

Romania

Luminita Ivanciu, Musat & Asociatii



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OVERVIEW

1. Please provide a brief overview of the system of environmental control?

The legal system of environmental protection is getting progressively more complex, particularly now that over 90% of European environmental regulations have been transposed into Romanian legislation, and it is expected that all EC law in this field will be fully integrated into Romanian law.

The main sources of environmental law are:

- Laws issued by Parliament, including those ratifying international treaties that Romania is a party to (primary legislation).
- Government Emergency Ordinances (GEOs) and Government Decisions (GDs).
- Orders of the Ministry of Environment and Waters Management (MEWM) (see box, *The regulatory authority*).
- Standing Rules and Guidelines to enforce legislation.

The principal environmental regimes are:

- Hazardous substances and products.
- Waste.
- Protection of water and aquatic eco-systems.
- Protection of air, climatic changes and ambient noise.
- Protection of soil, underground and human dwellings.
- Significant environmental impact activities.

The central public authority ensuring the co-ordination, regulation and implementation of environmental policies is MEWM. The National Agency for Environmental Protection (NAEP), and the local/regional Environmental Protection Agencies (EPAs) are also important, ensuring the implementation and enforcement of environmental policies and related regulations, and issuing the relevant environmental permits and authorisations. The National Environmental Guard (NEG) makes sure that regulations are observed and is ultimately responsible for their enforcement.

If environmental regulations are not observed and complied with, such conduct may trigger criminal, administrative and civil liability.

Criminal liability

Special laws, and also the new Criminal Code passed by Parliament (to enter into force in the near future) cover various environmental offences. The failure to observe obligations concerning pollution prevention and environmental protection is a crime specific to environmental law.

As a general principle, conduct endangering human or animal life or health or vegetation is punishable by imprisonment ranging from three months to seven years. For minor offences (misdemeanours), fines range from RON55,000 to RON70,000 (about US\$20,000 to US\$25,000) and are an alternative sanction to imprisonment. Significant damage and injury to life or health are aggravating circumstances. The investigation and prosecution of such crimes are conducted *ex officio* by the criminal investigation entities.

Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive) is due to be transposed into Romanian legislation in the near future.

Administrative liability

The purpose of administrative sanctions is generally to force the polluter to strictly observe the legal provisions and to reduce, as much as possible, the consequences of the pollution. Breaches are sanctioned differently depending on who caused the breach, that is, individuals or legal entities, and the sanctions include:

- Fines.
- Suspension of environmental authorisation/approval.
- Shutting down of installations.

Civil liability

Civil liability is triggered, in environmental law, when damage or prejudice has been caused. Prejudice is a quantifiable change of a natural resource, or a quantifiable deterioration of the functions fulfilled by a natural resource, for the benefit of another natural resource or of the public, which may occur directly or indirectly. Liability for prejudice to the environment is objective, assessed independently from the offender's fault, in relation to the damage caused.

2. To what extent are environmental requirements strictly enforced by regulators in your jurisdiction?

The management efficiency and administrative capacity of the MEWM, the NAEP and the EPAs, as well as the NEG, is increasing, and they are seeking to strengthen their capacity to enforce the new legislation and improve their functions, regarding:

- Strategic planning.
- Monitoring of environmental factors.
- Authorising activities having an environmental impact.
- Implementing legislation and environmental policies.
- Enforcing appropriate sanctions for legal breaches.

3. To what extent are environmental non-governmental organisations (NGOs) and pressure groups active in your jurisdiction?

Civil society has become more prominent within the last couple of years, mainly being involved in the transition from totalitarianism to democracy. Consequently, NGOs have started to play a role in the socio-economic landscape, mainly in areas such as protection of civil and human rights and democratisation of the country. Environmental NGOs, which raise public awareness of environmental issues, are largely grassroots groups, most of them having no paid staff and only a few active members, although more volunteers may be involved on special occasions.

PERMITTING OF EMISSIONS

4. Is there an integrated permitting regime or are separate permits required for different types of emissions?

By transposing Directive 96/61/EC concerning integrated pollution prevention and control (IPPC Directive), a unitary permitting system has been implemented, brought into effect by GEO number 152/2005. Depending on the activity carried out by an operator, the relevant environmental protection authorities undertake the authorisation procedure and issue, as the case may be, integrated environmental consents and authorisations.

5. If integrated, please provide a brief overview of the permitting regime.

The operation of existing activities, as well as the start-up of new activities having a significant impact on the environment is made only based on the environmental authorisation or integrated environmental authorisation. The environmental authorisation is

required for all installations having a significant impact on the environment, while the integrated environmental authorisation is issued for similar types of installations that in addition have certain technical specifications, as provided under GEO no. 152/2005 on integrated pollution prevention and control, transposing the IPPC Directive.

The operator must obtain an environmental integrated authorisation from the relevant authority. The integrated authorisation contains the emission limit values for pollutants, given their nature, and their potential transfer from one environmental form to another (that is, water, air, and soil). In addition, depending on the quantity of emissions, the operator has to pay a contribution to a special Environmental Fund.

An environmental consent is compulsory for new public or private projects and for the modification of existing ones, including decommissioning of various installations or activities, which may have a significant impact on the environment.

The regulatory authorities for the permitting regime are the MEWM (for certain large-scale projects), the NAEP and the EPAs.

Operating an installation or activity subject to an environmental authorisation or integrated environmental authorisation without obtaining authorisation, and failure to observe its provisions is a misdemeanour subject to a fine ranging from RON35,000 to RON100,000 (about US\$13,000 to US\$36,000).

The environmental consent or authorisation is suspended, for non-compliance with the provisions in it, after prior notification. Such suspension is maintained until compliance occurs, but for no more than six months. If the necessary measures for compliance are not taken during the suspension, the environmental authority can order cessation of the activity or of the project's execution.

The environmental consent is valid during the project's implementation period, but only if the execution of the project is started within two years of the date it is issued.

An environmental authorisation is valid for a maximum of five years and the environmental integrated authorisation is valid for ten years, except where the authorisations were issued based on compliance or action plans, when they are valid until implementation of the final stage.

To obtain an environmental consent or authorisation, the applicant has to submit an environmental audit or EIA to the environmental authority, and other relevant documents. The environmental balance or EIA, as the case may be, are also necessary for a change of ownership, asset transfer or on cessation of the activities having a significant impact on the environment (*see Question 12*).

If the activity's operator or the company's legal form changes, but the activities continue under the same conditions as set out in the environmental (integrated) authorisation, the authorisation is transferred to the new operator or into the new company name.

6. If there are separate permitting regimes (either instead of or in addition to an integrated regime), please provide a brief overview of regimes applicable to:

- **Emissions to air.**
- **Emissions to water.**

- **Emissions to air.** See *Question 5*.
- **Emissions to water.** To perform any water related activity, a water management permit and a water management authorisation are required, both issued by a body subordinated to the MEWM, the Romanian National Water Administration.

To protect and preserve surface water resources, water discharges are regulated using a combined approach. Discharges are controlled using the best available techniques, and by setting discharge limits for discharges with diffuse impact.

The discharge limits set under the water management permit or authorisation can only be exceeded in exceptional circumstances with prior approval of the competent authorities. The discharge of used waters and waste into water resources, without or in breach of a permit or authorisation, is an offence.

7. Please provide a brief overview of any emissions trading schemes in your jurisdiction.

Romania ratified the Kyoto Protocol to the United Nations Framework Convention on climate change in Law number 3/2001. So far, there is a single law concerning the establishing of a trading scheme for greenhouse gas emissions certificates that integrates Directive 2003/87/EC establishing a trading scheme for greenhouse gas emission allowances within the Community (Emissions Trading Directive). The total number of greenhouse gas emission certificates depends on Romania's emissions limit, set out in the Kyoto Protocol, and their distribution depends on the average greenhouse gas emissions per product, for each activity, and on the reductions achieved in each activity. The operators can use emission reduction units or a certified emission reduction. The national allotting plan, to be developed by NAEP, will contain clear information on how new installations can participate in the certificates trading scheme.

WASTE

8. Please provide a brief overview of the regulatory regime applicable to the generation, transfer and disposal of waste.

Operators carrying out waste disposal or recovery activities must comply with GEO number 78/2000 on the waste regime.

The authorisations for activities involving waste collection, landfill and management are issued by local or central environmental protection agencies or by local councils, depending on the type of waste.

In principle, there are no forbidden activities, except for the importation of waste, which is limited to waste that is a secondary resource of useful raw materials. The entities producing, recovering, collecting or transporting waste must meet separate landfill conditions for all waste categories, obtain all authorisations and comply with all measures for the protection of the population and environmental health.

Breaches of the waste regime are sanctioned with fines ranging from RON5,000 to RON10,000 (about US\$1,800 to US\$3,600). Crimes, sanctioned with imprisonment from one to five years, include the following:

- Importing waste for final disposal.
- Failure to adopt or observe the compulsory measures concerning the collection, transport or disposal of hazardous waste.
- Acceptance, by the landfill operators, of waste imported without an environmental permit or authorisation.

Landfill operators must implement a self-monitoring system, covering technological capabilities and the quality of environmental factors, and bear the cost. They must also set up a fund for monitoring the facility before and after closure.

The producers of hazardous waste have the additional obligations of:

- Evaluating the risk to public health and the environment.
- Observing special conditions of classification, labelling and packing.
- Information provision.

Additional rules and requirements apply to the transport, handling, landfill and disposal of hazardous waste.

Directive 2006/21/EC on the management of waste from extractive industries (Waste Management Directive), which was recently adopted by the European Parliament, will soon be transposed into Romanian legislation.

CONTAMINATED LAND

9. Please provide a brief overview of any regulatory regime relating to contaminated land.

Landowners are obliged to ensure soil protection. Failure to comply results in a written summons to the City Halls. Failure to comply with the obligation within the term specified by the mayor, without objective cause, triggers an annual fine ranging from RON1,000 to RON2,000 (about US\$360 to US\$720).

The following are criminal offences, sanctioned, for legal persons, with a fine between RON1,000 and RON2,000:

- Degrading of soil and cultures by storing waste.

- Operators' failure to take appropriate measures to avoid pollution of land with waste from production activity or leakages of any kind.

The Ministry of Agriculture, Forests and Rural Development and the MEWM are responsible for planning the improvement of land, which through degrading or pollution, has partially or totally lost its productive capacity for forest or agricultural purposes.

If surfaces have been removed from agricultural or forest production by degrading or pollution, due to the misconduct of natural or legal persons, the competent authorities, the owners or the City Hall can make the guilty party perform soil restoration and improvement works.

Landowners, and any individuals or legal entities that do not have ownership title in the land, carrying out an activity on a certain plot of land, are liable for any degradation caused to that terrain. Environment degrading involves:

- Alteration of the chemical, physical and structural characteristics of the environment's natural and man-made components.
- Reduction of biological diversity or productivity of the natural and man-made ecosystems.
- Affecting the natural environment and the quality of life through:
 - water, atmosphere and soil pollution;
 - over-exploitation of resources and their deficient management; and
 - grassroots inappropriate land planning.

Liability for prejudice caused to the environment is objective, independent of fault. There is also the possibility of third party civil lawsuits against a polluter, seeking indemnification for damage suffered.

10. If there is no regulatory regime, is it usual for owners or occupiers of contaminated land to carry out voluntary clean-up?

The owners of contaminated land that carry out clean-up or other improvements are provided by the authorities with free materials and technological assistance for the execution of the work. Voluntary soil recovery or clean-up is not common.

ASBESTOS

11. Please provide a brief overview of the regulatory regime applicable to the presence, use and disposal of asbestos.

To protect the population and environmental health, all activities using products containing asbestos are forbidden as of 1 January 2007.

The operators of activities that use asbestos are obliged to measure their water and air emissions regularly, and they are supervised by the relevant environmental public authorities. The authorities must also ensure:

- The demolition and removal of buildings, structures or installations containing asbestos without causing significant pollution.
- Appropriate storage of waste containing asbestos dust and/or fibres.

To prevent environmental contamination, all products containing asbestos must be labelled.

Natural or legal persons that fail to observe the above provisions may be subject to fines of up to RON60,000 (about US\$21,700).

ENVIRONMENTAL IMPACT ASSESSMENTS

12. Are there any requirements to carry out environmental impact assessments in respect of certain projects (for example, construction of an oil and gas facility)? If so, please provide a brief overview of the regulatory regime.

By transposing Directive 85/337/EEC (as amended) on the assessment of certain public and private projects on the environment (EIA Directive), Romania has adopted the European framework procedure for the evaluation of environmental impact concerning certain projects. Therefore, the environmental impact assessment procedure (EIA) is compulsory for new projects and for the modification of existing ones, in almost all fields, if they are likely to have a significant environmental impact. A different procedure covers the EIA of plans and programmes, according to Directive 2001/42/EC on the assessment of certain plans and programmes on the environment (EU Strategic Environmental Assessment Directive).

The EIA covers, among other things:

- The production, management, discharge and recycling of waste.
- Impacts related to water quantity, and surface and groundwater quality, associated with new potential sources of contaminants.
- Managing the air quality, and employment of the best available techniques to minimise or eliminate nuisance impacts.
- Characteristics of the soils and sub-soils.
- Identification of the specific and social impact likely to be associated with a project.

If the EIA is approved by the environmental authorities, an environmental endorsement containing conditions concerning environmental protection is issued.

The EIA is approved by MEWM (for certain large-scale projects and certain types of activities), or by the NAEP and the EPAs, depending on the size of the project.

If the conditions of the environmental consent (see *Question 6*) are breached, the consent is suspended until the breach is remedied, but for no more than six months. If compliance is not achieved during the six-month term, the environmental consent is then cancelled.

REPORTING AND AUDITING

13. Are regulators required to keep public registers of environmental information (for example, registers of environmental permits or contaminated properties)? If so, how easy or otherwise is it for a third party to search those registers?

The NAEP keeps a record of reports at national level, including:

- Environmental permits.
- Approvals and environmental integrated authorisations.
- Environmental impact studies on each region.

Also, data registers are kept for large incineration installations, for IPPC installations and for installations/activities falling within Directive 99/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (Solvent Emissions Directive).

Lands for improvement are established by the Ministry of Agriculture, Forests and Rural Development and by the MEWM.

GD number 87/2005 on public access to information concerning the environment allows the public access to:

- Permits, approvals, authorisations, environmental impact studies and risk evaluations for activities having a significant environmental impact.
- Agreements between the public authorities and natural and/or legal persons concerning environmental objectives.

14. Are companies required to report or provide information to the regulators and/or the public in relation to:

- **Environmental performance?**
 - **Incidents (such as water pollution and soil contamination)?**
- **Environmental performance.** Natural and legal entities must record the results of their obligatory self-monitoring activities. Operators must keep strict evidence of dangerous substances and products and give the relevant information and data to the authorities.

- **Incidents.** The operators must inform the relevant authority of accidental emissions of pollutants or a major accident, and must also inform the environmental protection authorities of any accident endangering the environment, in addition to taking remedial action. The breach of such obligations is sanctioned with fines ranging from RON25,000 to RON30,000 (about US\$9,000 to US\$10,900) for legal entities.

15. Are companies required to carry out environmental auditing?

The environmental audit is used as a management tool. It is a documented and periodical evaluation that allows the control of activities with a possible environmental impact and environmental policy observance, but it is not compulsory.

16. What powers do environmental regulators have to access a company's documents, inspect sites, interview employees and so on?

Environmental authorities have full access to industrial facilities and sites, corporate documents or similar, and can conduct interviews with the operator's employees.

Operators receive prior notification of an inspection, and the environmental officers conducting it, in order to facilitate the information gathering process. Inspections can be conducted without warning if the environmental officers suspect that the operator is intentionally causing environmental pollution.

Operators must assist the environmental officers in the inspection and control activities, supplying all relevant documents and facilitating the checks. Operators must allow access to authorised persons for checking of the technological installations, equipment, and so on.

TRANSACTIONS

17. To what extent is a seller, of assets or shares, required to disclose environmental information to the buyer?

Transactions involving activities having a significant environmental impact are issued an environmental endorsement. This is prepared by the competent environmental authorities, which sets out the environmental liabilities. Once the environmental endorsement is issued, the buyer is fully aware of the environmental liabilities involved (see *Question 19*).

18. Is it common for environmental due diligence to be undertaken on the acquisition of assets or shares? If yes:

- **What areas are usually covered?**
- **Are environmental consultants usually engaged? If so, what issues should a company cover in an engagement letter (for example, limit on consultant's liability)?**

- **Areas covered.** In the last couple of years, much attention has been paid by buyers to environmental issues, and environmental due diligence (either simple or complex) has become much more common. Environmental risk depends, to a large extent, on the type of activity of the target company and the specific context of the transaction.

Apart from private due diligence, various types of environmental audit may be required by law to be carried out, to carefully assess the potential environmental liabilities relating to an existing facility. An environmental audit or EIA is carried out. Based on this, the environmental protection authorities determine and establish existing environmental liabilities, compliance programmes or action plans that must be implemented (see *Question 19*).

- **Environmental consultants.** The role played by environmental consultants has become more significant during the last couple of years, corresponding with the increase of public awareness about environmental issues. Environmental consultants are employed particularly when the potential environmental risk is significant, or the target company is subject to a conditional environmental authorisation (associated with a compliance programme or action plan).

19. In what circumstances is a buyer at risk of inheriting pre-acquisition liabilities?

Before acquisition of an activity having a significant impact on the environment, the competent authorities must issue an environmental endorsement. The environmental endorsement establishes and determines the environmental liabilities arising in connection with the contemplated target, and these are made known to the relevant parties to the transaction. The environmental endorsement is drafted after an environmental audit (or EIA, as the case may be) has been carried out, usually by the seller. Based on the results of the environmental audit/EIA, the environmental protection authorities issue the environmental endorsement in which the environmental liabilities are set out. Based on the endorsement, the parties will apportion environmental liability in the contract. Therefore, the extent of the liability of the buyer depends on the contractual provisions agreed with the seller and the specific warranties provided under the transaction documents (see *Question 22*).

Within 60 days of completing the transaction, the parties must provide, in writing to the environmental protection authorities, documents that evidence the environmental liabilities undertaken by each party.

THE REGULATORY AUTHORITY

Ministry of Environment and Waters Management

Head. Sulfina Barbu

Contact details. 12 Libertatii Avenue
Bucharest 5
Romania
T +40 21 316 02 15
W www.mmediu.ro

Main area of responsibility. Co-ordination, regulation and implementation of environmental policies.

When an environmental endorsement is not required under the relevant regulations (that is, where the transaction does not relate to activities having a significant impact on the environment and the environmental exposure is therefore, to a certain degree, less significant), environmental liabilities are just agreed in the contract.

20. In what circumstances is a seller at risk of retaining liabilities post-acquisition in the context of:

- **An asset sale.**
 - **A share sale.**
-
- **An asset sale.** See *Question 19*. In addition, where the environmental endorsement is not required and no specific warranties have been set out in the transaction documents, general civil law principles apply, the seller being responsible for any hidden liabilities that the buyer was not aware of. The good faith of the seller plays a significant role in any potential litigation.
 - **A share sale.** See *Question 19*.

21. In what circumstances could a lender be liable?

The liability of a lender with respect to environmental issues is not regulated under the law and therefore such liability is subject to contractual provisions.

22. What kind of environmental warranties and/or indemnities is a seller usually required to give a buyer in the context of:

- **An asset sale.**
- **A share sale.**

In an asset or share sale, warranties generally provided by the seller cover:

- The holding of all environmental permits required, and that they remain valid.

- Compliance with all relevant regulations.
- Non-existence of environmental investigations, claims or proceedings.
- Non-occurrence of pollution.
- Appropriate disclosure of all environmental information and data.

Indemnities, if granted, are usually limited to a certain amount or percentage of the transaction value, are limited in time and cover past pollution liabilities.

INSURANCE

23. What types of insurance coverage are available for environmental damage/liability?

As GEO 195/2005 on environmental protection no longer requires operators to have environmental insurance, purchasing environmental insurance coverage is now at operators' own discretion. Insurance coverage for environmental liability (covering third party liability and recovery costs) will be further regulated once the Environmental Liability Directive has been transposed.

24. How easy or otherwise is it to obtain environmental insurance and is this usually obtained in practice?

As the number of clients ranging from professional contractors seeking project-specific coverage to multinational companies seeking site-specific coverage is increasing, the insurance companies have recently started to offer related policies covering the associated risks.

TAXES

25. Please provide a brief overview of any environmental taxes which apply in your jurisdiction (for example, tax on waste disposal, carbon tax and tax breaks for carrying out clean-up of contaminated land).

The main environmental taxes are applied to:

- **Emissions.** Taxes for atmospheric emissions are applicable to powders, nitrogen oxides, sulphur oxides, volatile organic compounds and heavy metals emissions, and range from

RON0.02 (about US\$0.0072) per kilogramme to RON20 (about US\$7.23) per kilogramme.

- **Various products brought onto the market (tyres, hazardous substances and packages).** Taxes for such range from RON1 (about US\$0.36) per kilogramme for packages (the same tax for tyres) to 2% of the value of hazardous substances.
- **Landfill sites.** Taxes for using new sites (land) for waste deposit range from RON0.2 (about US\$0.072) per square metre per year to RON4 (about US\$1.45) per square metre per year. In case of removal of lands from agricultural use a percentage tax of the market value is due.
- **Breaches of the quality conditions for used waters.** Depending on the chemical substances found in used waters, the taxes ranges from RON100 (about US\$36) per kilogramme to RON1000 (about US\$360) per kilogramme.

REFORM

26. Are there any significant proposals for reform in your jurisdiction in the area of environmental law?

An important modification is contemplated by the transposing of the Environmental Liability Directive. Operators will be encouraged to use appropriate insurance or other forms of financial security and to develop financial and security instruments, to provide effective cover for financial environmental related obligations.

Other EU legislation to be transposed includes:

- Regulation (EEC) No. 259/93 on the supervision and control of shipments of waste within, into and out of the EC (Waste Shipment Regulation).
- Decision 2000/728/EC establishing the application and annual fees of the Community eco-label (Eco-label decision) (anticipated in 2006-2007).
- Decision 2004/156/EC establishing guidelines for the monitoring and reporting of greenhouse gas emissions, pursuant to Directive 2003/87/EC (Greenhouse Gas Guidelines Decision) (anticipated for December 2006).
- Decision 280/2004/EC concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (Greenhouse Gas Monitoring Decision) (December 2007).



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MUŞAT & ASOCIAȚII

43 Aviatorilor Boulevard, 1st District
011853, Bucharest, ROMANIA
Tel: (40-21) 202.59.00
Fax: (40-21) 223.39.57
E-mail: general@musat.ro
Website: www.musat.ro