

Acceptance upon completion of construction or installation work in energy law

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Romania is expanding its renewable energy targets in line with EU initiatives such as *Fit for 55* and *REPowerEU*. By 2030, the share of renewable energies in total energy consumption is to increase to 36.2 %. This means expanding renewable capacities by 11.9 GW.

Another pressing issue is the imminent implementation of the EU's Renewable Energy Directive ("RED 3"). RED 3 is shaping the future of renewable energy across Europe; its strict standards and timetables require significant investment in technology and infrastructure.

Establishment of new E-RES capacities

In this context, numerous E-RES capacities (plants of prosumers, industrial companies or open space project developers) are currently about to start construction in Romania. In addition to the many challenges in the approval process before reaching the *ready-to-build* stage, the content of the work contract for the construction of the production capacity should not be neglected under any circumstances.

Special consideration must be given to the acceptance procedure, to which therefore a few comments follow.

Acceptance upon completion of the construction or assembly work

If a building permit is required for the planned construction project (this applies to E-RES production capacities by non-prosumers, e.g. by open space project developers), Government Resolution no. 343/2017 ("**RB 343**") applies to the building permit. If, on the other hand, no building permit is required for the construction project (e.g. for prosumers), Government Resolution no. 51/1996 ("**RB 51**") applies.

RB 343 and RB 51 are the only legal basis for the acceptance of construction and assembly work in Romania.

Through the acceptance, an investor declares that it approves the construction or assembly services with or without objections and that the construction/work can be put into operation. Acceptance also confirms that the contractor has carried out the installation services in accordance with the permits and approvals received, the contract for work, the implementation documentation and the applicable technical standards.

Especially when an E-RES production capacity does not require a building permit and therefore RB 51 applies, it often occurs in practice that the acceptance of the installation work is not sufficiently regulated in the contract for work and services, resulting in a loss of legal certainty.

Acceptance on completion of the assembly work

The acceptance of the assembly work is organized in four stages in accordance with RB 51:

- *Acceptance at the end of assembly work (recepția la terminarea lucrărilor de montaj);*
- *Commissioning (recepția punerii în funcțiune)* - after completion of the test samples - minimum duration and supporting documents to be provided by the contractor should be specified in the contract for work and services;

- *Final acceptance (recepția finală)* - after expiry of the warranty period for the installation work - the warranty period, procedure and guarantees must be specified in detail in the contract for work and services;
- *final acceptance (recepția definitivă)* - to confirm the realisation of the planned technological performance, after expiry of the warranty period - the exact specification of the required technical parameters as well as the procedure for asserting any rework or repair obligations during the warranty period are very often insufficiently clear contractually regulated in practice.

Acceptance committee

The clear composition of the acceptance committee is also of the utmost importance. The acceptance committee must consist of 5 members:

- i. Representative of the investor (at the same time chairman of the acceptance committee);
- ii. Representative of the local mayor's office - may be absent if no building permit has been issued for the construction project;
- iii. 3 installation specialists appointed by the investor who were not involved in the planning or execution of the installation work - a work or service contract is required with these specialists;
- iv. In the case of work with increased importance or high risks, the presence of additional members is required.

Legal effects of acceptance

Art. 29 of RB 51 regulates the legal effects of acceptance as follows: "*After the conclusion of the acceptance protocol, the investor may not assert any claims beyond the claims mentioned in the acceptance protocol for the removal of defects, contractual penalty (default interest), reduction and suchlike. An exception to this are hidden defects that are discovered within the contractual period.*"

Conclusion

Due to the significant consequences of acceptance, it is highly recommended that the important aspects (interest on arrears, retentions, defects, etc.) are carefully regulated in the contract for work and services and that the sample acceptance report is also attached to the contract for work and services as an annex.

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