



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT

Directorate E – Compliance, Governance & Support to Member States
The Director (acting)

Brussels
ENV.E/PJ

Petition: Ares(2023)667486: Open letter – Stop the Dams Ordinance, the Ordinance of Ecocides, Stop the Government Quackery!

Dear Petitioner,

The President of the European Commission, Ms Ursula von der Leyen, the Commissioner for Environment, Oceans and Fisheries, Mr Virginijus Sinkevičius and Ms. Céline Gauer, Director-General of SG RECOVER have asked me to reply to your petition urging the European Commission to launch an infringement proceeding against Romania for adopting the Emergency Ordinance for the establishment of measures regarding the investment objectives for the realization of hydropower facilities in progress as well as other projects of major public interest that use renewable energy on 14 December 2022 ⁽¹⁾.

The Commission is aware of this recently adopted ordinance and is closely following all developments on this matter. The Commission is also aware of the necessity to act effectively and efficiently in line with its powers under the EU legislation.

The Council Regulation laying down a temporary framework to accelerate the permitting process and the deployment of renewable energy projects ⁽²⁾ provides that only certain projects for solar energy equipment and heat pumps will be exempted from the requirement to be subject to a determination whether the project requires an environmental impact assessment or from the requirement to carry out an environmental impact assessment under the Environmental Impact Assessment Directive. It is also to be noted that repowering of renewable energy projects, including hydropower projects, will not be exempted from such a requirement under the Environmental Impact Assessment Directive ⁽³⁾.

The Council Regulation will be applicable for 18 months from its entry into force, after which the Commission will review whether it is appropriate to extend it. This Regulation will apply to permitting procedures that have a starting date within the duration of its

⁽¹⁾ Official Journal, Part I no. 1203 of 14 December 2022.

⁽²⁾ Council Regulation (EU) 2022/2577 laying down a framework to accelerate the deployment of renewable energy, OJ L 335, 29.12.2022

⁽³⁾ Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, OJ L 124, 25.4.2014

application. It is envisaged that Member States may also apply it to ongoing permit granting processes which have not resulted in a final decision before starting date of application of the Regulation, provided that the pre-existing legal rights of third parties are preserved.

Moreover, the Regulation introduces targeted provisions aimed at speeding up the permit-granting procedures for specific renewables technologies and types of projects which have the highest potential for quick deployment and the least impact on the environment. It stipulates that the planning, construction and operation of plants and installations to produce renewable energy is presumed to be in the overriding public interest and serving public health and safety when balancing legal interests in the individual cases for the purposes of the Habitats Directive, the Birds Directive, and the Water Framework Directive ⁽⁴⁾. Member States shall ensure, for projects which are recognised as being of overriding public interest, that in the planning and permit-granting process, the construction and operation of energy plants from renewable sources, including hydropower projects, and the related grid infrastructure development is given priority when balancing legal interests in the individual case.

Concerning species protection, this shall apply if and to the extent that appropriate species conservation measures contributing to the maintenance or restoration of the populations of the species at favourable conservation status are undertaken and sufficient financial resources as well as areas are made available for this purpose.

In this context, the Commission has already alerted the Romanian authorities about the implications of the adoption of such legislation and, depending on the analysis of the information available, it will take all necessary steps.

We understand your expectations for quicker Commission actions. In this respect, let me recall that the Commission is bound by the EU Treaties and the powers conferred to it. For the purposes of Article 258 TFEU, the Commission has the burden of proof to demonstrate the existence of a breach and may not rely on any presumption; hence, initiating enforcement action requires the preparation of a solid file. Moreover, it must be borne in mind that, in environmental protection, the Commission services do not have the competence to conduct on-site inspections in Member States to investigate compliance with EU law; this falls exclusively within the responsibility of Member States.

Romania has not yet submitted any formal proposal for projects under the REPowerEU chapter of its recovery and resilience plan. Once submitted, the Commission will thoroughly assess compliance of all measures proposed under such chapter with the requirements set out in Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility.

Finally, I would like to reassure you that the Commission will continue to monitor very closely the implementation and enforcement of EU environmental legislation in Romania and will not hesitate to take further legal steps, as appropriate.

⁽⁴⁾ Council Directive 92/43/EEC of 21 May 1992, on the protection of natural habitats and wild fauna and flora, OJ L 206, 22.7.1992, p. 7-50; Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, 26.1.2010, p. 7-25; Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

Yours sincerely,

Paul Speight