

APPLICATION
FOR AN EXEMPTION UNDER
ART. 5 PARA. (2) OF LAW NO. 292/2018 ON THE ASSESSMENT OF IMPACT OF CERTAIN
PUBLIC AND PRIVATE PROJECTS ON ENVIRONMENT

LEGAL ADVISERS TO THE APPLICANT

(On matters of Romanian law)

Musat & Asociatii Sparl
43 Aviatorilor Blvd,
District 1, Bucharest,
Romania

(On matters of European Union law)

Van Bael & Bellis
Glaverbel Building
Chaussée de la Hulpe 166 Terhulpesteenweg
B-1170 Brussels
Belgium

Date: 2st August, 2024
To: **Ministry of Environment, Water and Forests**
12 Libertatii Blvd., 5st District, Bucharest, Romania
In Attention: **Mr. Mircea FECHET, Minister for the Environment, Water and Forests**
Re: Request for exemption from the application of the provisions of Law No. 292/2018 for the constructions erected within the project "*The industrial wastewater treatment plant resulting from the Purolite Victoria factory and its discharge into the Olt River*"

Dear Mr. Minister,

The undersigned, **PUROLITE S.R.L.**, with its headquarters in 11, Alea Uzinei Street, Victoria Town, Brasov County, Romania, registered with the Romanian Trade Register under No. Jo8/446/1995, sole identification code (CUI) RO 6039433 (hereinafter "**Purolite**"),

holder of the project "*The industrial wastewater treatment plant resulting from the Purolite Victoria factory and its discharge into the Olt river*" (hereinafter the "**Project**"),

on the basis of which a plant to treat industrial wastewater resulting from the Purolite factory (never operational) was built before the date of this application, on the administrative territory of the city of Victoria, county of Brasov (hereinafter the "**Existing WWTP**").

in application of:

- (a) art. 5 para. (2) of Law No. 292/2018 on the assessment of impact of certain public and private projects on environment (hereinafter the "**Law No. 292/2018**"), transposing art. 2 para. (4) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended (hereinafter the "**EIA Directive**");
- (b) Council Directive of 21 May 1991 concerning urban waste water treatment (91/271/EEC) (hereinafter the "**Directive concerning urban waste water treatment**");
- (c) Commission Notice of 14 November 2019, entitled "*Guidance document regarding application of exemptions under the Environmental Impact Assessment Directive (Directive 2011/92/EU of*

the European Parliament and of the Council, as amended by Directive 2014/52/EU) – Article 1 para. (3), Article 2 para. (4) and para. (5) (2019/C 386/05) (hereinafter the “**Commission Guidance**”);

- (d) Commission notice regarding application of the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU) to changes and extension of projects - Annex I.24 and Annex II.13(a), including main concepts and principles related to these (hereinafter the “**Commission Notice**”);
- (e) the case law of the European Court of Justice, Cases C-196/16 and C-197/16, C-411/17, C-261/18, according to which European Union law does not preclude an environmental impact assessment from being carried out by way of regularization,

we hereby formulate the following

REQUEST FOR AN EXEMPTION

of the project " *The industrial wastewater treatment plant resulting from the Purolite Victoria factory and its discharge into the Olt River*" from the application of the provisions of Law No. 292/2018 **by allowing** the carrying out of an *ex post* environmental impact assessment on the Existing WWTP in order to regularize the Project and the Existing WWTP. The assessment carried out for the purpose of regularization will be conducted both in terms of the future environmental impact of the Project and taking into account the environmental impact already at the completion of the Project in line with, and as permitted by, the provisions of *Section 2.2.5 The remediation of the failure to carry out an environmental impact assessment* of the Commission Notice, and the case law of the European Court of Justice, Cases C-196/16 and C-197/16, C-411/17, C-261/18.

This requested exemption aims, as an exceptional measure, to safeguard the Existing WWTP, regularizing it from the perspective of the environmental legislation, in a way that ensures the clear and predictable achievement of the objectives of Law No. 292/2018 and of the EIA Directive and in line with EU law, EU Case Law, and Romanian practice, and facilitate, subsequent investments in upgrades in the Existing WWTP (estimated at approximately 25 million USD) as well as productions expansion (collectively the "**Envisaged Investments**") which Purolite has currently suspended pending regularisation.

The measure is both beneficial to the environment and to the Victoria community, the area's economy and the national economy, given: (i) the importance of Purolite's products, (ii) the economic activity carried out by Purolite and (iii) the Envisaged Investments in the area which will ensure the development and modernisation of the industrial and economical activity on the industrial platform of

Victoria, and favoring subsequent investments by the Romanian state with other third parties (*e.g.* the Pirochim gunpowder factory, as per *Annex No. 6 - Governmental Statements*).

We set out the grounds for this application on the following pages.

This application is submitted to the Ministry of Environment, Water and Forests in accordance with art. 36 para. (1) of *Annex no. 5 - Environmental Impact Assessment Procedure for certain public and private projects* of Law 292/2018, both in physical and electronic format (USB Memory Stick).

Table of contents

1.	Factual situation	6
1.1.	History	6
1.2.	Status of the Existing WWTP.....	7
2.	Legal basis for the application	8
2.1.	Preamble	8
2.2.	The rule under the Law No. 292/2018	9
2.3.	Article 5 para. (2) of Law No. 292/2018	10
2.4.	EU Case Law supporting retrospective regularization	12
2.5.	Commission Notice on the possibility of <i>ex post</i> evaluation for the purpose of regularization ...	13
2.6.	Practice of other EU Member States.....	15
2.7.	Conclusion.....	16
3.	Reasoning for the request for exemption	17
3.1.	Preamble	17
3.2.	Grounds for admission of the application	17
3.3.	Cross-border procedure.....	25
3.4.	Other appropriate form of assessment	26



Purolite®
An Ecolab Company

1. Factual situation

1.1. History

Purolite manufactures specialized ion exchange resins at its facility located on the industrial platform in Victoria, Brasov County. A detailed description of the products manufactured by Purolite is available in Section 3 (*Reasoning for the request for exemption*), Sub-section 3.2 below.

In December 2021 (the "**Acquisition Date**"), Ecolab Inc. ("**Ecolab**") acquired the Purolite Group, including its Romanian subsidiary, the Purolite Company of Victoria.

Ecolab is a global leader in water, sanitation and infection prevention, providing services and solutions that support the protection of people, the planet and healthcare businesses. Its 48,000 employees deliver products and services to advance food safety, maintain clean and safe environments, optimize water and energy use and improve operational efficiencies and sustainability for customers in the food and food service, healthcare, hospitality, government and education, and industrial markets in more than 170 countries. Purolite's filtration and purification solutions complement Ecolab's broader portfolio and support Ecolab's mission to partner with its customers to make the world cleaner, safer and healthier.

Given its mission, Ecolab has developed a long-standing and quantifiable commitment to environmental sustainability. For example, Ecolab is committed to using its technologies and expertise to conserve 300 billion gallons of water annually by 2030 by reducing water withdrawal in our customers' operations, as well as its own. In 2023, Ecolab technologies helped its customers save over 200 billion gallons of water. Ecolab also aims to achieve the highest safety and environmental standards at its own manufacturing facilities, including the Purolite Romania plant.

Purolite's process water is currently treated by Viromet S.A. (hereinafter "**Viromet**"), a company in insolvency, as evidenced by the extract from the Insolvency Proceedings Bulletin No. 1030 of 16.01.2020 and by the Ascertaining Certificate No. 10480/30.07.2024 issued by the National Trade Register Office, attached as *Annex No. 8 - Viromet insolvency documents* to this application. Purolite is totally dependent on Viromet's treatment solution. Any disruptions in the activity of this company (whether of a technical or legal nature - authorizations, permits, expropriations, or other authority related measures etc.) make it impossible for Purolite to continue its activity.

This situation exists prior to the Acquisition Date by Ecolab and has been the basis for the previous Purolite owners' efforts to build the Existing WWTP and provide alternative solutions in case of unavailability of Viromet services. The Existing WWTP was built by Purolite prior to the Acquisition Date and without Ecolab's involvement.

Ecolab, in full coordination with the Romanian authorities and in compliance with the provisions of the law, is seeking to regularize the Existing WWTP, reason for which the present procedure was initiated.

The operation of the Existing WWTP will allow Purolite to significantly reduce the facility's environmental footprint while ensuring that Purolite can continue operating in Victoria instead of shifting operations to its other production facilities in China, United Kingdom of Great Britain or the United States of America. It will also allow the carrying out of the Envisaged Investments.

Although costly, these Envisaged Investments in Romania confirm Ecolab and Purolite's commitment to the highest quality and environmental standards and reflect the respect these companies have for people, the environment, and the community in which it operates.

1.2 Status of the Existing WWTP

The Existing WWTP, as built prior to Ecolab's acquisition of Purolite, consists of five stages of treatment, including: (i) neutralization (milk of lime pH adjustment), (ii) coagulation and lamella clarifier, (iii) anaerobic tank / aeration tank, (iv) membrane bioreactor filtration and (v) sludge dewater (centrifuge).

The Existing WWTP was however not subject to the procedure provided for by Law No. 292/2018. In this regard, after the approval of the related Urban Zonal Plan (UZP) (in Romanian: "*PUZ*"), in May 2021, Purolite applied to the Environmental Protection Agency Brasov for the issuance of the environmental permit. The authority rejected the request, indicating that at that time, the construction works had already started, so the procedure cannot be continued or completed. Thus, the Existing WWTP has never been operational.

This is also the reason why it is necessary to assess *ex post* the environmental impact of the Existing WWTP in order to regularize it, by way of exception, pursuant to Article 5 para. (2) of Law No. 292/2018 and with the application of the case law of the Court of Justice of the European Union.

We also mention that the Existing WWTP has been technically assessed from a water management perspective, according to Art. IV para. (1) of the Emergency Ordinance No. 52/2023



amending and supplementing certain water legislation and, according to the assessment attached as *Annex No. 1 – Technical assessment of the Existing WWTP* to this application (hereinafter the “**Technical Assessment**”), it fulfils the technical conditions of operation from the water management perspective.

Conclusions of the Technical Assessment, included in *Chapter 5. Conclusions* of the Technical Assessment attached as annex to this application, states the following:

*"[...] As a result of the verifications carried out, it emerges that **the works have been carried out according to the project and can operate as intended - industrial wastewater treatment plant, meet the technical conditions of operation, and can be authorized from the point of view of water management.***

The wastewater treatment plant is characterized by modern technology and high efficiency.

*The scope of works in relation to the specific conditions of water treatment plants, was the realization of an industrial wastewater treatment flow **with ensuring the continuity of meeting the quality requirements of treated wastewater treated in accordance with the legislation and standards in force.***

[...]

*It is considered that, **by operating the treatment plant, environmental factors will not be significantly adversely affected in the medium and long term.***

All the above proves the compliance of the Project with the requirements of the Directive concerning urban waste water treatment, as the Existing WWTP will be operated with a technology that ensures that the treated waste water quality requirements will be continuously met.

2. Legal basis for the application

2.1. Preamble

This Section 2 (*Legal basis for the application*) explains the legal basis for the present application. It focuses on:



- (a) analysis of the relevant provisions of Law No. 292/2018, and the EIA Directive including the rule on environmental impact assessment, any exemptions, and guidance of the EU Commission on the subject;
- (b) analysis of the relevant provisions of the Directive concerning urban waste water treatment which require Member States to ensure that urban waste water treatment plants are operated and maintained in such a way to ensure “*sufficient performance*” under all normal local climatic conditions;
- (c) the case law of the Court of Justice of the European Union supporting retrospective regularization for projects for which an environmental impact assessment was not carried out at the time prescribed by law;
- (d) the Commission Notice which provides for the possibility of *ex post* environmental impact assessment as a remedial measure for *de facto* failures to comply with the EIA Directive, in order to regularize projects and to nullify the unlawful consequences of not carrying out an environmental impact assessment;
- (e) the practice of other member states of the European Union in terms of regularizing projects for which an environmental impact assessment was not carried out at the time prescribed by law; as well as
- (f) some conclusions resulting from the study of other Romanian projects which have been exempted by the Ministry of Environment, Water and Forests (hereinafter the “**Ministry**”), according to the provisions of Article 5 para. (2) of Law No. 292/2018.

Lastly, Sub-section 2.7 (*Conclusion*) includes a summary explaining the interactions between the foregoing legal provisions and case law and their relevance for the present application.

2.2 The rule under the Law No. 292/2018

In line with the provisions of the EIA Directive, the rule in Romania, as set out by Article 7 of Law No. 292/2018, is that projects listed in the Annex No. 1 of Law No. 292/2018, as well as those listed in Annex No. 2 of Law No. 292/2018 and which are likely to have significant effects on the environment, **require an assessment of their environmental impact prior to their development.** This requirement applies to projects such as the Existing WWTP.



23. Article 5 para. (2) of Law No. 292/2018

Preamble. According to the provisions of art. 5 para. (2) of Law No. 292/2018, the Ministry may exempt a specific project from "**the application of the provisions of this law, partially or totally**", if the following conditions are met:

- (a) there is an exceptional case;
- (b) the objectives of the law are achieved without affecting the provisions of the cross-border consultation procedure.

Meaning of "exceptional cases / situations". Commission Guidance. Romanian precedent. As a introductory note, Article 5 para. (2) of Law No. 292/2018 transposes into Romanian law Article 2 para. (4) of the EIA Directive (former Article 2 para. (3) of Directive 85/337/EC). Therefore, in interpreting its applicability, the Commission Guidance is relevant.

The term "*exceptional cases/situations*" is not defined, nor explained by Law No. 292/2018, or by the EIA Directive. Similarly, neither piece of legislation provides examples of the kind of cases that might fall within the scope of "*exceptional cases/situations*".

However, the EU Commission does give, in its Commission Guidance, a couple of guidelines, as follows:

- (a) the exemption should be applied on a case-by-case basis, taking into account the particulars of the case (Commission Guidance, para. #3.1). Exemption per category is not acceptable;
- (b) the term "*exceptional cases*" should be interpreted narrowly having regard to the objectives of the EIA Directive (Commission Guidance, para. #3.5);
- (c) the exemption has to be linked to an impossibility to meet the full requirements of the EIA Directive without compromising the purpose of the project (which is the case with regard to the Existing WWTP as this is already built, but never operational). The exemption should not apply in a case where the factors that make it exceptional do not preclude full compliance with the EIA Directive (which is not the case with regard to the Existing WWTP as this is already built) (Commission Guidance, para. #3.5).

The Commission's Guidance also provides some examples of situations that fell within the meaning of exceptional cases:



- (a) one example is the Doel case (*C-411/17, para. 97 and 101*) before the Court of Justice of the European Union (“**CJEU**”), where the court held that the need to ensure security of supply in electricity may amount to an “*exceptional case*” if the Member State demonstrates the risk for disruption is “*reasonably probable*”;
- (b) three other examples are: (i) a first case where there was a need to secure a supply of gas, (ii) a second case where there was a need to satisfy a strategic interest in renewable energies, and (iii) a third case where there was a need to meet high-level political commitments made by public authorities to build confidence between communities in the context of broader reconciliation negotiations.

In all these cases, the urgent need for the project was such that failure to grant the exemption would have been against the public interest and would have threatened political, administrative or economic stability and security.

Similarly relevant for the subject of identifying the scope of Article 5 para. (2) of Law No. 292/2018, are the exemptions granted by the Ministry, in Romania, to several wind energy projects and hydropower projects.

The review of these exemptions shows that:

- (a) an exemption may be granted from the national provisions transposing the EIA Directive, *i.e.* the provisions of Law No. 292/2018, for projects that are considered to be exceptional situations.

In this regard, the communication of the exemption decision published by the Ministry for the AHE Livezeni - Bumbesti Hydropower Plant notes:

"In accordance with the provisions of Article 5 para. (2) of Law No. 292/2018, the Ministry of Environment, Waters and Forests, as the central authority for environmental protection, decides the partial exemption from the application of the provisions of the mentioned normative act, namely the exemption from the application of the provisions of Art. 9 paras. (2) - (9) of the law and from Art. 9-13, Art. 14 para. (1) lit. b, Art. 16 para. (1) lit. c) and d), para. (2) and para. (3) of Annex 5 - PROCEDURE of environmental impact assessment for certain public and private projects of the law, for the project [...]".



- (b) European Union rules (see Art. 6 of Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy) recognize studies such as strategic environmental assessments prepared at the Zonal Urban Plan to be appropriate alternative forms of assessment to the assessment procedure provided by the EIA Directive and Law No. 292/2018.

In this regard, in the address issued setting out the reasons for the exemption decisions for the wind energy projects, Potoc 1 to 4, and the related documents, the Ministry held that:

"[...] Considering: - the provisions of Article 6 of EU Regulation No. 2577/2022 laying down a framework to accelerate the deployment of renewable energy;

„[...] the environmental assessment carried out at the zonal urban plan stage is another form of assessment, according to art. 2 para. (4) letter a) of the EIA Directive, respectively art. 5 para. (3), lit. a) of Law No. 292/2018 [...]” (namely, a strategic environmental assessment or SEA).

Achievement of the objectives of the law. Cross-border procedure. For a project to be exempted from the provisions of Law No. 292/2018, a second condition is that the objectives of the law must be achieved without prejudice to the provisions on the cross-border consultation procedure, to the extent such procedure would be incident.

24. EU Case Law supporting retrospective regularization

Cases C-196/16 and C-197/16, C 411/17, C-261/18 explicitly recognize the possibility of a Member State to regularize improperly permitted projects for lack of an environmental impact assessment (“**EIA**”) (such as the Existing WWTP) as follows:

- (a) excerpt from C-196/16 and C-197/16:

*“[...] Under the principle of cooperation in good faith laid down in Article 4 TEU [...] **the competent national authorities are therefore under an obligation** to take all measures necessary, within the sphere of their competence, **to remedy the failure to carry out an environmental impact assessment** [...] in order to carry out such an assessment.”*



*"[...] **in the event of failure to carry out an environmental impact assessment [...] EU law**, on the one hand, requires Member States to nullify the unlawful consequences of that failure and, on the other hand, **does not preclude regularization through the conducting of an impact assessment, after the plant concerned has been constructed and has entered into operation** [...] on condition that: - national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EU law or to dispense with applying them, and - an assessment carried out for regularisation purposes is not conducted solely in respect of the plant's future environmental impact, but must also take into account its environmental impact from the time of its completion."*

(b) excerpt from C-411/17:

*"[...], in the event of failure to carry out an assessment of the environmental impact of a project required under the EIA Directive, although Member States are required to nullify the unlawful consequences of that failure, **EU law does not preclude regularisation through the conducting of such an assessment while the project is under way or even after it has been completed**, on the twofold condition [...]."*

(c) excerpt from C261/18:

*"[...] **EU law does not preclude regularisation through the conducting of an environmental impact assessment**, subject to certain conditions."*

25. Commission Notice on the possibility of *ex post* evaluation for the purpose of regularization

The Commission's Notice expressly mentions the rulings of the Court of Justice of the European Union in the cases listed in section 2.4. EU Case Law supporting retrospective regularization, namely that:

*"[...] The Court has held that EU law does not preclude national rules which, in certain cases, **permit the regularisation of operations or measures which are unlawful in the light of EU law** and has made it clear that such a possible regularisation would have to be subject to the*



*condition that it does not offer the persons concerned the opportunity to circumvent the rules of EU law or to dispense with their application, and that it should remain the exception. [...] ” (see para. 2.2.5. **The remediation of the failure to carry out on environmental impact assessment in the Commission Notice**)*

[...]

*The Court has held that **an assessment carried out after a project has been completed and has entered into operation cannot be confined to its future impact on the environment, but must also take into account its environmental impact from the time of the completion of the project.** Therefore, in the event of failure to carry out an environmental impact assessment required under the EIA Directive, **the EU law, on the one hand, requires Member States to nullify the unlawful consequences of that failure and, on the other hand, does not preclude regularisation through the conducting of an impact assessment, after the project concerned has been completed and has entered into operation, on condition that:***

- national rules allowing for that regularisation do not provide the parties concerned with an opportunity to circumvent the rules of EU law or to dispense with applying them, and*
- an assessment carried out for regularisation purposes is not conducted solely in respect of the project’s future environmental impact, but must also take into account its environmental impact from the time of its completion. [...]” (see para. 2.2.5. **The remediation of the failure to carry out on environmental impact assessment in the Commission Notice**)*

Thus, if a project has not complied with the provisions of the EIA Directive as implemented in national legislation, an *ex post* environmental impact assessment will be carried out as a remedial measure for non-compliance. An example of non-compliance with the provisions of the EIA Directive is set out in the Commission Notice itself - the situation where "**development consent had already been granted** without carrying out an EIA and works either performed, or about to be executed" (**such as the case of the Existing WWTP**) (see para.



2.2.5. *The remediation of the failure to carry out on environmental impact assessment of the Commission Notice)*

The Commission also indicates that these *ex-post* EIA procedures are exceptionally used as a means of remedying the unlawful consequences of not carrying out an EIA to ensure that the objective of the EIA Directive and the national legislation transposing it is achieved, even if the procedure has not been formally carried out.

26. Practice of other EU Member States

In Romania, in accordance with the provisions of Article 26 para. (4) of Law No. 292/2018, the remedial measure to "*nullify the unlawful effects of a failure to carry out an environmental impact assessment*" is demolition. The measure is mandatory and does not involve any further assessment other than that carried out for demolition works, nor does it allow for a review of the actual conformity of the project with the law.

Other European Union Member States like Italy, Germany, France or Belgium have different approaches, expressly regulating retrospective regularization of projects in terms of environmental impact assessment.

In Italy, Article 29 para. (3) of the Italian Environmental Code explicitly provides for the possibility to apply for a late environmental impact assessment for regularization purposes.

In Germany, Section 4 of the Act on Supplementary Provisions on Legal Remedies in Environmental Matters under EC Directive 2003/35/EC (UmwRG) allows for environmental impact assessments to be carried out after the completion of a project, allowing for its retrospective regularization.

In France, Article L171-7 of the French Environmental Code, similarly provide for the possibility to apply for retrospective regularization. Projects under development or fully developed for which no environmental impact assessment was carried out may be regularized if the competent authority puts the interested party on notice of the defect. For this purpose, the competent authority sets a time limit which may not exceed one year. Within the time limit, an EIA must be completed, and any other procedural defect must be remedied.

In Belgium, if an environmental impact assessment was required but not carried out, this can be remedied by a new application for building permit that includes the missing EIA. In such cases, a deadline is imposed by the planning authority to remedy the defects to the building permit, including the absence of the EIA.

27. Conclusion

As per the foregoing sub-sections, from a legal perspective it can be concluded that:

- (a) Member States have an obligation to act to "nullify the unlawful consequences of a failure to carry out an environmental impact assessment" required by the EIA Directive;
- (b) this obligation does not prevent a Member State from allowing a "*regularization through the conducting of an impact assessment, after the plant concerned has been constructed and has entered into operation*";
- (c) demolition is not the only acceptable remedy under EU law to "*nullify the unlawful consequences of a failure to carry out an environmental impact assessment*"; as we have shown above, *ex post* environmental impact assessment aimed at regularisation is a permitted remedial measure compatible with EU Law;
- (d) as per CJEU case law, regularization must meet two requirements:
 - (i) national rules allowing for regularization must not provide the parties concerned with an opportunity to circumvent the rules of EU law or to dispense with applying them; and
 - (ii) an assessment carried out for regularization purposes must take into account the environmental impact from the time of its completion, and for the future;
- (e) in relation to the requirements in the CJEU case law referred to in (d) point (i) herein, in Romania:
 - (i) under Law No. 292/2018, the rule is environmental impact assessment has to be carried out before the commencement of the project (Article 7 of Law No. 292/2018), and an essential measure in case of breach, is demolition, without any further assessment or review of the actual conformity of the project with the law (Article 26 para. (4) of Law No. 292/2018); and
 - (ii) Article 5 para. (2) of Law No. 292/2018 allows the Ministry to provide an exemption from the application of the provisions of Law No. 292/2018 under certain very limited conditions, and with the notification of the European Commission, which the Ministry has done in the past.

This legal regime is therefore compatible with the requirements set out in the CJEU case law referred to in (d) point (i) herein.



- (f) other Member States have recognized the legal possibility for retrospective regularization in line with the foregoing case law, and this conduct is compliant with EU law;
- (g) the Ministry has lawfully and successfully applied Article 5 para. (2) of Law No. 292/2018 with respect to a number of projects, granting exemptions from the provisions of Law 292/2018;
- (h) factors which justify if an exceptional case exists are not set out in Law No. 292/2018, or in the EIA Directive and the Member State are not bound by specific scenarios;

As per the Commission Guidance cases relying on: (i) the need to ensure security of supply in cases where were shown to evidence "*reasonably probable risk*" of disruption, (ii) the need to satisfy a strategic interest in renewable energies, or (iii) the need to meet high-level political commitments made by public authorities to build confidence between communities in the context of broader reconciliation negotiations, were found to be "*exceptional*"; and

- (i) subject to the fulfilment of the conditions above (which we address in Section 3 (*Reasoning for the request for exemption*), the Ministry is lawfully permitted to grant, in application of Article 5 para. (2) of Law No. 292/2018, permission for the carrying out an *ex post* environmental assessment on the Existing WWTP in order to regularize this project.

3. Reasoning for the request for exemption

3.1. Preamble

This Section 3 (*Reasoning for the request for exemption*) justifies the request for exemption in relation to the conditions set out in Article 5 para. (2) of Law No. 292/2018.

3.2. Grounds for admission of the application

The following grounds support the admission of the present application:

- (a) in terms of factors which make the case of the Existing WWTP exceptional, we note the following:
 - (i) **Purolite products are essential for the priority industries of Romania and the European Union.** The products that Purolite manufactures for its customers provide critical support to industries designated as high priority by the European Union and Romania, including pharmaceutical manufacturing, nuclear

power, microelectronics, carbon capture, groundwater remediation (including PFAS) and water filtration;

More specifically, the resins produced and tailored by Purolite provide advanced filtration solutions in a variety of applications, and are crucial across a wide variety of essential industries including:

- (1) **Microelectronics and semiconductors.** Purolite UltraClean™ resins purify water to the highest possible water quality standards as required for wafer and microchip production and in the manufacture of semiconductors.

In 2023, this product line was primarily manufactured in the United States rather than Romania due to constraints on the Romania plant's production capabilities (which could be exceeded in case of regularization of the Existing WWTP).

- (2) **EV battery manufacture.** Purolite products support battery grade lithium chemical refining, direct lithium extraction, and battery recycling, with almost 1,000 cubic meters of product manufactured by Purolite globally in 2023 for this industry, with the bulk being produced in the United States and China due to constraints on Romania production. The stress caused from these constraints will only rise as there is aggressive growth tied to this market due to adoption of EV's and global 2030 emissions goals.
- (3) **Treatment of industrial and drinking water, groundwater remediation.** Several different Purolite resins are used to target and efficiently remove contaminants from drinking water, industrial wastewater discharge, and groundwater. For example, Purolite's Purofine® PFA694 family of products is designed to and has been proven to consistently achieve simultaneous removal of both short- and long-chain poly- and perfluoroalkyl substances (PFAS/PFOA).
- (4) **Medical and drug products.** Purolite Romania manufactures 14 API and excipient products for the pharmaceutical industry, including life saving drugs to prevent hyperkalemia in patients undergoing kidney failure. Romania clean room capabilities supplied over 2,000 tons of these products to the industry in 2023.

- (5) **Blood filtration.** Purolite's PuroSorb[™] and Macronet[™] polymeric adsorbents are used to help purify donated blood plasma to prevent transmission of disease through blood transfusions.
- (6) **Nuclear power.** Purolite's CriticalResin[™] is designed exclusively for use in nuclear power operations, protecting nuclear systems against corrosion and maintaining an environment safe from radioactive isotopes.
- (7) **Hydrogen energy.** Purolite's UltraClean[™] resins are used to purify water for production of green hydrogen energy. In 2023, this product line was primarily manufactured in the United States rather than Romania due to constraints on the Romania plant's production capabilities (which could be exceeded in case of regularization of the Existing WWTP).
- (8) **Carbon capture.** Purolite A110 and A500OHPlus resins are used to remove carbon directly from ambient air and from industrial emission sources.

The Romania Purolite facility plays a crucial role in the manufacture of these products, and Purolite's ability to supply these products to its customers is severely constrained by the limited production capacity of the Romania facility caused by the wastewater treatment limitations described below (which could be exceeded in case of regularization of the Existing WWTP).

Purolite has three other manufacturing facilities located in China, the United Kingdom, and the United States, but the Romania facility manufactures many of the intermediate products used to produce final products at the other Purolite facilities and is thus crucial to Purolite's global operations.

At the same time, the products manufactured by Purolite are essential for many companies operating in Romania, such as large companies in the nuclear industry, oil and gas industry, chemical industry, electricity industry and many others.

- (ii) **Capacity limitations forces shifting of production to China.** Purolite is currently unable to meet demand for its products in the above industries due to the constraints on production and effluent treatment capacities (which could be exceeded in case of regularization of the Existing WWTP).

Purolite has thus been forced over the past two years to divert planned investments of \$125M to other Purolite facilities **outside the European Union, including to China**, despite a strong preference for focusing those investments on the Romania plant.

This makes it so that ultimately valuable business opportunities and the development of a valuable portfolio of IP rights have to be unintendedly, but necessarily, moved outside the Romania and European Union.

- (iii) **Severe impact on the local economy.** Purolite is one of the main economic drivers of the Victoria region. An accounting analysis at the company level indicated that Purolite has incurred expenses of 358,066,801 RON (78,869,339 USD) in the last 16 months in payments to more than 600 local or national suppliers.

As we mentioned above, the company is totally dependent on Viromet's wastewater treatment solution.

Any disruptions in the activity of this company make it impossible for Purolite to continue its activity, and to immediately cease production of the resins so relevant for the wide variety of essential industries listed above.

A strong industrial platform in Victoria, with modern operations and strong waste water treatment infrastructure is also beneficial in light of the intentions of the Romanian Government to develop a significant investment on the industrial platform of the city of Victoria¹, namely one of the largest gunpowder factory in Europe (see *Annex No. 6 - Government Statements*).

- (iv) **Probable risk for security of supply.** At the date of this application, Viromet is a company in insolvency (see *Annex No. 8 – Viromet insolvency documents*), without a reorganization plan approved by its creditors.

Procedures for the re-authorization from a water management perspective of the Viromet plant are also pending. Any decisions of the creditors for a bankruptcy, or any decision of the authorities not to issue appropriate permits to Viromet will cause immediate shut down of Purolite.

¹<https://www.monitorfg.ro/2024/04/05/cea-mai-mare-fabrica-de-pulberi-din-europa-se-construieste-in-judetul-brasov-pe-un-teren-al-anaf/> (Note: This press article is only available in Romanian).

Purolite therefore faces a “*reasonably probable*” risk for the security of supply of waste water treatment services (within the meaning of para. #3.6 of the Commission Guidance).

The urgent need for the regularization of the Existing WWTP is such that failure to proceed with the approval would be against the public interest and would threaten the economic stability and security of the area (within the meaning of para. #3.7 of the Commission Guidance).

Similarly, the shutdown would also threaten the EU interest in ensuring EU autonomy in core energy renewable-related industries (see Sub-sections “*Hydrogen Energy*” or “*Carbon Capture*” above).

- (v) **Operation of the Existing WWTP is in the public interest of the Victoria Community.** The waste water treatment plant of Viromet has uncovered basins for the treatment of waste water.

This technical solution generates substantial odor discomfort in the community on a recurring basis, especially during the shutdown / maintenance periods when the accumulated sludge is cleaned.

Studies have shown that the odors are also accentuated by high summer temperatures, which lead to accelerated evaporation of volatiles. Thus, odors may be smelled generally after 18:00 and until morning hours due to a phenomenon of thermal inversion and due to the air currents coming from the mountains towards the city, in a south to north direction.

The community has been complaining about this repeatedly, all culminating with a protest held during the 5th of July 2024 in front of Purolite plant on these matters, as evidenced by media² (see *Annex No. 7 - Odor Protest*).

The Existing WWTP will provide superior treatment technologies to those currently used, and its regularisation would also address this issue of public interest, regarding the odors.

- (b) **Precedent for art. 5 para (2).** As the Existing WWTP is completed an environmental impact assessment according to the Law No. 292/2018 and EIA Directive can be carried

² <https://www.monitorulexpres.ro/2024/07/05/protest-in-victoria-in-fata-societatii-ecolab-purolite-vrem-sa-respiram-aer-curat-la-victoria/>
(Note: This press article is only available in Romanian).

out by retrospective regularization (according to Cases C-196/16 and C-197/16, C-411/17, C-261/18).

As mentioned in Section 2 (*Legal basis for the application*), Article (5) para (2) of Law No. 292/2018 has been applied previously in Romania in line with the CJUE case law cited above for several projects.

- (c) **Demolition and reconstruction of the Existing WWTP vs Regularization.** Purolite analyzed, together with environmental specialists, the effects in case of demolition and reconstruction of the Existing WWTP vs. the regularization of the Project and the Existing WWTP, the results of the analysis being included in the study attached as *Annex No. 2 - Study on the negative effects of demolition and reconstruction* to this application.

As per this analysis, maintaining the Existing WWTP is preferable from an environmental protection perspective to demolishing and rebuilding a wastewater treatment plant on the same site.

In addition, the approach would also be uneconomical as it would imply the destruction of a multi-million euro investment, which complies with Romanian water management requirements, Romanian construction requirements and was carried out in a highly anthropized environment (the industrial area of the Victoria City), according to the studies elaborated at the PUZ stage.

The positive aspects identified in relation with the Project include:

- (i) high protection of the environmental factor water through the introduction of state-of-the-art technologies for the treatment of wastewater related to the operation of the Purolite plant, in line with Ecolab's concern to protect the environment as a whole, but especially water;
- (ii) ensuring the sustainability of the Purolite plant operation in relation to the environmental factor water;
- (iii) reduction of resource consumption, as only the quantities foreseen in the Project are required, which are significantly less than those involved in the reconstruction of the existing on-site objectives;
- (iv) reducing the amount of waste by not demolishing existing buildings;

- (v) reduced impact on the Natura 2000 site ROSPA 0098 Piedmont Fagaras, by not carrying out demolition and construction works; respectively
- (vi) cancellation of the impact on Natura 2000 sites ROSPA0003 "*Avrig - Scorei - Fagaras*" and "*ROSCI Oltul Mijlociu - Cîbin - Hartibaciu*", by not carrying out demolition and reconstruction works.

In contrast, considering the size of the Existing WWTP as presented in *Annex No. 3 - Summary of Purolite wastewater treatment plant* to this application, the option of demolishing and rebuilding a new WWTP would have a significant negative impact on the environment, thus running counter to the objectives of the EIA Directive and Law No. 292/2018.

In this respect, the following **negative impacts** have been identified:

- (i) significant damage to environmental factors through emissions of dust particles and pollutant emissions due to demolition works which are immediately followed by construction works for the same objectives;
- (ii) the generation of significant quantities of waste related to the constructions to be demolished, followed by the construction of the same objectives;
- (iii) significant consumption of natural resources (land, water, natural aggregates, sand, crushed stone, wood, fuel) for the construction of the same buildings that were originally demolished;
- (iv) carrying out works within the perimeter of Natura 2000 areas. The location of the WWTP is within the boundary of ROSPA 0098 Piemontul Fagaras, and the outlet of the effluent discharge pipe into the Olt River is located within the boundaries of ROSPA 0003 Avrig – Scorei -Fagaras and ROSAC0132 (ROSCIO132) Oltul Mijlociu – Cîbin – Hartibaciu;
- (v) the field visit carried out to identify the bird and animal species likely to be affected by the project works concluded that the demolition of the investment would not be likely to bring additional benefits but, rather, could generate additional disturbance during the nesting period of the identified species, potentially putting the species' bridges at risk of mortality or abandonment as a result of the construction activities. It is noted that no mortality of any specimen was reported during the installation of the components within the Natura 2000 site; i.e.

- (vi) the route of the effluent discharge pipeline crosses the surface of ROSPA0003 Avrig – Scorei -Fagaras site (about 100m) for a short length. An existing road was followed at the time of installation. A new excavation to remove it would mean opening a new construction site inside the site and risk damaging the surrounding habitats.
- (d) **Environmental Studies concerning the Existing WWTP reveal a highly anthropized environment.** At the urban zonal plane approval stage, for the Existing WWTP, the following environmental studies were carried out, attached as *Annex No. 4 - Environmental studies* to this application:
 - (i) the appropriate assessment study for the "*Elaboration of the UZP for the construction of an industrial wastewater treatment plant from the Purolite factory with discharge into the Olt river*" which was prepared in 2020 by the Technical University of Civil Engineering of Bucharest (hereinafter the „**Appropriate Assessment Study**”);
 - (ii) the environmental report for the "Construction of an industrial wastewater treatment plant from the Purolite factory with discharge into the Olt river" which was prepared in 2021 by the Technical University of Civil Engineering of Bucharest (hereinafter the „**Environmental Report**”);
 - (iii) the initial evaluation study regarding species of conservation concern for the project "Construction of an industrial wastewater treatment plant from the Purolite factory with discharge into the Olt river" which was prepared in 2021 by Olosutean Horea Gheorghe PFA (Authorized Physical Person) (hereinafter the „**Initial Evaluation Study**”).

These studies concluded that:

- (i) the habitats in the project's area of influence are heavily entropized and consist in areas of land partially covered by trees, meadows, agricultural land, woody and grassy vegetation habitats established in riverbeds, reed, scrublands, human settlements;
- (ii) the structure of the landscape and that of the ecosystems has been profoundly influenced by anthropogenic activities, and the conservation value has been cancelled out;



- (iii) the flora of the secondary grasslands on the proposed sites of the UZP does not include species of extinct, endangered, vulnerable, rare or endemic categories, nor species of particular economic value;
- (iv) there will be no significant negative impact, that would reduce bird populations or significantly reduce foraging, nesting or temporary roosting habitats during migration or that would block movement or migration routes on the "key" bird species and existing habitats of the Natura 2000 sites ROSPA0003 "Avrig - Scorei - Fagaras" and ROSPA "Piemontul - Fagaras" and
- (v) there will be no significant negative impact on the flora and fauna of ROSAC0132 (ROSCIO32) Middle Oltul - Cîbin - Hartibaciu.

Furthermore, the Appropriate Assessment Study at the UZP stage contains the environmental impact mitigation measures presented in the study and accepted by the Environmental Protection Agency of Brasov, then included in both the environmental agreement and the National Agency for Protected Natural Areas' agreement, documents attached in *Annex No. 5 – Agreements and authorizations obtained for the Project* to this application.

As required by law, the Appropriate Assessment Study has the same framework content at both the plan and project phases. This document presents the species and habitats identified on the surface of the site, find assessed all forms of impact that are likely to have a semi significant impact on species or habitats for which sites of Community interest have been designated in the vicinity of the project and mitigation measures have been presented.

33. Cross-border procedure

With regard to this requirement set out in Article 5 para. (2) of the Law No. 292/2018, the Environmental Report for the urban zonal plan shows that due to its position, the location of the Existing WWTP is not in the vicinity of the country's borders, the distance from the border being more than 200 km. Thus, most of the effects will occur at a local scale with no potential negative transboundary effects, including on human health.



34 Other appropriate form of assessment

According to Article 5 para. (3) of Law No. 292/2018, if the Ministry decides to grant an exception under Article 5 para. (2) of Law No. 292/2018, it is obliged, inter alia, to consider whether another form of assessment is appropriate.

Past precedent shows that the Ministry deemed „[...] *the environmental assessment carried out at the zonal urban plan stage is another form of assessment, according to art. 2 para. (4) letter a) of the EIA Directive, respectively art. 5 para. (3), lit. a) of Law No. 292/2018*”.

The Existing WWTP holds such studies, as detailed in Sub-section 3.1, para. (d) which can be used and considered for the purposes of this assessment.

Purolite expresses its availability to carry out any studies that the Ministry considers necessary in relation to this application and to implement corrective measures, if necessary.

In consideration of the above, **we respectfully request the approval** of this request for an exemption from the application of the provisions of Law No. 292/2018 on the assessment of impact of certain public and private projects on the environment for the investment objective "*The industrial wastewater treatment plant resulting from the Purolite Victoria factory and its discharge into the Olt River*", in accordance with the provisions of Article 5 para. (2) of the aforementioned regulatory act, **in terms of allowing** an *ex post* environmental impact assessment to be carried out on the Existing WWTP with a view to its regularization, so that the Existing WWTP can be permitted and the operated, rather than demolished and reconstructed.

We remain at your disposal for any further details at the following contact details:

- (a) Marius Craciun, SHE Manager, Purolite, marius.craciun@purolite.com, mobile: 0040 726 047 008;
- (b) Razvan Stoicescu, Deputy Managing Partner, Musat & Asociatii Sparl, razvan.stoicescu@musat.ro, mobile 0040 726 190 955.

Attachments. This application includes the following annexes:

- (a) Annex No. 1 –Technical assessment of the Existing WWTP;
- (b) Annex No. 2 - Study on the negative effects of demolition and reconstruction;
- (c) Annex No. 3 - Summary of Purolite wastewater treatment plant;



Purolite®
An Ecolab Company

- (d) Annex No. 4 - Environmental studies (Appropriate Assessment Study, Environmental Report and Initial Evaluation Study);
- (e) Annex No. 5 – Agreements and authorizations obtained for the Project (the environmental agreement, the National Agency for Protected Natural Areas’ agreement, water management agreement, building permit);
- (f) Annex No. 6 - Government Statements;
- (g) Annex No. 7 - Odor Protest;
- (h) Annex No. 8 – Viromet insolvency documents (the Insolvency Proceedings Bulletin and the Ascertaining Certificate issued by the National Trade Register Office);
- (i) Annex No. 9 - Translation of the exemption request (without annexes) in English.

Your faithfully,

S.C. PUROLITE S.R.L.,

By Hector Hipolito Fajardo Rivera – Director General

Cc:

- (a) Mike Duijser, Executive Vice President and Chief Supply Chain Officer, mike.duijser@ecolab.com;
- (b) Katie Roek, Ecolab Global Environment Associate General Counsel, katie.roek@ecolab.com;
- (c) Agnese Danelon, Ecolab Europe Government Relations Vice President, agnese.danelon@ecolab.com.

Annex No. 1 – Technical assessment of the Existing WWTP

FOLLOWS ON THE NEXT PAGE

Annex No. 2 - Study on the negative effects of demolition and reconstruction

FOLLOWS ON THE NEXT PAGE

Annex No. 3 - Summary of Purolite wastewater treatment plant

FOLLOWS ON THE NEXT PAGE

Annex No. 4 - Environmental studies

FOLLOWS ON THE NEXT PAGE

Annex No. 5 – Agreements and authorizations obtained for the Project

FOLLOWS ON THE NEXT PAGE

Annex No. 6 - Government Statements

FOLLOWS ON THE NEXT PAGE

Annex No. 7 - Odor Protest

FOLLOWS ON THE NEXT PAGE

Annex No. 8 - Viromet insolvency documents

FOLLOWS ON THE NEXT PAGE

Annex No. 9 - Translation of the exemption request (without annexes) in English

FOLLOWS ON THE NEXT PAGE