

Chapter 18

Environmental protection

1. General

Implementing new regulation for environmental protection has become one of Romanian legislative priorities after joining European Union in January 2007. Similar to the regulations adopted in other European countries, the current regulations are based on several legal principles, generally accepted in the field, such as: (I) compliance with the *acquis communautaire* for environment (II) integration of environmental policy into others sector policies (III) monitoring and reducing the climate change risks (IV) the polluter must pay (V) preservation of biodiversity and specific ecosystems of biogeography natural area (VI) sustainable development of natural resources (VII) disclosure of information and public participation in taking the decision (VIII) international cooperation for environment protection etc.

2. Main regulations

- Emergency Government Ordinance no. 195/2005, on environmental protection ("EGO no. 195/2005");
- Emergency Government Ordinance no. 196/2005, concerning integrated pollution prevention and control (" EGO no. 196/2005");
- Emergency Government Ordinance no. 12/2007 amending and supplementing the regulations implementing the *acquis communautaire* on environmental protection ("EGO no. 12/2007");
- Emergency Government Ordinance no. 68/2007 on environmental liability, prevention and remedying environmental damages ("EGO no. 68/2007");
- Emergency Government Ordinance no. 43/2007 on integration in environment and market of genetically modified organisms ("EGO no. 43/2007");
- Law no. 107/1996 on water protection ("Law no. 107/1996");
- Emergency Government Ordinance no. 243/2000 on atmosphere protection ("EGO no. 243/2000");
- Government Decision no. 1076/2004 concerning the procedure for environment assessment or plans and programs ("GD no. 1076/2004");
- Government Decision no. 573/2002 on the approval of the authorization procedures for corporate entities operation ("GD no. 573/2002");

- Emergency Government Ordinance no. 78/2000 on waste regime ("EGO no. 78/2000");
- Government Decision no. 1213/2006 on establishing the framework procedure regarding the environmental impact assessment pertaining to certain public and private projects;
- Order no. 184/1997 on the approval of environmental balance procedure ("Order no. 184/1997");
- Order no. 863/2002 on approval of the methodological guidelines applicable to the stages of the environmental assessment procedure (" Order no. 863/2002");
- Law no. 111/1996, republished, on nuclear activities performance ("Law no. 111/1996").

3. Environmental protection

3.1. Competent authorities

At present, upon enforcing of several EU directives, the State specialized authorities responsible for the environmental protection are: (I) the Ministry of Environment and Sustainable Development – as the core central authority for environment protection; (II) the National Agency for Environment Protection; (III) the regional environmental protection agencies;(IV) the county environmental protection agencies and (V) the Environmental National Guard for control. As the environmental protection represents an obligation of all central and local public administration authorities, the environmental authorities are supported in their activity by all other public, central and local authorities. Therefore, central authorities such as the Ministry of Health, the Ministry of National Defense, etc. or local authorities such as city halls, prefectures, etc., must get actively involved both in the elaboration of environmental regulations, and in their implementation at national or local level.

3.2. Obligations of individuals and legal entities

Environmental protection represents an obligation of individuals and legal entities carrying out activities on the Romanian territory. Their main obligations are:

- (i) to apply for environmental permits and/or authorizations to the environmental protection authorities;
- (ii) to pay for the damage mitigation and removal costs arisen from pollution and to reestablish the previous environmental balance;
- (iii) to ensure special systems for monitoring technological installations and processes, for the analysis and control of polluting agents within the area where their various activities are performed, and to record the results of these analyses - in order to prevent and avoid technological risks or accidental release of polluting substances, and to report these results on a monthly basis to the competent environmental authorities;
- (iv) to adopt proper solutions for the environment when new activities and projects are contemplated, or in case of any alteration of such existing activities and projects.

3.3. Responsibility for activities affecting the environment

The responsibility for environmental pollution is based on the principle “the polluter must pay”. Therefore, the individual or legal entity that pollutes the environment – thus, causing an environmental damage– shall pay all costs pertaining to the damage remedy, to the removal of its consequences, as well as any costs needed to reestablish the previous eco balance.

By adopting EGO no. 68/2007, Romania implemented the provisions of the European Directive no. 2004/35/CE related to remedying environmental damages and completed its national legislation on what concerns the environmental protection with a view to secure a specific and unitary regulation of environmental damage.

As such, the authority in charge with the assessment of the environmental damages caused by any human activity is the Regional Environmental Protection Agency. This institution is also required by law to consult the National Environmental Guard and National Agency for Environmental Protection on what concerns the environmental damages assessment. In case the environmental damage affects or is likely to affect other states, the aforementioned Romanian public authorities are obliged to inform and cooperate with the relevant authorities of the affected states also by taking into account the bilateral conventions in place entered by Romania with such relevant states or other applicable international environmental regulations.

The environmental pollution level (and, implicitly, the extent to which a certain economical activity involves or may involve the polluter’s responsibility) will be benchmarked against the national or international standards (only for such cases where Romania does not have its own standards). Such standards identify the concentration of the polluting substance that could be released/discharged in the environment as a result of an economic activity or that could be accepted in a certain geographical area (pollution of the soil, underground, underground water, or of the atmosphere, etc.). In all these cases, the responsibility of the economic agents is directly determined by the concentration of the polluting substances that the agent could release/dischARGE in the environment.

The liability for pollution damages is objective in nature; therefore it is independent of the existence or non-existence of the polluter’s guilt. In case of a plurality of polluters, they share joint responsibility. Only exceptional the liability could be subjective in nature for pollution damages caused against protected species and natural areas. For activities entailing major pollution risk, the law establishes mandatory insurance of such risks, for the activity owners.

Infringement of environment legal regulations may entail civil, administrative or criminal liability.

4. Authorization of activities having an impact on the environment

EGO no. 195/2005 provides for the obligation of individuals and legal entities to apply for the issuance of the environmental permit or authorization in case they perform or intend to perform an activity that has a potential impact on the environment. The law expressly lists the economical and social activities deemed to have an impact on the environment. The authorization procedure is public.

4.1. Environmental Permit. Environmental Authorization

The *environmental permit* is defined as the technical and legal document containing the conditions and/or terms for conducting an existing activity or a new one as far as their impact on the environment is concerned. Thus, the application for an environmental permit will always aim to obtain the competent environment authority’s permission for conducting a new

project/investment or to modify an existing one (for example: the construction of an industrial facility).

The *environmental endorsement* requested for plans or programs, is defined as the technical and legal document issued by the competent authority for environment protection, which confirm the achievement of the environmental protection's elements under the plan/program based on an environmental impact assessment.

The *environmental authorization* is defined as the technical and legal document establishing the operational terms and parameters for existing activities as well as for new ones, based on the environmental permit. Consequently, the application for the environmental authorization will always aim to obtain the competent authority's permission to operate a certain activity (such as the operation of an installation).

The validity of the environmental permit is until achievement of its purpose and for authorization is maximum 5 years. The permit or authorization will not be issued if there are no project guidelines or compliance programs setting forth the specific ways to mitigate negative effects on the environment, as compared to the standards and regulations in force.

The environmental permit or authorization will be suspended in case of failure to comply with the provisions stipulated therein, after prior summoning notice from the environmental authority, and it will remain suspended until the elimination of the causes determining the permit/authorization suspension. However, the suspension may not exceed 6 months. If, during the permit/authorization suspension period, the beneficiary fails to take the necessary steps to meet the environmental parameters established in the issued permit or authorization, the environmental authority is entitled to order the cessation of the project execution or of the owner's activity.

4.2. Environmental audit. Impact studies

In order to obtain the environmental permit or authorization, the applicant must submit the environmental authority, together with other relevant documents, an environmental audit or an impact assessment. The audits or studies serve in case the owner or the destination of the asset is changed, or if the economic and social activities impacting the environment cease, or new elements come out after the issuance date.

Environmental audits or impact studies represent technical documents with the following objectives:

- (i) evaluation of the existing or potential pollution level, for a certain location;
- (ii) the way an investment/project (for an environment permit application) or an activity (for environment authorization application) meets the environmental protection regulations in force;
- (iii) possible remedies or preventive measures meant to ensure environmental protection;
- (iv) conditions for an investment/project or activity to be accepted by the environment authority.

Environmental audits and impact studies represent basic documents used by the environmental authority to establish, through compliance programs, the environmental obligations that the project/activity owner must fulfill in order to comply with the environmental protection regulations. The validity of the environmental permit/authorization depends on the fulfillment of these obligations.

Environmental audits may be:

- (i) environment audit level 0 (zero);
- (ii) environment audit level I;
- (iii) environment audit level II.

The type of audit necessary to grant a permit/authorization for a project/activity is either stipulated by the regulations in force, or it may be required by the competent environmental authority, entitled to issue the required permit/authorization, depending on the environmental impact of the location (the environmental impact is defined as a material adverse effect, either existing or potential, of the physical, chemical and structural characteristics of a location's natural environment components). The three types of environment audits do not exclude each other and can be drawn up consecutively or simultaneously.

Thus, a level 0 environmental audit shall be drawn up whenever such audit is required by law, without indicating its type, and the environment authority considers less probable the existence of an environmental impact of the location. The level 0 audit represents the minimum requirements for situations where, according to the law, presentation of an environmental audit is necessary.

The level I environmental audit will be required by the environment authorities when:

- (i) level 0 audit shows a possible environmental impact, on that location;
- (ii) the current activity of an entity fails to meet the authorization conditions;
- (iii) upon changing the investment destination or owner, or in case of cessation of the activities generating an environment impact.

Environment audit level II will be required by the environment authority when:

- (i) the level I audit indicates a potentially significant pollution of a location;
- (ii) the environmental authority establishes from the inception of level I audit that allocation presents a potentially significant pollution.

The level II environmental audit is the only audit requiring sample taking and physical, chemical or biological tests of the environment factors (air, water, soil, etc.).

The level I and II environmental audits and impact studies can only be elaborated by specialized entities or individuals, certified according to the laws in force.

4.3. The environmental permit for privatization

In accordance with the provisions of art.13 of Law no. 137/2002 on certain measures for privatization acceleration and with the provisions of the Order no. 709/1999 on obtaining of the environmental permit for privatisation, in order to issue an environmental permit, and upon the interested company's request, the competent environment authority will specify in writing, the documentation that the latter has to submit, in order to obtain such permit, indicating also the environment audit needed to be drawn up.

In 10 days after the documentation filling, the environmental authority will issue the environmental permit together with the compliance program, if the case may be, or will require the company to complete the documentation, in case it does not contain the requested information or it was not submitted in the requested form. If the environmental

authority fails to reply to the applicant, the company will be considered to perform its activity in full compliance with the environment protection regulations in force.

The environmental obligations stipulated in the environmental permit will be included in the presentation file of the company.

5. Products, toxic substance and waste regime

Wastes represent substances resulted from various biological or technological processes that can no longer be used as such, some of them being recyclable.

Dangerous substances are substances or products of any kind, which, if used in apparently not dangerous quantities, concentration, or conditions, represent a major risk for human life, environment or goods (such as explosives, oxidants, flammable matters, toxic, noxious, corrosive, irritant, mutagen, radioactive substances).

Production, possession, or any activity related to the circulation of toxic products, growth for processing purposes of plants containing such substances, as well as experiments of such toxic products or substances are regulated by law. Entities may carry out activities involving products and toxic substances within strictly regulated fields, such as: medicine, industry, agriculture, forestry, education, scientific research, trade, but only based on authorization.

Dangerous wastes as well as recyclable wastes are subject to the legal regulations. International treaties play an important role in this field, for example the Directives adopted in the P.N.U.E. 1987 or the Basel Convention of 1989. In Romania, waste disposal is regulated mainly, by EGO no.195/2005 and EGO no. 78/2000. By adopting the Government Decision no. 788/2007 on the establishment of certain measures for application of European Council Regulation EC no. 1.013/2006 concerning the waste disposal transfer, importation to Romania of any kind of raw or processed wastes must follow strict conditions.

6. National System for environmental monitoring

Pollution is controlled in Romania by a complex monitoring system (monitoring and general control of some elements or phenomena), which gathers data about environmental quality. The competent authority is the Environmental National Guard coordinated by the Ministry of Environment and Sustainable Development.

“The Romanian Integrated Monitoring System” is included in “The Global Environmental Monitoring System” created in 1972 by The Decision of the UN Conference in Stockholm.

7. Climate change

By the Law no. 3/2001 Romania has adopted the United Nations Kyoto-Convention on Climate change which sets the overall framework for intergovernmental efforts tackling the challenge posed by the climate change. After joining European Union, Romania has entirely transposed and implemented the European Directives on climatic changes in national legislation, via: Ministry Order no. 1175/2006 for the approval of the Guide regarding the monitoring and reporting of Greenhouse Gas Emissions, Ministry Order no. 897/2007 for the approval of the procedure for authorization granting on the Greenhouse Gas Emissions for 2008-2012 period and Ministry Order no.1768/2007 for the approval of accreditation procedure of checking organisms for the Greenhouse Gas Emissions monitoring reports.