

# Romanian decision-makers try to misuse REPowerEU funds for illegal hydropower plants

For more information

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Smelling new opportunities for funding under the REPowerEU chapter of the EU recovery funds, Romania's Parliament and Government are again relentlessly pushing to legalise illegal hydropower projects in protected areas. A new draft Government Ordinance would allow the destruction of twenty Natura 2000 sites,<sup>1</sup> two national parks, a Ramsar site and tens of freshwater bodies. The EU must not allow this to happen.

The Romanian Parliament and Government are trying by all means possible, to legalise several hydropower projects started in the 1980s or 1990s, whose technical and economic analyses have not been updated since then, and some of which have been declared illegal by the Romanian justice system. Now, the plan is to finance the finalisation of these projects with **public money through the REPowerEU chapter of the National Recovery and Resilience Plan** as the latest draft

<sup>1</sup> ROSCI0063; ROSCI0129; ROSCI0044; ROSPA0024; ROSCI0376; ROSCI0190; ROSCI0103; ROSPA0160; ROSPA0133; ROSCI0019; ROSPA0030; ROSCI0368; ROSCI0132; ROSPA0043; ROSCI0085; ROSCI0122; ROSCI0162; ROSPA0071; ROSCI0069; ROSPA0035.

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Government Emergency Ordinance<sup>2</sup> clearly states. The nine hydropower projects listed in the annex of the draft Ordinance are:

1. Bumbesti-Livezeni,<sup>3</sup> 65 MW capacity, on the river Jiu and in the Jiu Gorge National Park (ROSCI 0063). The additional protected areas which would be destroyed by this project are: ROSCI0129; ROSCI0128 and ROSCI0188. This project was first permitted in 2004, without an environmental impact assessment to date.
2. Rastolita,<sup>4</sup> 35 MW capacity, on the river Mures and in the Calimani-Gurghiu National Park (ROSCI0019). The project would also affect irreversibly the protected sites ROSPA0030, ROSCI0368 and ROSPA0133. This project was first permitted in 1989, without an environmental impact assessment to date.
3. Cornetu-Avrig,<sup>5</sup> on the river Olt, a 5-step cascade, totaling 144.8 MW capacity. This project was first permitted in 1989, without an environmental impact assessment. The Natura2000 sites affected by this project are: ROSCI0132; ROSCI0085, ROSPA0043.
4. Pascani,<sup>6</sup> on the river Siret, 12 MW capacity, first permitted in 1985, without an environmental impact assessment.
5. Surduc-Siriu,<sup>7</sup> on the rivers Buzău, Bâsca Mare, Bâsca Mică and Zabala, 186 MW capacity, first permitted in 1981, without an environmental impact assessment. Natura2000 sites that would be impacted: ROSCI0190, ROSCI0103, ROSPA0160.
6. Cosmesti-Movileni,<sup>8</sup> on the river Siret, 71 MW capacity, first permitted in 1991, without an environmental impact assessment. Natura2000 sites that would be impacted: ROSCI0162, ROSPA0071.
7. Cerna-Motru-Tismana,<sup>9</sup> stage 2, on the three rivers with the same names, 119 MW capacity, first permitted in 1974, without an environmental impact assessment. Natura2000 sites that would be impacted: ROSCI0069, ROSPA0035.
8. Cerna-Belareca,<sup>10</sup> on the rivers Cerna and Belareca, 31 MW capacity, first permitted in 1980, without an environmental impact assessment. Natura 2000 sites that would be impacted: ROSCI0069, ROSPA0035.

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<sup>2</sup> Ministry of Energy, [Draft Emergency Ordinance for the establishment of measures regarding the investment objectives for the realisation of hydropower facilities in progress as well as other projects of major public interest that use renewable energy](#), *Government of Romania*, 22 November 2022.

<sup>3</sup> Dragos Rosu, Emil Crisan, Daniela Iordanescu, [STRATEGIA INVESTITIONALĂ](#), *Hidroelectrica*, May 2020.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Hidroelectrica, [NOTĂ DE FUNDAMENTARE către Adunarea Generală a Acționarilor a SPEEH Hidroelectrica SA](#), *Hidroelectrica*, accessed 30 November 2022.

<sup>10</sup> Hidroelectrica, [Nota catre Adunarea Generala Extraordinara a Actionarilor SPEEH Hidroelectrica SA](#), *Hidroelectrica*, accessed 30 November 2022.

9. Islaz,<sup>11</sup> on the river Olt, 28.8 MW capacity, first permitted in 2004, without an environmental impact assessment. Protected areas that would be severely impacted: ROSCI0044, ROSPA0024, ROSCI0376.

All of these projects are 20 to 45 years old, so one must ask: what is the sudden ‘emergency’ to put them in a Government decision and derogate from all environmental rules?

Perhaps the most controversial of all is the Bumbesti-Livezeni hydropower project in the Jiu Gorge National Park. The project received construction permits in 2012 and 2016, after the Jiu Gorge had been declared a National Park, based on the old environmental decision from 2004, without an environmental impact assessment, as at the time Romania had not adopted any EIA legislation. There is a final court decision by the Bucharest Court of Appeal,<sup>12</sup> annulling the two construction permits. The construction began in 2004, but most of the construction was done in 2015-2017, and the project promoters are quoted as saying that the project is 60 to 90 percent built. The project would irreversibly destroy the last free flowing big river in Romania, a national park and three other Natura2000 sites. Hidroelectrica, the state-owned energy utility, has since tried two extraordinary appeals against the 2017 court decision, but lost, and has also split the project in pieces, trying to permit parts of it, such as the transmission lines (ongoing court case) or trying to obtain an environmental permit only for the part which is still left to build (cancelled in court).<sup>13</sup>

The Rastolita<sup>14</sup> project is also notorious. Located in both the Călimani-Gurghiu (ROSCI0019) and Defileul Mureşului Superior (ROSPA0030) Natura2000 sites, construction on the dam began in 1990 and was abandoned quite soon after. If finalised, the project would adversely affect the ecological status of at least ten bodies of water, eight of which will be seriously damaged and thus violate the non-deterioration principle established by the Water Framework Directive. Along the 8.5 km derivation pipeline, the project would provide minimum flow rates only for human use, not for ecosystems. Moreover, the concerned water bodies and the affected forest areas are habitats for a number of species of European importance such as the Danube salmon, otter and lynx, so endangering them is a breach of the Habitats and Birds Directives in a situation where alternatives to the project exist. There is an ongoing court case<sup>15</sup> for the annulment of the project’s EIA screening decision.

The Surduc-Siriu project, which spreads over four rivers - Buzău, Bâsca Mare, Bâsca Mică and Zabala – was also stopped in court this year, after the Cluj Court of Appeal annulled<sup>16</sup> the construction permit on Bâsca Mare.

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<sup>11</sup> Hidroelectrica, [Nota de fundamentare](#), *Hidroelectrica*, accessed 30 November 2022.

<sup>12</sup> [Comunicare hotarâe civila](#), 14 December 2017.

<sup>13</sup> Călin Dejeu, [Două victorii esenţiale. pentru Jiu şi pentru Bâsca Mare. într-un moment nefast pentru râurile noastre](#), *România Curată*, 22 February 2022.

<sup>14</sup> WWF, [WWF-Romania Calls for an Urgent Environmental Impact Assessment \(EIA\) for the Răstoliţa Hydropower Project](#), WWF, 24 May 2019.

<sup>15</sup> Bucharest Tribunal, [Cancellation of administrative act](#), *Bucharest Tribunal*, 16 September 2022.

<sup>16</sup> G4 Media, [The building permit for the Hidroelectrica project on the Bâsca Mare River in the Buzau Mountains has been definitively annulled in court](#), G4 Media, 9 June 2022.

## This draft ordinance is the latest in a year-long series of attempts to legalise the projects

Since December 2021, when several Romanian environmental NGOs<sup>17</sup> were summoned to a hearing in front of a parliamentary inquiry committee in an attempt to shift the blame for increasing electricity and gas prices onto civil society organisations, the rivers and biodiversity in Romania have again been under threat, because of the political pressure to build hydropower plants in protected areas.

The organisations are well known for their efforts to protect nature – including through litigation – from environmentally damaging energy infrastructure projects, such as the Jiu Gorge and Rastolita. In these cases, the projects reached the construction phase due to environmental authorities’ incapacity or unwillingness to enforce national and European environmental law during the permitting processes.

Representatives of Hidroelectrica (the state-owned energy utility promoting all the nine projects), the National Environmental Protection Agency and the National Agency for Protected Areas also appeared in front of the same parliamentary committee and made no secret of the fact that they are seeking ways to legalise the Jiu Gorge and Rastolita hydropower projects,<sup>18</sup> which are more than half built, and that environmental watchdogs are making this harder for them.

## Special law passed in February 2022 to legalise the Jiu Gorge and Rastolita hydro projects

Citing the consequences of the war in Ukraine and the need to gain energy independence from Russian fuel sources, the Romanian Parliament adopted a **controversial law – Law 117/ 2022 to change boundaries of protected areas** – in February 2022, allowing for the change of boundaries of protected natural areas. It also allowed the completion, by end of 2025 the latest, of hydropower plants that were more than 60 per cent built at the time the law was adopted and that are considered projects of overriding public interest and of national security. Since the construction criteria only apply to the Jiu Gorge and Rastolita plants,<sup>19</sup> this was an obvious attempt to legalise them.

As a compensatory measure, the law stipulated that the Ministry of Environment, Water and Forests would suggest a new area for protection, with similar biodiversity as the one occupied by the hydropower plant construction. However, the Rastolita project for example, would irreversibly destroy the known breeding ground for the Danube salmon (Hucho Hucho) in Romania, which is the very reason that the ROSCI0019

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<sup>17</sup> Bankwatch Romania, Agent Green, Declic, Neuer Weg and Eco-civica, [Members of the Romanian Parliament attempt to scapegoat environmental NGOs for increasing electricity and gas prices](#), CEE Bankwatch Network, 29 November 2021.

<sup>18</sup> Agepress, [Badea \(hidroelectrica\): Investitia de la Bumbesti se afla in faza avansata: ni se cere sa protejam un rac care nu a fost gasit niciodata](#), Agepress, 10 November 2021.

<sup>19</sup> Bankwatch Romania, Agent Green, WWF, [Analiza L117/2022 și a proiectelor de amenajări hidroelectrice în arii naturale protejate - Defileul Jiului și Răstolița](#), Bankwatch Romania, accessed 30 November 2022.

protected area was designated on that territory in the first place. Other fish species expected to disappear if the hydro project was finalised are *Cottus gobio*, *Barbus meridionalis*, *Eudontomyzon danfordi*.<sup>20</sup>

Similarly, the law also stated that such projects are considered exceptional situations regarding the environmental impact assessment, meaning they are exempted from the process.

The law was challenged by opposition party Union to Save Romania (USR), and the Constitutional Court's ruling came only in November, declaring the Law unconstitutional, on procedural grounds.<sup>21</sup>



### New emergency law proposal threatens Romania's rivers

Immediately after the Constitutional Court's decision, two new draft laws,<sup>22,23</sup> were submitted to the Parliament and a Government Emergency Ordinance too<sup>24</sup>. They all have the same contents as the initial law from February 2022 and if not stopped, they could be adopted as early as 5 December 2022. As examples of how these weaken environmental and due diligence requirements, the draft Government Emergency Ordinance includes the following:

*ART. 1. The investment objectives set out in the annex which is an integral part of this emergency ordinance, declared to be projects of major public interest that use renewable energy are considered exceptional situations,*

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<sup>20</sup> Bankwatch Romania, Agent Green, WWF, [Analiza L117/2022 și a proiectelor de amenajări hidroelectrice în arii naturale protejate - Defileul Jiului și Răstolița](#).

<sup>21</sup> Radu Eremia, [CCR: Legea care permite construcția de hidrocentrale mici în ariile protejate, neconstituțională](#), *Adevarul*, 2 November 2022.

<sup>22</sup> Senate of Romania, [Alaris Capture Pro Software](#), *Senate of Romania*, accessed 30 November 2022.

<sup>23</sup> Senate of Romania, [Alaris Capture Pro Software](#), *Senate of Romania*, accessed 30 November 2022.

<sup>24</sup> Ministry of Energy, [Proiect de Ordonanță de urgență pentru stabilirea unor măsuri privind obiectivele de investiții pentru realizarea de amenajări hidroenergetice în curs de execuție precum și a altor proiecte de interes public major care utilizează energie regenerabilă](#).

*in the sense of the provisions of art. 5 para. (2) from Law no. 292/2018 regarding environmental impact assessment of certain public and private projects on the environment and projects of importance/national security and of art. 36 of Law no. 46/2008 – Forestry Code, republished, with subsequent changes and additions.*

*ART. 2. By derogation from the provisions of art. 42 para. (1) and (2) of Law no. 500/2002 on public finances, with subsequent amendments and additions and of art. 5 para. (1) from Law no. 255/2010 regarding expropriation for reasons of public utility, necessary to achieve certain objectives of national, county and local interest, with subsequent amendments and additions, the technical-economic indicators related to the investment projects provided in the annex are updated and reapproved by the entity that holds them in its portfolio, regardless of the initial method of approving the respective investment projects.<sup>25</sup>*

### **Nine hydropower projects secretly proclaimed to be of national strategic interest**

An important piece of information that only became public now, is that the Supreme Council of National Defense (CSAT) 26 issued on 25.10.2022, therefore prior to the Constitutional Court's decision on the hydropower law, Decision no. 169 on 'improving Romania's energy resilience to ensure security in the field through operational adaptation and the development of new energy production capacities, in the context of war of Ukraine' and ordered the adoption of the necessary measures for its implementation. Among the actions identified by CSAT, is the development of hydro-electricity production capacities that would be financed through REPowerEU. The list of projects contains the same nine hydropower projects which are now in the text of the Government Emergency Ordinance (dated 22.11.2022).

The Government and Parliament's latest desperate moves to prop up Hidroelectrica's decades-old highly damaging hydropower projects are a blatant abuse of the ongoing energy crisis. Even if construction resumed tomorrow, the projects would not be ready for at least another three years – far too late to tackle immediate security of supply. Destruction of nature can never be decided through a Government Emergency Ordinance – there is no emergency in destroying nature.

Moreover, the lack of updated technical and economic analyses means the projects may never perform as planned, given the increasingly unpredictable hydrological patterns caused by climate change. Considering the projected impacts of climate change on the southern part of Romania, with decreasing precipitation levels and water scarcity,<sup>27</sup> it is expected that the discharge of Jiu River, among others, will decrease, while water demand from all consumers (households, tourism, etc.) will increase, reducing the efficiency of energy production.

**The EU must ensure that no public funds are allowed for this abominable abuse of the ongoing energy crisis. We cannot tackle the climate crisis by destroying biodiversity.**

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<sup>25</sup> Ministry of Energy, [Proiect de Ordonanță de urgență pentru stabilirea unor măsuri privind obiectivele de investiții pentru realizarea de amenajări hidroenergetice în curs de execuție precum și a altor proiecte de interes public major care utilizează energie regenerabilă.](#)

<sup>26</sup> Adi Mosoianu, [DOCUMENT CSAT a declarat 10 proiecte ale Hidroelectrica drept vitale pentru securitatea națională. Scutire de la evaluarea de mediu și de la interdicția de reducere a fondului forestier.](#) Profit, 23 November 2023.

<sup>27</sup> ICPDR 2019, Climate change Adaptation Strategy. ICPDR Secretariat, Vienna International Centre, Austria, 82.