Chapter 18

Environmental protection

1. General

Implementing new regulations for environmental protection became a legislative priority in Romania after joining the European Union in January 2007. Similar to 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 the environment, (ii) integration of environmental policy with the policies of other sectors, (iii) monitoring and reduction of climate change risks, (iv) the polluter must pay, (v) preservation of biodiversity and specific ecosystems of biogeographical natural areas, (vi) sustainable development of natural resources, (vii) disclosure of information and public participation in decision-making, (viii) international cooperation for environmental protection, etc.

2. Main regulations

- Emergency Government Ordinance No. 195/2005 on environmental protection, as further amended and supplemented ("**GO No. 195/2005**");
- Order No. 1798/2007 on the approval of the procedure regarding issuance of environmental authorization ("**Order No. 1798/2007**");
- Law No. 278/2013 on industrial emissions ("**Law No. 278/2013**");
- Emergency Government Ordinance No. 196/2005 concerning the Environmental Fund, as further amended and supplemented ("**GO No. 196/2005**");
- Emergency Government Ordinance No. 12/2007 amending and supplementing the regulations implementing the *acquis communautaire* on environmental protection ("**GO No. 12/2007**");
- Emergency Government Ordinance No. 68/2007 on environmental liability, prevention and the remedy of environmental damages ("**GO No. 68/2007**");
- Emergency Government Ordinance No. 43/2007 on integration into the environment of genetically modified organisms, as republished and further amended and supplemented ("**GO No. 43/2007**");
- Government Decision No. 1076/2004 concerning the procedure for environmental 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**");
- Law No. 211/2011 on the waste regime, as republished and further amended and supplemented ("**Law No. 211/2011**");
- Government Decision No. 445/2009 on environmental impact assessment pertaining to certain public and private projects ("**GD No. 445/2009**");

- Order No. 184/1997 on the approval of environmental balance procedures ("**Order No. 184/1997**");
- Order No. 863/2002 on the approval of methodological guidelines applicable to the stages of the environmental assessment procedure ("**Order No. 863/2002**").

3. Environmental protection

3.1. Competent authorities

At present, upon the enforcement of several EU directives, the State specialized authorities responsible for environmental protection are mainly the following: (i) the Ministry of Environment, Waters and Forests – as the core central authority for environmental protection; (ii the National Agency for Environment Protection; (iii) the county environmental protection agencies; (iv) the Environmental National Guard for control and (v) the Environmental Administration Fund.

As environmental protection represents an obligation of all central and local public 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 a 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 in Romanian territory. Their main obligations are:

(i) to apply for environmental permits and/or authorizations to the environmental protection authorities;

(ii) to pay for damage mitigation and removal costs arising 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 their various activities are performed, and to record the results of these analyses - in order to prevent and avoid technological risks or an accidental release of polluting substances, and to report these results 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, an individual or legal entity who pollutes the environment – thus, causing an environmental damage –pays 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 GO No. 68/2007, Romania implemented the provisions of European Directive No. 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damages, and completed its national legislation on environmental protection with a view to securing a specific and unitary regulation of environmental damage.

As such, the authority in charge with the assessment of environmental damages caused by any human activity is the County Environmental Protection Agency. This institution is also required by law to consult the National Environmental Guard and National Agency for Environmental Protection concerning the environmental damage assessment. In cases where 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 into by Romania with relevant states, or other applicable international environmental regulations.

The environmental pollution level (and, implicitly, the extent to which a certain economic activity involves or may involve the polluter's responsibility) is benchmarked against 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 which can be released/discharged in the environment as a result of an economic activity, or which 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 can 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 in exceptional cases can the liability be subjective in nature, for pollution damages caused against protected species and natural areas. Infringement of environment legal regulations may entail civil, administrative or criminal liability.

4. Authorization of activities having an impact on the environment

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

4.1. Environmental Permit. Environmental Authorization

An *environmental permit* is defined as the administrative deed issued by the competent authority on environmental protection, and according to which the conditions are established, and any measures of environmental protection that required for the implementation of a project.

Thus, the application for an environmental permit always aims for permission from the competent environment authority's to conduct a new project/investment or to modify an existing one (for example: the construction of an industrial facility).

An *environmental endorsement* is defined as the administrative deed issued by the competent authority for environmental protection, which confirms the achievement of elements of environmental protection under

the plan/program submitted for adoption.

An *environmental authorization* is defined as the administrative deed establishing the operational conditions and parameters for existing activities, as well as for the new ones, issued by the competent authority for environment protection. 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 an environmental impact assessment or of an environmental balance by the competent authority, the need to readapt technology may arise in order to comply with mandatory environmental requirements.

According to the provisions of the GO No. 195/2005 on environmental protection (representing the general legal framework on environmental 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) needs to be issued in order to operate various installations or equipment. The integrated environmental authorization falls under the scope of Law No. 278/2013 on industrial emissions which has transposed into the national legislation Directive No. 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention).

The validity of an environmental permit is until the achievement of its purpose, for the "simple" authorization a maximum of 5 years, and for the integrated authorization a maximum of 10 years. A 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.

An environmental permit, environmental authorization and integrated environmental authorization is suspended in case of failure to comply with the provisions stipulated therein, after a prior summoning notice from the environmental authority, and will remain suspended until the elimination of the determinate causes of the suspension. However, the suspension may not exceed 6 months. If, during a permit/authorization/integrated 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 an environmental permit or authorization, the applicant must submit an environmental audit to the environmental authority, together with other relevant documents, which may be accompanied by an environmental impact assessment, in case a substantial impact is identified. The audit serves 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 date of issue.

In the event that such activities may have a significant impact on the environment, an environmental permit or 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 in the case of an existing activity. The environmental impact assessment (EIA) is regulated by Government Decision No. 445/2009 on environmental impact assessments regarding specific public and private projects, which fully transposes the EU EIA Directive (Directive No. 85/337/EEC on the assessment

of the effects of certain public and private projects on the environment).

Environmental audits and impact studies represent the basic documents used by the environmental authority to establish, through compliance programs, the environmental obligations that a project/activity owner must fulfill in order to comply with environmental protection regulations. The validity of an 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 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 environmental 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 is drawn up whenever such audit is required by law, without indicating its type, and the existence of an environmental impact on the location is considered improbable by the environment authority. A level 0 audit represents the minimum requirements for situations where, according to the law, the presentation of an environmental audit is necessary.

A level I environmental audit is required by the environment authorities when: a level 0 audit shows a possible environmental impact, in 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 activities generating an environment impact.

Environment audit level II is required by the environment authority when: the level I audit indicates potentially significant pollution of a location; or the environmental authority establishes from the inception of a level I audit that the location presents a potentially significant risk of pollution.

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

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. Environmental permit for privatization/notification on a 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 the acceleration of privatization, 10 days after documentation is submitted, the environmental authority issues an environmental permit together with a compliance program, if the case may be, or requires the company to complete the documentation, in case it does not contain the requested information or was not submitted in the requested form. If the environmental authority fails to reply to the applicant, the company is considered to perform its activity in full compliance with the environment protection regulations in force. The environmental obligations stipulated in the environmental permit are included in the presentation file of the company.

Separately, according to art. 10 of the GO No. 195/2005, 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, the operator shall undertake or shall be subject to a procedure involving the sale of majority share stock, assets sale, merger, split, concession or in other situations that imply a 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 the modification, on any new elements that occur and were unknown upon the issuance of the environmental authorization/integrated environmental authorization.

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

5. Products, toxic substance and waste regime

Wastes represent substances and products which holders throw away or have the intention or the obligation of throwing away.

Dangerous substances are substances or products of any kind which, if used in apparently not dangerous quantities, concentrations, or conditions, represent a major risk to human life, the 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, or of growth for the purposes of processing 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 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 GO No. 195/2005 and Law No. 211/2011. By adopting Government Decision No. 788/2007 on the establishment of certain measures for the application of European Council Regulation EC No. 1.013/2006 concerning 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, Water 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 Law No. 3/2001 Romania adopted the United Nations Kyoto-Convention on Climate change which sets the overall framework for intergovernmental efforts to tackle the challenge posed by climate change. After joining the European Union, Romania entirely transposed and implemented the European Directives on climate change into national legislation, via: Ministry Order No. 1897/2007 for the approval of the procedure for granting authorization on Greenhouse Gas Emissions for the 2008-2012 period, currently repealed by Ministry Order No. 3420/2012 for the approval of the procedure for granting authorization on Greenhouse Gas Emissions for 2013-2020, and Ministry Order No. 1768/2007 for the approval of the accreditation procedure for checking organisms for Greenhouse Gas Emission monitoring reports, currently repealed by Ministry Order No. 1969/2009 on the amendment of the annex to Ministry Order No. 1768/2007.

Greenhouse gas ("GHG") emissions are dealt with under Romanian law by the GD No. 780/2006, amended by GD No. 204/2013 and by GD No. 578/2015, which transposes into Romanian legislation Directive No. 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 from 1 January 2007, all installations developing one of the activities indicated in Appendix 1 of the GD No. 780/2006 which generate GHG emissions should obtain a greenhouse gas emissions authorization issued by the national environmental protection authority; currently, the procedure for issuing a permit emission for greenhouse gases for the period 2013-2020 is governed by the Order of the Minister of Environment, Water and Forests no. 3.420/2012. The authorization procedure must be conducted by operators of installations that generate GHG emissions. The authorization may cover one or more installations located on the same plot provided they are handled by the same operator.

The framework content of the GHG emissions authorizations is provided for 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) monitoring and reporting requirements; (iv) 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 for within the GHG authorization):

(i) to inform the competent environmental protection agency on any planned or effective changes to the capacity, activity level and operation of an installation, by 31 December of every year, from 2013 to 2020;

(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 approved by the environmental protection agency;

(iii) 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 tonnes) of greenhouse gas emissions emitted by the installation during the previous year, as ascertained in the monitoring report.

Failure to comply with the obligations provided for by law by the operators of installations represents a felony and is sanctioned by the law with fines (ascertained by the personnel of the National Environmental Guard). Aside from 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 for not more than 60 business days. If the causes of the suspension are not remedied in the abovementioned period of suspension, the environmental protection authority may decide upon the cancellation of the GHG emissions authorization and the cessation of activities of the operator.