

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, as further modified (“EGO no.195/2005”);
- Emergency Government Ordinance no. 152/2005, concerning the integrated pollution prevention and control, as further modified (“EGO no. 1552/2005”);
- Emergency Government Ordinance no. 196/2005, concerning the Environmental Fund, as further modified by Law no. 167/2010 (“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 of genetically modified organisms (“EGO no. 43/2007”) as republished and further modified by Law no. 247/2009;
- Law no. 107/1996 on water protection (“Law no. 107/1996”) as further amended by EGO no. 3/2010 and Medium and long term National Strategy for the flood risk management dated August 11, 2010;
- Emergency Government Ordinance no. 243/2000 on atmosphere protection (“EGO no. 243/2000”) as further amended;
- 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 repealed by Government Decision no.445/2009 on 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, on nuclear activities performance ("Law no. 111/1996"), republished and amended by Law no. 200/2010.

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 Forests – 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/dischage 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 administrative deed issued by the competent authority on environmental protection and according to which it is established the conditions and, as the case may be, measures of environmental protection that must be observed for the implementation of a project.

Thus, the application for an environmental permit will always aim the obtaining of 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 conditions and parameters for existing activities, as well as for the new ones. The authorization for activities having a significant impact on the environment is issued either based upon an environmental permit or following the performance of an environmental balance (in Romanian "*bilant de mediu*") in case of existing activities. During the execution of the environmental impact assessment or of an environmental balance by the competent authority, the need to readapt uncomfoting technology may arise in order to comply with mandatory environmental requirements.

According to the provisions of the Government Emergency Ordinance No. 195/2005 on environmental protection (representing the general legal framework on environment protection in Romania), business activities can be conducted only after the issuance of an environmental authorization. Depending on the activity performed by an operator, it may be required that an integrated environmental authorization (instead of a "simple" environmental authorization) is to be issued in order to operate various installations or equipments. The integrated environmental authorization falls under the scope of the Government Emergency Ordinance no. 152/2005 on integrated pollution prevention and control that has transposed into the national legislation the EU IPPC Directive (Directive 2008/1/EC concerning integrated pollution prevention and control).

The validity of the environmental permit is until achievement of its purpose and for authorization is maximum 10 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/renew the environmental permit or authorization, the applicant must submit to the environmental authority, together with other relevant documents, an environmental audit or an environmental impact assessment. The audits serve in the case of existing activities, 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.

In the event such activities may have a significant impact on the environment, the environmental permit or the environmental authorization/integrated environmental authorization are issued following a certain procedure that entails a comprehensive assessment of the potential impact – in case of new activities – or of the actual impact of an existing activity. The environmental impact assessment (EIA) is regulated by Government Decision no. 445/2009 on environmental impact assessment regarding specific public and private projects, which fully transposes the EU EIA Directive (Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment).

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: environment audit level 0 (zero); environment audit level I; and 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: level 0 audit shows a possible environmental impact, on that location; the current activity of an entity fails to meet the authorization conditions; or 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: the level I audit indicates a potentially significant pollution of a location; or the environmental authority establishes from the inception of level I audit that the location 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/ notification on change of circumstances used for issuance of the environmental permit/authorization

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 privatization, 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.

Separately, according to art. 10 of the Government Emergency Ordinance No. 195/2005 on environmental protection, where the operator of an activity for which the regulation on environmental aspects is required through the issuance of an environmental authorization/integrated environmental authorization shall undertake or shall be subject to a procedure involving sale of majority share stock, assets sale, merger, split, concession or in other situations that imply the change of the titleholder, as well as in cases of winding up followed by liquidation, liquidation, bankruptcy, ceasing of activity, then, the titleholder of the activity must notify the relevant authority for environmental protection, prior to the implementation of such modification, on

any new elements that occur and that were unknown upon the issuance of the environmental authorization/integrated environmental authorization.

The environmental authority shall then determine the relevant environmental obligations based on the current environmental authorization and its compliance program (if any) or in case this is not available, based on an environmental balance. Within 60 days upon closing of the transaction, the parties involved must provide in writing to the environmental protection authority, the supporting documents as to evidence the environmental liabilities undertaken by each party.

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 Forests.

“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/ greenhouse gas emissions in Romania

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.

The greenhouse gas (“GHG”) emissions are dealt with under Romanian law by the GD no. 780/2006, which transposes in the Romanian legislation the Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community (the “EU-ETS Directive”).

According to GD no. 780/2006, beginning with January 1, 2007, all installations developing one of the activities indicated in Appendix 1 of the GD no. 780/2006 that generate GHG emissions should obtain an greenhouse gas emissions authorization issued by the environmental protection authority. The authorization procedure must be conducted by the operators of the installations that generate GHG emissions. The authorization may cover one or more installation located on the same plot provided they are handled by the same operator.

The framework content of the GHG emissions authorizations is provided under GD no. 780/2006, and includes the following: (i) the name and the address of the operator; (ii) a description of activities and greenhouse gas emissions generated by the installation; (iii) the monitoring requirements, specifying the methodology used and the frequency of monitoring; (iv) the reporting requirements; (v) the obligation to return a number of greenhouse gas emissions certificates equal to the total emissions generated by the installation.

As regards the **benefits** deriving from authorization, for every installation authorized as per the above, the operator is entitled to receive a certain number of certificates, as indicated in the National Allocation Plan. The certificates are issued yearly by the National Environmental Protection Agency no later than February 28th of the year for which they are granted.

In relation to the **obligations** involved, the operators of installations falling under the scope of the GD no. 780/2006 have, *inter alia*, the following main obligations (which are also provided within the GHG authorization):

- (i) to inform the competent environmental protection agency on any planned change regarding the nature, the operation or the extension of the installation which would entail the review of the GHG emissions authorization;
- (ii) to monitor the greenhouse gas emissions for the installation, as per the provisions of the plan of measures for monitoring and reporting of the GHG emissions, which is appended to and represents an integral part the GHG emissions authorization; the abovementioned plan of measures must be reviewed by the operator and submitted yearly to the environmental protection agency;

- (iii) to draft and submit to the competent environmental protection agency, in the first quarter of every year, a monitoring report regarding the greenhouse gas emissions for the previous year, verified by an accredited surveyor; the monitoring report, together with the documents drawn up by the accredited surveyors, must be archived and kept by the operators for a period of 10 years and must be delivered to the new operator, in case the operator of the installation changes;
- (iv) to give back to the environmental protection agency, no later than the April 30th of every year, a number of GHG emissions certificates corresponding to the total quantity (in tones) of greenhouse gas emissions emitted by the installation during the previous year, as ascertained in the monitoring report.

Failure to comply with of the obligations provided by law for the operators of installations represents a felony and is sanctioned by law with fines (ascertained by the personnel of the National Environmental Guard). Aside fines and penalties, the GHG emissions authorization may be suspended for failure to comply with its provisions, until the causes of suspension are remediated, but not more than six months. If the causes of suspension are not remedied in the abovementioned period of suspension, the environmental protection authority may decide the cancellation of the GHG emissions authorization and the ceasure of activities of the operator.