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Romania

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Legislation

1 Main environmental regulations

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

Romania has made extensive progress in the field of environmental protection law before and further to the EU accession date (1 January 2007). Apart from the general regulations and principles on environmental protection, the following areas of environmental law are covered by the applicable legal provisions: air, water and soil quality, pollution control and risk management, ecological labelling, management and disposal of waste and dangerous materials, noise, biodiversity, bio-security and preservation, atmospheric pollution and climate change.

Romanian legal environmental aspects are regulated by the following main legal acts:

- Government Emergency Ordinance No. 195/2005 on environmental protection, as amended up to date (GEO 195/2005);
- Government Emergency Ordinance No. 152/2005 on integrated pollution prevention and control, as amended up to date (GEO 152/2005);
- Government Emergency Ordinance No. 68/2007 on the environmental responsibility related to the prevention and repairing of environmental damage (GEO 68/2007);
- Government Emergency Ordinance No. 196/2005 on the Environmental Fund (GEO 196/2005);
- Government Emergency Ordinance No. 78/2000 on waste regime (GEO 78/2000);
- Government Resolution No. 878/2005 concerning public access to information on the environment (GR 878/2005);
- Government Resolution No. 445/2009 on the assessment of the environmental impact for certain public or private projects (GR 445/2009);
- Government Resolution No. 1076/2004 on the procedure to carry out environmental assessments for plans and programmes (GR 1076/2004);
- Government Resolution No. 780/2006 on establishment of trading scheme for greenhouse gas emission certificates (GR 780/2006).

Generally, Romania has implemented the EU Directives setting out the general framework on environment and environmental liability.

2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

GEO 152/2005, implementing Directive 96/61/EC on the integrated pollution prevention and control, sets out the necessary measures for preventing or, if not possible, reducing air, water and soil emissions that result from certain types of activities having a significant impact on the environment, including measures concerning waste manage-

ment for achieving a high level of environmental protection.

In order to carry out certain activities that have an environmental impact (eg, energy, production and processing of metals, mineral, chemical and waste management), an integrated environmental authorisation is required. Such an integrated environmental authorisation grants the right to operate an installation, totally or partially, under certain conditions so as to guarantee the protection of the environment.

The integrated environmental authorisation sets out measures, requirements and conditions to be observed for carrying out activities with environmental impact, namely emission limits for pollutants, measures for waste management generated by the pollution source, monitoring requirements and other measures to prevent the environmental risks and pollution.

No substantial change in the operation of an installation should be performed without prior notification to the competent environmental authority. In such case, the environmental authority will review the conditions and terms of the integrated environmental authorisation, decide whether additional adjustments are required and issue amended requirements or conditions for operating the installation under the new circumstances.

Nevertheless, in case of substantial change in the operating of an installation, the operator should carry out an environmental impact assessment in order to obtain the appropriate approvals for such change.

Under the EU Accession Treaty, annex VII establishing certain transitional measures for Romania, the requirements for issuing environmental authorisations shall not be applicable in Romania for certain existing installations until the final terms specified in the EU Accession Treaty, subject to observing certain mandatory emission limits, parameters or technical measures provided therein.

3 Soil pollution

What are the main characteristics of the rules applicable to soil pollution?

Pursuant to Romanian regulation land-holders, under any title, and individuals and entities carrying out activities on a certain piece of land without having a legal title, have the following obligations: to prevent damage to the quality of geological environment; to take all measures necessary for cleaning up the lands that are not subject to production or operation (especially those located along the road, railway and shipping communication ways); and to observe any obligations provided by the applicable regulations.

Pursuant to the 'polluter pays' principle, the main obligations of individuals and legal entities are that they will bear the costs for any environmental damages and will also be responsible for remedying any associated damages and for re-establishing conditions to their original state before the occurrence.

Due to the risk that human activities present to the environment, Romanian regulation establishes the principle of objective liability

for pollution and environmental damages, regardless of polluter's fault; polluters shall have joint responsibility, and liability for damages shall be treated pursuant to the 'polluter pays' principle.

4 Regulation of waste

What types of waste are regulated and how?

According to GEO 78/2000, with all further amendments and modifications to the waste regime, 'waste' is defined as any of the following substances or objects:

- production or consumption residues;
- off-specification products;
- expired products;
- materials resulting from an accident, or contaminated due to such accident;
- material contaminated or soiled as a result of planned actions;
- non-reusable parts;
- substance that no longer performs satisfactorily;
- industrial residues;
- residues resulting from anti-pollution measures;
- machining or 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; or
- contaminated materials resulting from decontamination of soil.

GEO 78/2000 is not applicable to the following types of waste: radioactive waste, waste resulting from extractions, treatment and storage of mineral resources, waste resulting from exploitation quarries, animal by-products and other agricultural non-dangerous substances, used water and expired explosives and gaseous effluents emitted into the atmosphere and carbon dioxide captured and transported for the purposes of geological storage and geologically stored in accordance with Directive 2009/31/EC on the geological storage of carbon dioxide or excluded from the scope of that Directive pursuant to its article 2(2). Directive 2009/31/EC has been implemented in Romania by Law No. 64/2011 on the geological storage of carbon dioxide (Law 64/2011), which entered into force on 30 June 2011.

According to Law 64/2011, the storage of carbon dioxide has to be performed under environmental safety conditions in order to contribute fighting climate changes. The storage of carbon dioxide takes place by injecting, together with storing, carbon dioxide flows in underground geological formations. The areas in the Romanian territory where storage sites may be selected are determined by the National Agency for Mineral Resources (ANRM), which also assesses the available storage capacities, including by allowing exploration. The storage of carbon dioxide is subject to a storage permit issued by ANRM. Only one operator can obtain a storage permit for each storage site. Subject to meeting several conditions provided by the law, priority in obtaining a storage permit is given to the holder of an exploration permit. In order to ensure that all obligations arising under the storage permit, including closure and post-closure requirements, will be fulfilled, the potential operator has to present a financial security as part of the application for a storage permit; this financial security has to be valid and effective before commencement of injection. When a storage site is closed, all legal obligations in relation with the storage site (eg, monitoring of the injection facilities, storage complex and surrounding environment) are transferred to ANRM provided that several conditions provided by the law are met.

Pursuant to GEO 78/2000, natural and legal persons must obtain an environmental permit or integrated environmental permit to perform activities involving waste collection, landfill and waste management, depending on the type of waste.

The main types of waste, depending on the nature of their components, are:

- domestic waste;
- waste similar to domestic waste;
- industrial waste;
- industrial recyclable waste; and
- dangerous waste (medical, pharmaceutical, chemical waste).

Waste transportation operators must comply with the following obligations:

- obtaining an environmental permit from the environmental authority;
- obtaining a transportation licence in cases of dangerous waste, applicable to local and international waste transportation;
- not abandoning waste on the road; and
- ensuring proper disposal of waste by authorised means, etc.

5 Regulation of air emissions

What are the main features of the rules governing air emissions?

The limits of air emissions and concentration in the air are provided through the integrated environmental authorisation in the case of operating activities with significant environmental impact or the commencement of new activities.

The Romanian regulations establish the limit values for a number of specific air emission pollutants such as nitrogen dioxide, sulphur dioxide and oxides of nitrogen, and the timeline for compliance of the limits of emissions of organic volatile chemical compounds in the air.

On 1 July 2011, Law No. 104/2011 on ambient air quality (Law 104/2011) entered into force. Law 104/2011 transposes Directive 2008/50/EC on ambient air quality and cleaner air for Europe and Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air. It provides measures for: defining and determining the targets for ambient air quality intended to avoid and prevent the occurrence of damaging events and to minimise their effects on human health and the environment as a whole; assessing ambient air quality in the Romanian territory based on common methods and criteria, set forth at the European level; obtaining information referring to ambient air quality in order to support fighting air pollution and long-term monitoring of the trends and improvements resulted from measures taken at national and European level; maintaining ambient air quality where it is appropriate and/or improving it in the other cases; promoting a closer cooperation with the other EU member states in order to reduce air pollution; fulfilment of the obligations under international treaties concluded by Romania; and ensuring that information on ambient air quality are available to the public.

Law 104/2011 imposes the following obligations upon the business owners (ie, any natural or legal person who operates, controls or is delegated decisive economic power on an activity with potential impact on ambient air quality):

- to immediately report the occurrence of damages, accidents, incidents, accidental starts/stops, etc, to the public territorial authority for environment protection;
- to participate in the drafting of the air quality plans and short-term action plans;
- to apply the measures of reducing the air pollutants emissions contained in air quality plans;
- when the public territorial authority for environment protection applies a short-term action plan, to take immediate and effective measures for reduction of air pollutants in accordance with the plan so that their concentration in the ambient air is reduced to reach the limit value, including by temporary cessation of the activity, as the case may be;
- to monitor the emissions of pollutants in ambient air, using methods and equipment established under the Law 104/2011 and to forward the results to the public territorial authority for environment protection;

- to communicate the public territorial authority for environment protection all information required to accomplish the emissions inventories;
- to ensure the sampling and control points of air pollutant emissions in accordance with the regulatory acts; and
- to inform the public territorial authorities for environment protection when the emissions limit values imposed within the regulatory acts are exceeded.

Generally, the failure to comply with these obligations represents an administrative offence and it is sanctioned by a fine. However, the failure to put off, in case of imminent danger, the operation of the plants which represent a source of danger with impact on air quality or the failure to notify the competent authorities with regard the danger, as well as the failure by business owners who own important fix sources of emissions to draft the plans for emergency cases providing the measures applicable within the site and the failure to request the approval from the competent authorities for the measures set forth to apply off-site are sanctioned as criminal offences.

As a result of ratifying the Kyoto Protocol and the EU Accession Treaty, Romania has implemented regulations that allow the competent environmental authorities to issue greenhouse gas (GHG) emission authorisations for a number of activities carried out through installations that generate GHG.

6 Climate change

Are there any specific provisions relating to climate change?

Romania has ratified the Kyoto Protocol by means of Law No. 3/2001. Starting on 1 January 2008, by means of the national allocation plan for the period 2008 to 2012, it provides the total number of GHG emission certificates and their distribution. The national allocation plan, providing the total quantity of allowances and the allocation mechanism, as approved by GR 60/2008, has entered into force. The certificates-trading scheme provided by GR 780/2006 sets out that GHG emission certificates and their distribution depend on the average of GHG emission per product for each activity, and the reduction achieved in each activity by using certified emissions reductions (CERs) and emission reduction units (ERUs). Operators can choose to meet their allocation by reducing emissions, reducing emissions to below their allocation and selling the excess allowance, producing emissions above their allocation and buying allowances from the other participants.

The emission trading scheme will apply to emissions from following activities:

Energy activities

- Combustion installations with a rated thermal input exceeding 20MW (except hazardous or municipal waste installations);
- mineral oil refineries; and
- coke ovens.

Production and processing of ferrous metals

- Metal ore (including sulphide ore) roasting or sintering installations; and
- installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour.

Mineral industry

- Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day; lime in rotary kilns with a production capacity exceeding 50 tonnes per day; or in other non-rotary furnaces with a production capacity exceeding 50 tonnes per day;
- installations for the manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day; and

- installations for the manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day, or with a kiln capacity exceeding 4m³ and with a setting density per kiln exceeding 300 kg/m³ (or both).

Other activities

- Industrial plants for the production of:
- pulp from timber or other fibrous materials; and
- paper and board with a production capacity exceeding 20 tonnes per day.

Directive 2008/101/EC amending Directive 2003/87/EC, so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community, has been implemented in 2010.

Starting on 1 January 2007, non-refundable EU funds of roughly €224 million have been allocated for renewable energy projects developed in Romania over the next five years (until 2013). The programme is designed and run under the Structural Funds Regulations 2007 to 2013.

7 Protection of fresh water and seawater

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

Pursuant to Law No. 107/1996, the right to use water is established through the authorisation for management of water, which also includes the right to discharge wastewater. Any individual may use freely, for his or her own domestic purposes, seawater and internal water outside restricted areas.

Order No. 662/2006 of the Ministry of Environment and Water Management, governing the procedure and authority to issue water management permits and authorisations, provides that the national administration and its subordinated units will be responsible for granting such permits and authorisations to operators carrying out water-related activities.

The competent authority for issuing the permits or authorisations will establish the limits for discharge and the integrated monitoring of the discharge of waste water. Extraction activities will require a water management permit or authorisation if the water flow for new operations exceeds two litres per second and the water flow for provisional installations exceeds 10 litres per second, and the resulting waste water affects the water's quality.

Under the EU Accession Treaty, annex VII, certain conditions for industrial facilities that were temporarily inapplicable to Romania came into force in 2010. For instance, the limitation values for discharge of cadmium and mercury provided in Directive 76/964/CE, and for lindane and hexachlorobenzene, will apply starting in 2010.

8 Protection of natural spaces and landscapes

What are the main features of the rules protecting natural spaces and landscapes?

Natura 2000 standards are applicable to Romanian territory since protected sites are extremely valuable for natural habitats and species of plants and animals that are rare, endangered and vulnerable. The following areas are subject to mandatory conservation irrespective of their location or owner:

- protected sites of national interest;
- protected sites of international interest;
- protected sites of community interest, including sites of community importance, special conservation areas and special fauna protected areas; and
- protected sites of county or local interest.

The protection regime of natural areas has a special structure designated for administration and safeguarding of protected areas, management plans and regulations set forth for the protection of areas or for the areas located nearby and internal zoning measures set up for an accurate implementation of protection measures.

9 Protection of flora and fauna species

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

GEO No. 57/2007 on the regime of protected natural areas, conservation of natural habitats, wild flora and fauna sets out the protection and conservation of natural habitats and wild species of community interest.

Natura 2000 sites are subject to co-financing between the local environmental authority and the European Commission in respect of conservation of species and habitats of community interest. Taking into consideration the conservation of natural protected areas, any project having a potential negative environmental impact is subject to an environmental impact assessment where such project is indirectly connected to or mandatory for specific uses of a site. Activities having a potentially negative environmental impact that are carried out in protected natural areas are subject to special regulatory provisions.

10 Noise, odours and vibrations

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

Order 536/1997 of the Ministry of Health sets out the maximum limits for noise levels for locations of companies as follows: 50 dBA during daytime (measured at a distance of three metres from the building) and 40 dBA during night-time.

Lower limits of noise levels are set out for flats and schools. Small industrial activities located in dwellings must be performed in special buildings located at a distance of 15 metres from the dwellings' windows. Further, the minimum sanitary protection distance between the industrial plants and the dwellings is 200 metres. At the regulatory level, the Ministry of Environment and Sustainable Development must draft action plans on noise management, including reduction measures, if necessary.

Performance of activities having a possible impact on the environment such as noises, odours and vibrations is permitted only on the basis of an environmental authorisation issued by the competent authority upon the request of the person who is going to perform such activity.

The competent authority cannot change 'ex officio' the issued authorisation. The person performing an authorised activity has the obligation to inform the competent authority about the interference of new elements unknown at the date of issuance of such authorisation, and about any changes in the conditions on which the authorisation issued was based. Failure to notify the authority is sanctioned with a significant fine.

11 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

GEO 68/2007 applies in cases of environmental damage caused by a specific type of professional activity or any imminent threat of damage caused by any such activity, damage to species and protected natural habitats or any imminent threat of damage caused by any professional activity, as long as the operator acted with intention or by fault, or damage caused by diffuse pollution when it results from the individual operators' activities.

Environmental damage is defined as any damage to species or protected natural habitats that has significant negative effects on preserving their favourable status; any water damage having significant adverse effects on the ecological, chemical, quantitative status

or ecological potential; and soil damage creating a significant risk to human health, which would be negatively affected as a result of direct or indirect insertion of certain substances, organisms or micro-organisms in the soil or subsoil.

The main principles guiding environmental responsibility are the following: the liability for damages shall be treated pursuant to the 'polluter pays' principle; the polluters shall have joint responsibility in the case of multiple polluters; and the polluter shall bear all costs necessary for cleaning up and environmental recovery.

Although the general principle is the 'polluter pays', the respective owner of an asset or location may also eventually be held liable in the event of previous contamination connected to such asset (in the event of new contaminations this is clear, because in such case the owner will also be the polluter). Admittedly there is no explicit and general rule on this. However, certain regulations also address this issue. From GEO 195/2005, for example, it can be deduced that if the polluter is not identified, the obligation to bear decontamination costs shall be undertaken by the respective owner of the plot (ie, it sets forth the principle of objective liability). It can therefore be argued that pollution of a plot of land or connected to a plot of land is a risk of that asset (objective liability), and in particular if the author of the pollution cannot be identified the owner will have to bear damages. Under the Civil Code, the transfer of the property right over an asset also generally entails the transfer of all risks of such asset to the purchaser (of course, the parties can agree otherwise between themselves, and there are also exceptions (eg, in the case of hidden defects)). In practice, in the case of contamination it is to be expected that the authorities will attempt to hold the owner responsible in the first place.

GEO No. 68/2007 sets forth both safeguarding and remediation measures, as the case may be. The public authority may order safeguarding measures in case of an imminent threat of damage to the environment and remediation measures in case the environmental damage has already occurred.

12 Environmental taxes

Is there any type of environmental tax?

Pursuant to GEO No. 196/2005, part of the environmental funds is represented by certain taxes and contributions payable in case of the occurrence of various regulated taxable events.

The following contributions or taxes shall become, inter alia, revenue for the environmental fund:

- a 3 per cent contribution applied to revenues resulting from the sale of iron or non-iron waste;
- taxes for air pollutant emissions;
- taxes from operators using new lands for depositing recyclable waste;
- a 2 per cent contribution from the value of substances classified by legal regulations as dangerous for the environment, except for those used to produce medicines;
- RON 2 (€0.46) per kilogramme applicable to packaging materials that are traded by the producers or importers of such packaging materials;
- 2 per cent from the sale value of wood products or materials;
- RON 2 (€0.46) per kilogramme applicable to new or used tyres and cashed by the producers or traders of such tyres;
- a 3 per cent contribution from the amount payable yearly by hunting funds managers;
- a €200 tax for each product for which EU ecological label is requested (as provided by the Government Resolution No. 661/2011 on setting certain measures to ensure enforcement at national level of the provisions of Regulation No. 66/2010) and
- the pollution tax for vehicles.

Pursuant to Emergency Government Ordinance No. 50/2008 concerning the pollution tax for vehicles, which entered into force on

1 July 2008, the vehicles pollution tax shall become payable when a car is registered for the first time in Romania or a vehicle is placed into circulation after being subject to an exemption tax regime or to a legal tax exception.

Hazardous activities and substances

13 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

The production, use, temporary or indefinite storage, internal transport, handling, elimination, as well as the import and export of hazardous substances, must comply with the specific regime of regulation and management.

International transportation and transit of hazardous substances shall be made according to the agreements and conventions regarding international transport of dangerous materials ratified by Romania. Moreover, import and export of hazardous substances restricted or forbidden for use by some states or by Romania shall be made with observance of the international agreements and conventions to which Romania is a party.

The central public authority and local authorities for environmental protection and other public authorities empowered by law, as appropriate, monitor the compliance with the regulations regarding the hazardous substances.

Natural and legal persons that manage hazardous substances have the following obligations:

- to carry out activities such as production, use, storage, transport, handling, import or export only according to the rules set out in the specific regulations;
- to keep track of the quantity, characteristics and insurance of the hazardous substances, including receptacles and packaging of the hazardous substances that are part of their activities, and to provide the information and data required by the competent authorities;
- to remove, in a manner safe for the health of the population and environment, hazardous substances that became waste and that are governed by specific legislation; and
- to identify and prevent the risks arising from or in connection with hazardous substances.

Most of the EU legislation regarding hazardous substances has been transposed into domestic legislation. Some of the main directives transposed into Romanian legislation are:

- Directive 87/217/CEE regarding the prevention, reduction and control of pollution with asbestos;
- Directive 76/769/CEE regarding the trade and use restraints of hazardous substances and chemical compounds; and
- Directive 96/59/CEE regarding the disposal of polychlorinated biphenyls and polychlorinated terphenyls.

There are also specific EU norms that apply directly (eg, Council Decision 80/372/CEE regarding chlorofluorocarbons in the environment or Regulation CE 2037/2000 regarding substances that exhaust the ozone stratum).

14 Regulation of hazardous products and substances

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

In order to comply with EU legislation provisions, the Emergency Ordinance No. 200/2000 was repealed in November 2008 and replaced with the Government Resolution No. 1408/2008 on classification, labelling and packaging of hazardous chemical substances.

Hazardous substances or mixtures are those fulfilling the criteria relating to physical hazards, health hazards or environmental hazards laid down in Regulation No. 1272/2008 of the European

Parliament and of the Council on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC and amending Regulation No. 1907/2006 (Regulation 1272/2008), and are divided into the following categories:

- explosives;
- flammable gases;
- flammable aerosols;
- oxidizing gases;
- gases under pressure;
- flammable liquids;
- flammable solids;
- self-reactive substances or mixtures;
- pyrophoric liquids;
- pyrophoric solids;
- self-heating substances or mixtures;
- substances or mixtures that emit flammable gases when they come in contact with water;
- oxidising liquids;
- oxidising solids;
- oxidising peroxides;
- substances or mixtures corrosive to metals;
- acute toxicity;
- skin corrosion or irritation;
- serious eye damage or eye irritation;
- respiratory or skin sensitisation;
- germ cell mutagenicity;
- carcinogenicity;
- reproductive toxicity;
- specific target organ toxicity – single exposure;
- specific target organ toxicity – repeated exposure;
- aspiration hazard;
- hazardous to the aquatic environment; and
- hazardous to the ozone layer.

Suppliers must ensure that substances or mixtures are labelled and packaged in accordance with the special rules stipulated in Regulation 1278/2008, before placing them on the market.

Hazardous substances and products that are subject to cross-border transportation must be packed, labelled and transported with observance of the provisions set out in the applicable international agreements and conventions.

Industrial accidents

15 Industrial accidents

What are the regulatory requirements regarding the prevention of industrial accidents?

Government Resolution No. 804/2007 on the control of major accident hazards involving hazardous substances, implementing the Seveso II Directive No. 96/82/EC with respect to the prevention of industrial accidents, sets out the procedures and actions to be followed or taken by an operator for preventing an industrial accident:

- filing a notification to the competent environmental authority including enough information for the purposes of identifying the hazardous substances involved, the specific landfill and any other elements that can cause industrial accidents;
- preparing a prevention policy for major accidents to ensure that such measures are properly implemented;
- preparing a security report indicating:
 - the implementation of the major accident prevention policy and the related management security plan;
 - the potential risks of major accidents and the satisfactory evidence that all necessary measures for prevention of such accidents and for limiting their consequences have been adopted;

- the safety measures and the manner of exploitation of facilities and storage places;
- evidence of how the internal plan has been implemented; and
- preparing an internal and external emergency plan including a 'waterfall' model for limiting the 'domino' effect.

The local public authorities take measures to prevent accidents and limit their consequences. In this respect, they review the position of new facilities, changes to existing facilities and new developments to the transportation network, buildings and public utility and residential areas located in the surrounding neighbourhood, along with the potential increased risk in terms of major accidents and resulting consequences.

Environmental aspects in transactions

16 Environmental aspects in M&A transactions

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

In the case of a transaction linked to installations or plants that might have negative impacts on the environment (such as industrial plants and hydropower plants), it is highly recommended to carry out an environmental due diligence. Such due diligence consists of a substantial licence check to prevent the risk of a breach of environmental provisions. Furthermore, whether the purchase of the company is linked to the acquisition of a contaminated site has to be assessed; moreover, emission limit values have to be considered.

When acquiring shares or assets in a company with activities having potential impact on the environment, the owner of the activity has to inform the environmental authorities of such changes so that they may impose environmental obligations upon the involved parties.

The obligations are imposed on the basis of either an environmental balance sheet (when the owner of the activity does not hold an environmental authorisation) or environmental evaluations performed during the environmental authorisation's issuance procedure (when the owner of the activity already holds an environmental authorisation). Such documents offer information on the causes and consequences, or the negative effects, of the activities (or both) with a view to assessing any environmental impact. Within 60 days of the date of signing the documents attesting to the acquisition of shares or of assets, the parties involved must submit written information to the relevant authority on how the environmental obligations have been assumed by the parties involved.

17 Environmental aspects in other transactions

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

As a general note, Romanian environmental legislation does not differentiate environmental obligations by type of transaction, nor are there any such obligations regulated in the specific legislation.

Irrespective of the nature of a transaction, whenever a transaction entails a change (ie, change of owner of an activity with environmental impact, sale of a stake majority, sale of assets, merger, division, concession, winding-up followed by liquidation, liquidation, termination of activity, corporate restructuring, bankruptcy), the owner of the activity has to inform the environmental authorities of such changes so that they may impose environmental obligations upon the involved parties (see question 16).

As per GR 445/2009, obtaining development approval is a prerequisite for transactions involving projects with potential impact on the environment. A development approval is the decision of the environmental authority that appears in several documents and entitles the project owner to develop the respective project (an environmental

agreement is one of the permits that have to be obtained during the process of a development approval). Depending on whether the project has a significant impact on environment, the performance of an environmental impact assessment may be a prerequisite of a development approval (see questions 18 and 19).

Furthermore, if a transaction involves existing activities or the beginning of new activities having a potential impact on the environment, an environmental authorisation must be obtained. If the existing activities do not comply with environmental regulations, an environmental balance sheet is a prerequisite of an environmental authorisation (see question 16).

Environmental assessment

18 Activities subject to environmental assessment

Which types of activities are subject to environmental assessment?

An environmental impact assessment is a prerequisite to obtaining development approval relating to projects having a significant impact on the environment (as listed in appendix 1 to GR No. 445/2009) or may be a prerequisite to obtaining development approval relating to projects that might have significant impact on the environment (as listed in appendix 2 to GR No. 445/2009). In the latter case, the final decision on whether to perform an environmental impact assessment or not is made after a prior analysis of the respective project.

An environmental assessment does not act as a licence, it only represents a prerequisite to obtaining environmental agreement and development approval (the environmental agreement represents an annex attached to the development approval) for projects having, or which might have, a significant impact on the environment. These projects may be of a public or private nature, industrial or non-industrial (for example, fishing or agriculture).

19 Environmental assessment process

What are the main steps of the environmental assessment process?

The environmental impact assessment process is part of the procedure for the issuance of the development approval. Such process is regulated by GR 445/2009 and its methodology approved by Order No. 135/2010 of the President of the Ministry for Environment Protection.

The environmental impact assessment process is preceded by a preliminary stage at which the county environmental authority establishes the geographical setting of the project in relation to the protected natural areas of community interest.

The preliminary stage commences with the project owner's application to obtain an environment agreement for developing the project. The county environmental authority evaluates whether the project needs to be subject to an environmental impact assessment. Should this be the case (see question 18), the county environmental authority informs the project owner of its decision and requests that the project owner draft a memorandum presenting the project activities that have to be assessed. Such memorandum is further submitted by the county environmental authority to the territorial competent environmental authority to carry out the assessment.

After the preliminary stage is completed, the environmental assessment procedure is carried out in three main phases.

In the first phase, the territorial competent environmental authority analyses the memorandum, establishes a technical analysis committee, assesses whether the project has a cross-border dimension and informs interested third parties about the project owner's application. This phase is finalised with the territorial competent environmental authority's decision either to perform or not to perform an environmental impact assessment. The owner is informed thereof, and interested third parties are also informed through mass communication channels. Third parties may express their points of view and amendment suggestions with regard to the decision of

the authority, which may lead to a re-evaluation of the decision by the issuing authority. In the second phase, the territorial competent environmental authority identifies the points to be assessed under the environmental assessment and details them in a guide aimed at helping the project owner to draft an environmental impact assessment report. The report has to be drafted by an authorised expert. The points to be addressed in the environmental assessment report represent the potential effects on the environment generated by the project and the solutions thereto. The report has to consider suggestions of the interested parties.

In the third phase, the report is released for public debate and the quality of the report is analysed. It is the duty of the project owner to organise the public debate and to bear its costs. After such debate, the project owner has to prepare answers and solutions to the issues raised by the third parties participating in the debate (which will be annexed to the report) and also has to perform any amendments to the report as requested by the technical analysis committee.

After analysing any amendments (if any have been made), the territorial competent environmental authority will either issue the environmental agreement or reject the application. The project owner then informs any third parties of the environment authority's decision by mass communication channels.

Under Romanian legislation, members of the interested public (ie, citizens, non-governmental organisations or any structure or entity that may be affected by the implementation of a project) have the right to be actively involved in the environmental impact assessment process from the submission of the request for issuance of the environmental agreement to the relevant authority's final decision.

On average, the environmental impact assessment process takes between three and six months; however, it may be even longer depending on the extent of the national or cross-border public involvement.

Please note that the methodology to GR No. 445/2009 also details the environmental impact assessment process for projects potentially impacting protected natural areas of community interest.

Regulatory authorities

20 Regulatory authorities

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

The coordination, regulation and implementation of environmental policies are ensured by the following authorities:

- the Ministry of Environment, which is the central authority for the coordination, regulation and implementation of environmental policies;
- the National Environmental Protection Agency, a specialised authority of the public central administration, under the Ministry of Environment, has competence for implementing environmental policies and legislation in the following areas: strategic environmental planning; environmental factors monitoring; permitting of activities that have an impact on the environment; implementation of environmental legislation and policies at national, regional and local level; and reporting priority data flows for air quality, climate change, protected areas, contaminated soil and water to the European Environment Agency; and
- the Danube Delta Biosphere Reserve Authority, an organisation created to administrate natural heritage of national interest from the Danube Delta Biosphere Reserve and to protect and conserve the physical and geographical units of the Danube Delta Biosphere Reserve territory.

The authorities responsible for the enforcement of environmental regulations by control and inspection are:

- the National Environmental Guard, which:
 - controls activities with environmental impact and imposes

sanctions according to environmental legislation;

- controls the observance of environmental regulations, including those referring to pollution, biodiversity and natural protected areas or to hazardous substances and materials;
- ascertains administrative offences and applies sanctions; and
- notifies the competent authorities in the event of perpetration of criminal offences;
- the local public authorities; and
- the National Commission for Nuclear Activities.

21 Investigation

What are the typical steps in an investigation?

The kind of investigation carried out by the competent authorities depends on the character of the breached environmental provisions. In the case of administrative offences set out in the environmental regulations, the investigation is made by the commissioners or representatives of the National Environmental Guard or the Danube Delta Biosphere Reserve Authority, local public authorities or the National Commission for Nuclear Activities, the representatives of the Ministry of Defence or the representatives of the Ministry of Internal Affairs. Records covering the determination of the offences are maintained and may be contested by the offender within 15 days of receipt of such a determination. The decision of the authority may also be appealed in court. If a breach of environmental law results in a criminal offence, the above-mentioned authorities will submit the investigation to the competent authorities for subsequent criminal prosecution. Criminal offences shall be investigated ex officio by the criminal authorities according to their legal competence.

If commissioners from the county level of the National Environmental Guard ascertain threats to the environment, preventive and compensatory measures can be ordered and taken by the county agency for environmental protection.

The acts, decisions or omissions of the authorities may be contested by the offender within 30 days pursuant to the general legal provisions.

22 Powers of regulatory authorities

What powers of investigation do the regulatory authorities have?

As mentioned in question 21, the regulatory authorities have the power to investigate and impose sanctions in case of administrative offences related to the environmental regulations. If the regulatory authorities discover criminal offences, they are only entitled to inform the competent criminal authorities (for example, the prosecutor), which will subsequently investigate the criminal offences according to criminal procedure.

23 Administrative decisions

What is the procedure for making administrative decisions?

Romania has ratified the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus dated 1998. Therefore, the public must be informed by the competent authority through an individual or public announcement about the start of a decision-making procedure. Public procedures enable the public to submit any relevant comments, information, analyses and opinions for the envisaged activity. During the decision-making process, the Environmental Protection Authority must consider the results of the public consultation. After the decision has been reached, the decision's text and the reasons and considerations on the basis of which the decision has been adopted shall be made available to the public.

24 Sanctions and remedies

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

The sanctions applied by the competent authority depend on the seriousness of the breach and the damage that has occurred, and they may consist of fines, suspension of the environmental authorisations or approvals after a 30-day notification period, the annulment of the authorisations or the closure of the activities in specific cases.

In addition to sanctions imposed, any natural or legal person that has caused damages to the environment is obliged to cover all the costs related to the environmental recovery and the restoration of the environment to the conditions existing before the damage occurred. In case the damage occurred accidentally without any breach of the environmental regulations, the natural or legal person responsible for such damage is only liable for the environmental recovery.

25 Appeal of regulators' decisions

To what extent may decisions of the regulators be appealed, and to whom?

Any person who has a legitimate interest, or who might be affected by an administrative decision issued by the environmental regulations, is entitled to challenge it before the competent administrative court. Subject to a preliminary administrative procedure, during which the authority issuing the decision or any superior authority above it may revoke the contested decision, the court is competent to review whether the regulator's decision or refusal to act breaches or in any way infringes upon the environmental law. The administrative court may annul the decision or order the environmental authority to issue a certain decision.

Judicial proceedings**26 Judicial proceedings**

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

Environmental law court proceedings may be civil, criminal and administrative. The nature of the court proceeding depends on the object of the proceeding. In criminal law proceedings, the courts verify whether a legal or natural person may be held liable for committing an environmental criminal offence. As is usual in civil law proceedings, the court is called to determine the existence and the amount of any damages created by the breach of the environmental legal provisions. In administrative proceedings, the courts verify the activity of the environmental authorities and the legality of the sanctions applied by the environmental control authorities.

27 Powers of courts

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

As mentioned in question 26, environmental court proceedings, and consequently the powers of the courts in relation to infringements of environmental law, depend on the object of the proceeding.

In criminal law proceedings related to infringements of environmental law, the court is competent to determine if the accused (legal or natural person) committed a certain criminal offence, and if the answer is positive to determine the punishment to be applied. Furthermore, the court is competent to oblige the accused to cover all the environmental damages created by the criminal offence. The proceeding will be carried out in line with the criminal law procedural provisions. For the powers of the courts in a civil law proceeding related to infringements of environmental law, please see question 28.

In administrative proceedings related to infringements of environmental law, the administrative courts are competent to annul any acts, permits, approvals or authorisations issued in violation of the law, to order the environmental authorities to issue the required acts

when the respective legal requirements are met or to verify the legality of the sanctions applied by the environmental control authorities for any environmental administrative offences. The administrative courts are competent to grant damages to entitled persons in relation to any of the breaches of environmental law mentioned above.

28 Civil claims

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

The courts are competent to decide on civil claims determined by breaches and infringements of environmental law. Where the object of the judicial action is limited to civil claims, the action will be submitted to the civil courts. If civil damages are the effect of a criminal offence or of an illegal action of the environmental authorities, both the criminal and administrative courts will be competent to decide on such claims as an accessory to the principal action.

In order to be allowed, civil claims entail the existence of some kind of damage incurred by the claimant and its extent. The main object of civil claims is, as a rule, to compel the polluter to remedy the negative effects associated with any violation of environmental law. If such a result cannot be achieved or may only be achieved partially, and the existence of further damages may subsequently be proved, the court will only grant damages to the claimant in the amount based on the evidence before the court. While only a court may grant damages, both the courts and the environmental control authorities may order the polluter to remedy the effects of any breaches or infringements of environmental law.

29 Defences and indemnities

What defences or indemnities are available?

Under Romanian law, the 'polluter pays' principle sets out the obligation of any polluter to remedy the effects or cover any damages of the polluting acts. The liability of the polluter for damages caused to the environment is 'objective'. This means that the polluter's liability for damages to the environment does not depend on proving his or her fault. As long as the polluting act continues, the polluter may be held liable. However, this principle does not concern the criminal and administrative liability of the polluter (the polluter may be held liable for criminal or administrative offences related to the environment only if the polluter's fault is proved).

Joint liability applies in the event that pollution was caused by several polluters. The law does not stipulate how liability will be apportioned between the polluters, except that the general civil liability principle (each polluter is liable according to its fault) does not apply because of the objective character of the environmental liability. If the polluter is part of a consortium or a multinational company, the polluter is jointly liable with the respective consortium or multinational company.

Depending on the characteristics of the proceedings (criminal, administrative or civil), the general statutes of limitation for each field will be applicable. Consequently, civil claims may be submitted to the court within three years as of the moment the environmental damages occurred. The ability of the environmental authorities to apply sanctions for administrative offences is also barred by a six-month statute of limitation, which starts running at the moment the administrative offence was committed.

30 Directors' or officers' defences

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

There are no specific defences for directors or officers as concerns their liability in relation to breaches and infringements of environmental law. In order to be held liable, the directors' and officers' fault will have to be proved.

31 Appeal process

What is the appeal process from trials?

Depending on the character of the proceedings, the following appeals exist:

- under criminal proceedings, both the accused and the prosecutor may exercise the appeal and the second appeal against the judgment of the court of first instance;
- under civil proceedings, the parties have only the appeal, or both the appeal and the second appeal, against the judgment of the court of first instance, depending on the value of the requested damages; and
- under administrative proceedings, parties may exercise only the appeal against the judgment of the court of first instance.

International treaties and institutions**32 International treaties**

Is your country a contracting state to any international environmental treaties, or similar agreements?

Romania has ratified most international environmental treaties and consequently has become a contracting state to:

- the Espoo Convention on the Estimation of the Environmental Impact in a Cross-border Context (1991);
- the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998);
- the Framework Convention of the United Nations on the Climatic Change dated 1992 and the Kyoto Protocol for the amendment of the Framework Convention of the United Nations on the Climatic Change, the Geneva Convention on Long-range Cross-border Air Pollution (1979);
- the Sofia Convention for the Protection and Sustainable Use of the Danube River (1994);
- the Rio de Janeiro Convention on Biological Diversity (1992);
- the Bucharest Convention on the Protection of the Black Sea Against Pollution (1992);
- the Protocol to the International Convention on Civil Liability for Oil Pollution Damage;
- the Basel Convention on the Cross-Border Movement of Hazardous Waste and their Disposal;
- the UNESCO Convention Concerning the Protection of World Cultural and Natural Patrimony (1972);
- the Vienna Convention for the Protection of the Ozone Layer (1985);
- the Nairobi Convention on Biological Diversity (1992);
- the Helsinki Convention on the Trans-boundary Effects of Industrial Accidents (1992);

Update and trends

On 29 September 2011, Romania received a reasoned opinion from the European Commission, as the second stage of the infringement procedure initiated against Romania due to the failure to transpose the EU Waste Framework Directive 2008/98/EC (the Directive) into the national legislation. The Directive sets a legal framework for waste treatment within the EU and aims to protect the environment and human health through the prevention of the harmful effects of waste generation and waste management.

By 12 December 2010, Romania was supposed to bring into force regulations necessary to comply with the Directive. As Romania did not notify the Commission of all implementing measures in time, the latter sent a letter of formal notice on February 2011. Romania informed the Commission that it would comply by April 2011.

The draft law on waste regime (transposing the Directive) was only approved by the government on 6 April 2011 and it was submitted to the Parliament on 16 May 2011. The Senate approved the bill on 14 June 2011, but it also has to be voted on by the Deputies Chamber in order to be enacted. According to a press release, on 18 October 2011, the Deputies Chamber voted on this draft law, but the law has not yet been published in the Official Gazette of Romania. If the Commission decides that Romania has failed to comply with its duties, it may refer the case to the EU Court of Justice and, based on the amendments brought to the EU legislation by the Treaty of Lisbon, may ask for immediate financial penalties.

- the Florence European Landscape Convention (2000); and
- the Kiev Framework Convention on the Protection and Sustainable Development of the Carpathians (2003).

In addition, Romania has signed many bilateral conventions in the field of the environment (eg, the agreement with Germany regarding the cooperation on environment protection from 2000).

33 International treaties and regulatory policy

To what extent is regulatory policy affected by these treaties?

The international environmental treaties ratified by the Romanian parliament have become part of the domestic legislation. In case of conflict between domestic legislation and the ratified treaties, the provisions of the treaties prevail. In order to ensure the implementation of the international environmental treaties to which Romania is a contracting state, the technical support, efficiency and administrative capacity of the competent authorities must be improved.

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