

GETTING THE DEAL THROUGH

Environment

in 26 jurisdictions worldwide

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Legislation

1 What are the main statutes and regulations relating to the environment?

Environmental protection law is becoming progressively more complex, particularly since Romania joined the EU on 1 January 2007.

The legal framework relating to the environment can be divided into separate categories such as:

- general regulations;
- air, water and soil quality;
- pollution control and risk management;
- ecological labelling;
- management and disposal of wastes and dangerous chemical substances;
- biodiversity, biosecurity and preservation; and
- atmospheric pollution and climate change.

The main regulations relating to environment are the following:

- Emergency Government Ordinance (EGO) No. 195/2005 on environment protection, approved with amendments by Law No. 265/2006 and presently amended by EGO No. 57/2007 on the protected natural areas regime and conservation of natural habitats, flora and wild fauna;
- Government Ordinance No. 152/2005 concerning integrated pollution prevention and control, as modified and completed by Law No. 84/2006;
- Government Decision (GD) No. 1213/2006 regarding the setting-up of the framework procedure for environmental impact assessments and the approval of the public or private list subject of this procedure; and
- GD No. 1076/2004 for setting up the environmental assessment procedure of certain plans and programmes and Order No. 117/2006 for application manual.

In addition, Romania recently passed EGO No. 68/2007 on environmental liability with reference to the prevention and repair of environmental damage. The EGO transposes Directive 2004/35/EC and sets out the general framework on environmental liability in order to prevent and repair damage caused to the environment.

2 Is there a system of integrated control of pollution?

Pursuant to EGO No. 152/2005 implementing Directive No. 96/61/EC concerning integrated pollution prevention and control (IPPC), an integrated environmental authorisation is required to carry out certain existing activities as well to start

new activities having a significant impact on the environment.

The integrated environmental authorisation provides for:

- the emission limit for pollutants, given their nature and their potential transfer from one environment to another (that is, water, air and soil);
- supplementary measures for the management of waste generated by the installation;
- monitoring requirements; and
- other measures to be taken to avoid pollution risk.

Where an operator wishes to modify the functioning of the installation, such modification must be notified beforehand to the competent environmental authority for review of the conditions of the integrated environmental authorisation and decide if adjustments are required.

Furthermore, an important aspect to be noted is that in the event the IPPC installations are subject to substantial changes, the operator must perform an environmental impact assessment (EIA) to obtain the permits and authorisations for implementing material modifications.

An integrated environmental authorisation is mandatory required for the following industry activities: energy, production and procession of metals, mineral, chemical and waste management. It is worth mentioning that according to annex VII of the Act of Accession to the EU, which established transitional measures for Romania, the requirements for granting authorisations for 195 existing installations shall not apply in Romania until the date indicated for each installation (the maximum provided deadline is 2015) conditioned by the observance of the obligation to operate these installations in accordance with emission limit values, equivalent parameter or technical measures based on the best available techniques.

3 What are the main contents of the rules applicable to soil pollution?

The individuals or the legal entities having title over a plot of land (or using such land) and carrying out activities in relation to the land, are liable for any degradation caused to the terrain, which might be: alteration of the chemical, physical and structural characteristics of the environment's natural and man-made components; reduction of biological diversity or productivity; or affecting the natural environment and quality of life.

In the event pollution of the soil has occurred, the legal entities (or individual) accountable are compelled to perform clean-up and soil restoration activities to completely remediate the polluted soil.

Environmental liability under Romanian law has three main features:

- the responsibility for pollution and for the related damage is objective, independent of the fault of the polluter;
- in case of multiple polluters, they shall have joint liability; and
- the liability for the damages caused by pollution shall follow the 'polluter pays' principle.

4 How is waste defined?

As provided for under EGO No. 78/2000, as amended, regarding the waste regime, 'waste' is defined as any substance or object due to be disposed of and resulting from:

- production or consumption residues;
- off-specification products;
- expired products;
- materials resulted from an accident or contaminated due to such accident;
- materials contaminated or soiled as a result of planned actions;
- non-reusable parts;
- substances that no longer perform satisfactorily;
- industrial residues;
- residues resulting from anti-pollution measures;
- machining/finishing residues;
- residues resulting from raw materials extraction and processing;
- generally any materials, substances or products whose use has been banned by law;
- abandoned products; and
- contaminated materials resulting from decontamination of soil.

5 What types of waste are regulated and how?

According to EGO 78/2000 on waste regime, natural or legal persons must obtain authorisations for activities involving waste collection, landfill and management or recovery, depending on the type of waste.

Apart from the classifications listed in question 4, waste is classified based on its special chemical or physical components as follows:

- consumer waste;
- waste similar to consumer waste;
- industrial waste;
- industrial recyclable waste; and
- dangerous waste (including anatomical, medical, pharmaceutical, chemical and polluted waste).

The operators involved in waste disposal or assessment activities, in addition to the requirement of obtaining an environmental authorisation have, among other things, the following obligations:

- not to abandon, remove or dispose of it in an uncontrolled way;
- to ensure the proper disposal of waste, by their own means or through authorised entities;
- to obtain an environmental permit which shall point out the obligations of restoration after closing;
- to implement a self-monitoring system, etc.

6 Which are the main features of the rules governing air emissions?

For operating the existing activities, as well the start-up of new activities having a significant impact on the environment, it is requested an integrated environmental authorisation, under which are provided the limits of emissions.

By transposing the Directive No. 96/62/EC on ambient air quality assessment and management, were adopted limit values and, as appropriate thresholds for a number of specific air emission pollutants such as sulphur dioxide, nitrogen dioxide and oxides of nitrogen, PM₁₀, PM_{2.5}, lead, etc. In addition, the Romanian government has set several deadlines for the emissions of organic volatile chemical compounds in the air and the installations thereof to be compliant with EU requirements. As regards the Kyoto Protocol, to which Romania is a signatory starting in January 2007, the competent authority shall issue a greenhouse gas (GHG) emission permit granting authorisation to emit GHGs from all or part of an installation

7 Are there any specific provisions made for climate change?

Romania has ratified the Kyoto Protocol by means of Law No. 3/2001. The National Allocation Plan for 2008 to 2012, providing the total quantity of allowances that shall be allocated for that period and the allocation mechanism, has been recently drafted and released for public consultation.

Romania undertakes to limit its GHG emissions by 8 per cent during 2008 to 2012, compared with the 1989 emission levels. The certificates trading scheme, as regulated by GD No. 780/2006, provide the total number of GHG emission certificates and their distribution depends on: the average GHG emission per product, for each activity; and the reduction achieved in each activity by using certified emission reductions (CERs) and emission reduction units (ERUs). By adopting the cap-and-trade gas emission-trading scheme, each year certain installations are required to report by 31 March their CO₂ emission for the preceding calendar year. Operators can choose to meet their allocation by: (i) reducing emissions; (ii) reducing emissions to below their allocation and selling the excess allowance; or (iii) producing emissions above their allocation and buying allowance from the other participants.

8 How are fresh water and seawater, and their associated land, protected?

As per Order No. 662/2006 on procedure and competence for issuing water management permits and authorisations, each operator that performs a water-related activity shall obtain a permit or authorisation issued by the Romanian National Water Administration (RNWA).

The limits to discharge are established by the RNWA before the issuance of the permit or authorisation in consideration of the best available techniques. The RNWA also ensures the integrated monitoring of wastewater to be discharged. The extraction activities request the issuance of water management permits and authorisation if the flow passes over 2 litres/second and the resulting wastewater does not influence the quality of water resources.

According to annex VII of the Act of Accession to the EU, which established transitional measures for Romania, several exceptions were set concerning certain industrial facilities (eg, limit values for discharge of cadmium and mercury into waters referred to in Directive 76/964/EEC shall not apply in Romania until 31 December 2009; the same delay of derogation is provided for discharge of lindane and hexachlorobenzene; require-

ments for collecting systems and treatment of urban wastewater as set by Directive 91/271/EEC shall not fully apply in Romania until 31 December 2018 – except to drinking water intended for food processing).

9 What are the main features of the rules protecting natural spaces?

By applying Natura 2000 standards, Romania creates the following network of protected sites:

- protected sites of national interest;
- protected sites of international interest;
- protected sites of Community interest, which include sites of Community importance, special conservation areas, and special fauna protected areas; and
- protected sites of county/local interest.

These represent areas of the highest value for natural habitats and species of plants and animals that are rare, endangered or vulnerable. Having in view the guarantee of conservation of habitats in special area, such protected spaces are to be declared by a Government Decision. The protection regime is established independent of their destination or their owner and the conservation is mandatory. The protection regime of natural areas consists of: (i) a special structure designated to ensure the management or the safe keeping of the protected areas; (ii) management plans and regulations set forth for the protection areas or for the areas located nearby; and (iii) internal zoning measures set up in order to ensure the coherent implementation of protection measures (strict protection zone; integral protection zone; buffer zone and sustainable human development zone).

10 What are the main features of the rules protecting flora and fauna species?

According to EGO No. 57/2007 on the regime of natural protected areas and the conservation of natural habitats, wild flora and fauna, the protection and conservation of natural habitats and wild species with Community interest will be ensured by designation of sites with Community importance and special conservation areas. The environment relevant authority (the Ministry of Environment and Sustainable Development, MESD) will monitor the conservation status of natural habitats and Community protected wild flora and fauna species. Within the protected areas, activities likely to have an impact on the environment are prohibited. Some of these activities may be carried out based only on a special authorisation issued by the MESD with prior consultation with the European Commission.

11 What are the main features of the rules governing noises, odours and vibrations?

Order No. 536/1997 establishes the maximum limits for noise levels (Leq) in dwellings as follows:

- 50dBA – daytime, measured 3m away from the building face; and
- 40dBA.

Lower limits of 35dBA are set for flats and for schools. The local authorities must take the appropriate measures when authorising the laying-out of industrial facilities with sources of noise and vibration or by setting out of sanitary protection zones in order to comply with the limits mentioned-above. For performing small industrial activities in dwellings in order to

avoid the noise, vibrations and odours such business will be set up in special buildings situated 15m from the dwellings' windows.

Moreover, the above-mentioned enactment set the minimum sanitary protection distance at minimum 200m between the industrial plants and the dwellings.

At the regulatory level, the MESD must draft action plans on noise management and its effects, including reduction measures if necessary for a zone having more than 250,000 inhabitants, until 18 July 2008 and approve the Guideline on measures to be taken for management and reduction of noise threshold.

12 Is there a general regime on liability for environmental damage?

As per the provision of EGO No. 68/2007, environmental damage represents:

- any damage that has significant adverse effects on reaching or maintaining the favourable conservation status of protected species and natural habits;
- any water damage that has significant adverse effect on the ecological, chemical and/or quantitative status and/or ecological potential; as well as
- any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in, on, or under land, of substances, preparations, organisms or micro-organism.

The responsibility for environmental pollution is based on the 'polluter pays' principle. Therefore, the individual or legal entity that pollutes the environment shall pay all costs pertaining to clean-up and environmental recovery. In a situation where the environmental damage or imminent threat results from the action of several operators, the costs incurred by the prevention and remediation shall be borne jointly by the operators as a result of the application of multiple party liabilities.

Hazardous activities and substances

13 Are there specific rules governing hazardous activities?

Concerning hazardous substance management and disposal, the following legislation has been transposed:

- special management and control of PCB and similar chemical compounds such as PCT, PCN and PBB (implementing Directive 96/59);
- the legislation regarding the prevention, reduction and control of pollution with asbestos (implementing Directive 87/217/EEC) and Directive 91/689 regarding the dangerous wastes; and
- Directive 2002/95/EC on the restriction of certain hazardous substance in electrical and electronic equipment (RoHS Directive) and the Directive 2002/96/EC on waste electrical and electronic equipment.

As regards PCBs, Romanian companies must label all the equipment and installations containing the envisaged chemical compounds above the minimum limits admitted, subsequently giving complete information and statistics on such equipment and providing the environmental authorities with plans for the elimination of such equipment. Furthermore, Romanian companies must cease to use such equipment either by 2006 or 2010, depending on the concentration of such chemical compounds in the equipment.

The commercialisation and use of asbestos and products containing asbestos is forbidden from 1 January 2007. Until then, Romanian companies must progressively adapt their technologies and equipment in order to meet the aforementioned deadline.

14 What are the main features of the rules governing hazardous products and substances?

Hazardous product means any prohibited, restricted or controlled product. Used and worn products or forbidden from importation are included in the prohibited product category. The restriction concerns some special rules for manufacture, import, export or involving other hazardous substances to health and environment.

Hazardous substances and products are divided into the following categories:

- explosive;
- oxidant;
- inflammable;
- toxic;
- harmful;
- corrosive;
- irritant;
- causing sensitivity;
- carcinogenic;
- mutagenic;
- toxic for reproduction; and
- toxic for the environment.

Hazardous products that are to be the subject of a transboundary movement must be packaged, labelled and transported in conformity with international rules, and must be accompanied by a transportation document from the point at which transportation commences to the point of disposal.

The control of import-export of several hazardous substances follows the rules established by the Rotterdam Convention 1998 on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade.

Industrial accidents

15 What are the measures to prevent industrial accidents?

As provided for by GD No. 804/2007 on the control of major-accident hazards involving hazardous substances, which transposed the Seveso II Directive No. 96/82/EC, with respect to the prevention of industrial accidents, operators must:

- submit a notice within 30 days before commencing the construction to the competent environmental authority, which shall contain, among other things: the quantity and physical status of, and enough information for identifying, the involved hazardous substances, their landfill, and other elements able to produce industrial accidents;
- draft a document by which is attested the operator's prevention policy of major accidents and which constitutes a guarantee that such policy is properly implemented;
- prepare a security report that will prove the following:
 - the implementation of the major accident prevention policy and the management security plan of such policy;
 - the acknowledgement of potential risks of major accidents and that the operator took all necessary measures for prevention of these accidents and for limiting their consequences;

- that safety measures were introduced within the design, building up and exploitation of facilities and storage places; and
- that the internal plan has been implemented; and
- prepare an internal emergency plan and an external one, which has to include a 'waterfall' model for limiting the 'domino' effect.

Subordinated to the MESD, the Risk Secretary Office is the competent authority and will identify potential domino effects and consequently supervise them effectively; take adequate measures to limit the consequences of an accident; and prepare an effective monitoring plan.

Environmental aspects in transactions

16 What are the main environmental aspects to consider in M&A transactions?

For a Romanian transaction involving activities having a significant environmental impact, an environmental endorsement is required. This is issued by the environmental authority and determines the liabilities arising in connection with the proposed transaction. Before the endorsement is drafted, an audit or impact study is requested in case the owner or the purpose of the asset is changed. Any specific warranties and other liability of the buyer related to the environment are to be agreed with the seller when drafting the transaction documents. Within 60 days of executing the agreement, the parties must provide the environmental protection authorities in writing with information on how the environmental liabilities are to be assumed by the parties.

17 What are the main environmental aspects to consider in other transactions?

Environmental endorsement is required for specific industrial activities (a schedule of industrial activities is included as an appendix to the specific legislation) to establish the environmental liabilities in the following circumstances:

- a change of ownership for an activity with significant environmental impact, including selling shares, assets, merger and division;
- in case of winding up, bankruptcy or upon ceasing of activity; and
- where activities with significant environmental impact are subject to changes. When such activities are ceased or upon dismantling of industrial installations, an environmental approval must be obtained by the relevant operator. The approval is issued after the performance of an EIA or environmental audit that provides information and data regarding the environmental conditions on the relevant site-facility.

Environmental impact assessment

18 Which types of activities are subject to environmental assessment?

GD No. 1213/2006 regarding the setup of the framework procedure for environmental impact assessments and the approval of the public or private list subject to this procedure sets forth an obligation to conduct an environmental impact assessment in relation to projects that may have a significant adverse impact on the environment. In addition, an assessment will always be carried out with respect to certain projects and installations and for substantial changes to existing ones.

19 Do environmental assessments act as a licence? Do they only cover industrial projects, or programmes and plans as well?

The EIA for specific projects presents basic documents used by the environmental authority upon which they issue the environmental approval, which establishes the main obligations of, and measures to be taken by, the project owner to comply with the relevant environmental protection regulations. The validity of the environmental approval depends on the continued fulfilment of these obligations.

On the other hand, the plans and programmes are to be submitted to the environmental assessment procedure set out in the SEA Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, as transposed by GD No. 1076/2004. The environmental assessment is an integral part of the approval procedure and leads to obtaining the necessary environmental endorsement.

20 What are the main steps of the environmental assessment process?

The key stages of the EIA process are:

- The developer prepares the proposals for the project and send a notification to the Environmental Protection Authority (EPA).
- ‘Screening’ – after analysing the application, EPA settles the type of procedure to be followed and issues the screening decision.
- ‘Scoping’ – after the qualification stage, EPA analyses:
 - any additional information provided by the developer;
 - comments made by other relevant public authorities; and
 - proposals made by a technical analysis committee; and provides a ‘scoping’ opinion (terms of reference) by which the matters to be covered by the environmental assessment will be identified.
- The applicant performs the environmental impact study based on relevant legal provisions and considering the terms of reference
- EPA and the applicant set the date of the public debate in the course of deciding on the project and release the relevant documents within 30 days before the meeting.
- Analysis – after the public meeting, the applicant drafts an evaluation of the comments made by the authorities and by the public and sends the evaluation to EPA.
- Decision and announcement – EPA issues the environmental approval and makes it available to the public, including the reasons that formed the basis of such decision, and also provides a description of the measures that will be required to mitigate adverse environmental effects.

If cross-border effects are likely to be significant, the affected states’ authorities must also be consulted and sent an EIA report. A public debate should take place within eight weeks of receiving the report.

Regulatory authorities

21 Which authorities are responsible for the environment and what is the scope of each regulator’s authority?

- The MESD ensures the coordination, regulation and implementation of environmental policies.
- The National Agency for Environmental Protection (NAEP) ensures the implementation and enforcement of environmental policies and related regulations and issues the rel-

evant environmental permits and authorisations

- The National Environmental Guard (NEG) makes sure that regulations are observed, is responsible for their enforcement by control and inspection, and imposes sanctions.

22 What are the typical steps in an investigation?

For minor offences set out in the environmental regulations, an investigation is conducted either by NEG commissioners, public administration authorities or by the National Commission for Nuclear Activities, the Ministry of Defence or the Ministry of Internal Affairs. Such proceedings are recorded in a minutes book. Against this the claimant may appeal before the court in the jurisdiction where the offence occurred, within 15 days of its communication. Furthermore, the court’s decision can be challenged with a second appeal within 15 days.

If breaches of environmental provisions are criminalised by a specific environmental law, the NEG or any other competent authority must submit the criminal investigation to the competent entities as provided for in Romanian criminal law. In such cases the provisions of the Criminal Code shall apply and the case will be prosecuted under the rules of the Criminal Procedure Code.

Besides the sanctions applied for minor offences and crimes, as the case may be, the individuals or the entities that have caused damage to the environment are compelled to cover all costs related to the environmental recovery, which implies the full restoration of the environment to the conditions existing before the pollution occurred.

Even if no regulation was breached, if any damage to the environment occurred or the pollution was accidental, the entities or the individuals responsible for such damage are liable for environmental recovery.

23 What powers of investigation do the regulatory authorities have?

See question 22.

24 What is the procedure for making administrative decisions?

During the decision-making stage, EPA considers the environmental information provided by the applicant and the results of the public consultations. EPA issues the administrative decision after consulting the technical analysis committee. Nevertheless, the decision with reasons must be available to the public.

Any person that might be affected or has a legitimate interest may challenge an administrative decision before the competent administrative court.

25 What are the sanctions and remedies that may be imposed by the regulator for violations?

Administrative sanctions are generally directed towards forcing the polluter to observe the legal provisions and to reduce as possible the consequence of the pollution. Depending on the breach, the sanctions may be fines, suspension of the environmental authorisation (or approval) or closure of installations or activities.

26 To what extent may decisions of the regulator be appealed, and to whom? What are the grounds and procedures for appeals?

See question 22.

Judicial proceedings

27 Are environmental law proceedings in court civil, criminal or both?

According to Law No. 554/2004 as further amended, any person who has been, or whose rights have been, affected by an administrative authority's decision may challenge such or demand recognition of his or her rights and also demand damages before the competent administrative court. Environmental law proceedings regarding a criminal offence are submitted to the competent criminal courts. Third-party claims seeking indemnification for environmental pollution are to be heard by civil courts.

28 What are the powers of courts in relation to infringements and breaches of environmental law?

The competent courts may issue definitive and irrevocable decisions that must be fully observed. The non-observance of a final court decision is considered a serious criminal offence. Where an infringement of environmental law occurred, the courts, as a matter of principle, may order the temporary suspension of the environmental authorisation of the respective installation or activity and compel the operator to restore the environment and cover subsequent damages (including those incurred by third parties).

29 Are civil (contractual and non-contractual) claims allowed regarding breaches and infringements of environmental law?

Third-party civil claims can be filed with respect to a breach of the environmental regulations, provided, however, that the infringement produced damages to that third party. Infringements of the environmental law can be determined by the relevant public authorities and may be penalised either administratively by decision of the authority or by the competent courts.

30 What defences or indemnities are available?

Civil liability, based on the 'polluter pays' principle is triggered when the following elements are met: (i) the occurrence of damage; (ii) illegal or 'tortious' conduct; (iii) the illegal conduct caused the damage; and (iv) the illegal conduct is a tort or the result of a fault.

Update and trends

One major topic currently in debate relates to the capacity of several major industrial operators to meet the IPPC requirements until the coming deadline agreed under the Accession Treaty, ie, 31 October 2007.

Certain operators have been granted individual transitional periods to comply with IPPC requirements. The overwhelming majority, however, have to meet the general deadline. Investment in environment protection has been insignificant in the past years. Considering the present compliance status, the coming deadline and the significant investments needed, it appears that certain industrial operators will have to close their activities.

Although civil liability is triggered by the performance or occurrence of a tort of fault, the environmental liability is 'objective' by nature, meaning that it is independent of the existence or non-existence of the polluter's fault or tort. Therefore, where pollution occurred, the respective operator shall be liable for environmental restoration, save for the case when it can show that pollution occurred owing to force majeure. Because of the objective nature of the environmental liabilities, in theory there are limited defences available.

From a civil liability perspective, although there are no specific legal provisions in this respect, environmental liability would be barred by the statutes of limitations in the event the responsibility was not triggered within three years of the date the damaged occurred.

31 Are there specific defences in the case of directors' or officers' liability?

There are no specific defences as regards the liability of directors or officers and assessments thereof should be performed case by case.

32 What is the appeal process from trials?

See question 22.

MUŞAT & ASOCIAȚII

Attorneys at Law

Contacts: Luminita Ivanciu

e-mail: luminitai@musat.ro

43, Aviatorilor Blvd
1st District 011853
Bucharest
Romania

Tel: +40 21 202 59 00
Fax: +40 21 223 39 57
Website: www.musat.ro

International treaties and institutions

33 Is your country a contracting state to any environmental international treaties etc?

Romania has ratified most of the environmental treaties, including for example the Declaration of UN Conference (Stockholm 1972) on the Human Environment, the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, the Basel Convention on the Transboundary Movement of Hazardous Waste, Convention on EIA in a Transboundary Context (Espoo).

34 To what extent is regulatory policy affected by these treaties?

Efficiency and administrative capacity are to be improved by ratifying these treaties and by preparing strategic planning, monitoring of environmental factors, authorisation process and enforcing appropriate sanctions for legal breaches.