law and commercial and fiscal litigation. Our legal support for mergers and acquisitions and real estate and energy transactions consists of preliminary analysis, legal due diligence, deal issues and the preparation and negotiation of transaction documentation.

Robotic Process Automation (RPA)

When employees spend their time filling out forms on the computer, copying data back and forth for use in reports or are used as human interfaces between programs that are unable to communicate with each other, this costs money and nerves. The solution for this is Robotic Process Automation. RPA is software that can be programmed to automatically perform repetitive tasks based on well-defined rules. Instead of being processed by a human employee, these tasks are performed much faster and error-free by software programmed by us.

Tax Advisory

Drawing on our experience of providing tax services we are able to provide comprehensive tax advice tailored to your individual needs, specific requirements and expectations.



Face to Face Business

Regionally and Internationally

An accurate
eye



A finely tuned
ear



A good
nose



An honest
talk

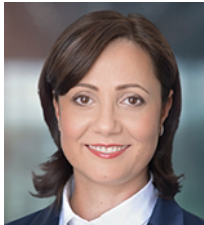


TPA is one of the leading tax, accounting and audit services companies in Romania and Central and South Eastern Europe. From our offices in Bucharest and Cluj-Napoca we cover all regions of the country. TPA Romania currently has 10 partners and more than 160 full-time employees providing support to our clients in the fields of Tax Advisory, Accounting, Auditing, Advisory and Legal.

The TPA Group is one of the leading tax advisory and auditing services companies in Central and South Eastern Europe. More than 1,700 TPA employees work at 30 tax & Audit offices in Albania, Austria, Bulgaria, Croatia, the Czech Republic, Hungary, Montenegro, Poland, Romania, Serbia, Slovakia and Slovenia.

The TPA Group is an independent member of Baker Tilly Europe Alliance and is thus able to provide to its clients a worldwide network of tax advisors, auditors and consultants.

The Report is based upon legislation valid at the date of its issuance. The information contained herein has been simplified and is not a substitute for advice in particular cases.



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