

The International Comparative Legal Guide to:

Environment Law 2009

A practical insight to cross-border Environment Law



Published by Global Legal Group, in association with Freshfields Bruckhaus Deringer LLP, with contributions from:

Advokatfirman Vinge KB
 Arnold & Porter LLP
 Arntzen de Besche Advokatfirma AS
 Avbreh, Zajc & Partners
 Baker & McKenzie
 Barrera, Siqueiros y Torres Landa
 Bonn Schmitt Steichen
 Borislav Boyanov & Co.
 Bowman Gilfillan
 Čechová & Partners
 Central Law, A Central American Law Firm
 ChanceryGreen
 Clayton Utz
 De Brauw Blackstone Westbroek N.V.
 Fraser Milner Casgrain LLP
 Gencs Valters Law Firm

Gessel
 Gide Loyrette Nouel A.A.R.P.I.
 Goltsblat BLP
 Gómez-Pinzón Zuleta
 Guevara & Gutiérrez S.C.
 Hammarström Puhakka Partners, Attorneys Ltd.
 Harris Kyriakides LLC
 Horten
 Kocián Šolc Balaščík
 Kyriakides Georgopoulos & Daniolos Issaias
 L K Shields
 Law Firm SMA
 Tark & Co.
 McGrigors LLP
 Mifsud & Mifsud Advocates
 M.V. Kini & Co.

Nishimura & Asahi
 Oppenheim
 Pachiu & Associates
 Rattagan Macchiavello Arocena & Peña Robirosa
 Salans
 Schellenberg Wittmer
 Slaughter and May
 Squire, Sanders & Dempsey L.L.P.
 Tonucci & Partners
 University College London
 Uría Menéndez
 Urrutia & Cía. Abogados
 Veirano Advogados
 Yulchon
 Ziv Lev Law Offices
 Žurić i Partneri

Romania

Laurențiu Pachiu



Alina Deiac



Pachiu & Associates

1 Environmental Policy and its Enforcement

1.1 What is the basis of environmental policy in Romania and which agencies/bodies administer and enforce environmental law?

Under the Government Emergency Ordinance No. 195/2005 on environmental protection published in Official Gazette No. 1196/2005, as amended and supplemented (“**GEO No. 195/2005**”), environmental policy in Romania is based on certain **general principles**, such as:

- precaution in taking decisions regarding the environment;
- the principle of preventive action;
- withholding the polluters to their sources;
- the principle “*polluter pays*”;
- long-term use of natural resources;
- public information and involvement in decision-making, and access to justice regarding the environment; and
- development of international cooperation for environmental protection.

These general principles are taken into consideration by the competent agencies/bodies when enforcing and managing environmental law in Romania. The most important environmental bodies are as follows:

- **The Ministry of Environment (“ME”)**, which is the central authority for environmental protection, subordinated to the Romanian Government.
- **The National Agency for Environmental Protection**, a public institution subordinated to ME, responsible for environmental protection and coordinating the territorial authorities for environmental protection, at regional and local levels, through its subsidiaries. Further, such institution is responsible for the implementation of the legislation and of the policies related to environmental protection.
- **The National Environmental Guard**, a specialised inspection and control body subordinated to ME, holding competence in preventing, determining and imposing penalties for infringement of the laws of environmental protection, having under its authority regional and county units.
- **The National Administration “Romanian Waters”**, a public institution of national interest involved in qualitative and quantitative management of waters, their protection against degradation, and their long-term utilisation.
- **The Ministry of Agriculture, Forests and Rural Development**, subordinated to the Romanian Government, holding competence in the safety and protection of soil and forests.

1.2 What approach do such agencies/bodies take to the enforcement of environmental law?

The Romanian Government has adopted national plans and strategies regarding environmental protection which contain procedures to be followed by the environmental bodies, in accordance with the Community legislation and international standards. The provisions of such plans and strategies are complex and aim to implement certain actions and projects having as a final goal the progressive improvement of the quality of environmental factors in Romania.

1.3 To what extent are public authorities required to provide environment-related information to interested persons (including members of the public)?

According to GEO No. 195/2005, the public administration has the obligation to inform the public with respect to the potential risks generated by the operation or existence of objectives which may pose a threat to the people’s health and to the environment.

The Romanian State guarantees the public the following rights with regard to environmentally-related information:

- the right to have access to information regarding the environment, with the observance of the legislation in force stipulating confidentiality requirements; and
- the right to be consulted on the decision-making process related to the development of environmental policy. By Law No. 86/2000, the Romanian State ratified the Convention regarding access to information, public participation in decision-making, and access to justice related to environmental matters, signed at Aarhus on June 25, 1998 (“**Aarhus Convention**”).

2 Environmental Permits

2.1 When is an environmental permit required, and may environmental permits be transferred from one person to another?

GEO No. 195/2005 provides for three types of environmental documents, issued by the competent authorities:

- environmental approvals;
- environmental permits; and
- environmental authorisations/integrated environmental authorisations.

Environmental Approvals

GEO No. 195/2005 provides for several types of environmental approvals:

- Environmental approval for plans and programmes is compulsory for the adoption of plans and programmes that may significantly endanger the environment and it confirms the integration of the relevant environmental aspects within the plans or programmes to be adopted.
- Environmental approval for plant protection products, respectively for authorisation of chemical fertilisers, required in the procedure for homologation of plant protection products and respectively for authorisation of chemical fertilisers.

“Nature 2000” approval, contains the conclusions of the evaluation of the outcomes of any plan or project and whereby is established the achievement of the conditions of the plan or project, as regards the impact on the protected, community interest natural habitats, included or to be included in the ecologic network “Nature 2000”.

Environmental Permits

The environmental permit establishes the conditions, or as the case may be, the measures to be taken for the protection of the environment, that need to be followed when developing a project.

A company should obtain an environmental permit in order to carry out public or private projects for new investments or for the amendment or extension of the existing activities which are likely to have a significant impact on the environment.

Environmental Authorisations/Integrated Environmental Authorisations

There are some activities established by public authorities which require environmental authorisation. Romanian environmental regulations stipulate which activities have to be authorised prior to and during their operation. The impact on the environment of a particular activity is assessed after the performance of an environmental audit.

The environmental authority may establish a conformity programme with the operator, based on the environmental audit, in order to observe the legal provisions regarding environmental protection. The conformity programmes form an integral part of the environmental authorisations. The environmental approval, permit and authorisation may be amended if new elements appear which were unknown at the issuance date of such permits and which affect the environment.

Environmental permits may not be transferred from one entity to another. New environmental permits shall be issued whenever the beneficiary is changed.

2.2 What rights are there to appeal against the decision of an environmental regulator not to grant an environmental permit or in respect of the conditions contained in an environmental permit?

Under Law No. 554/2004 on administrative dispute, published in Official Gazette No. 1154/2004, as subsequently amended, the operator has the right to submit to court a claim regarding the issuance, the review, the annulment or the suspension of any environmental permit. Before submitting such claim with the Court, the operator should compulsorily follow a prior complaint procedure.

2.3 Is it necessary to conduct environmental audits or environmental impact assessments for particularly polluting industries or other installations/projects?

Government Emergency Ordinance No. 152/2005 on the prevention and integrated control of pollution, published in Official Gazette No. 1078/2005, as subsequently amended (“**GEO No. 152/2005**”), establishes the necessary measures for the prevention and control of polluting emissions resulting from industrial exploitation such as

the power industry, the metal industry, the mineral extraction industry, the chemical industry, etc.

Any large-scale installations or activities that could potentially cause heavy pollution require, prior to entering into exploitation, an integrated environmental authorisation. Such authorisation may require specific conditions to be met in order to protect the soil and underground waters, as well as additional measures regarding the management of the resulting waste.

The competent authority usually requires that an environmental audit or an environmental impact assessment be performed.

2.4 What enforcement powers do environmental regulators have in connection with the violation of permits?

Civil, administrative or criminal liability may arise in the case of violation of permits.

Under **civil liability**, the operator may be required to repair the damage caused to the environment and to compensate the affected third parties.

Under **administrative liability**, the following sanctions may be imposed on the operator:

- suspension of the environmental permit or authorisation (for a maximum of six (6) months, after a prior notice is sent to the operator);
- cancellation of the environmental permit or authorisation and termination of the project/activity, in case the conditions provided within the prior notice sent to the operator were not complied with;
- temporary or final termination of the operator’s activity or project;
- imposition of specific programmes on the operator, aimed at rendering the activity compliant with the requirements of the law; or
- fines of up to RON 100,000 (approx. EUR 25,000).

Failure to comply with the requirements of the law may constitute a criminal offence punishable with fine of up to RON 100,000 (approx. EUR 25,000) or imprisonment of three (3) months to twenty (20) years.

3 Waste

3.1 How is waste defined and do certain categories of waste involve additional duties or controls?

Under Government Emergency Ordinance No. 78/2000, published in Official Gazette No. 283/2000, as subsequently amended (“**GEO No. 78/2000**”), “waste” is defined as any substance or object, listed in Appendix 1B to GEO 78/2000 that its holder is disposing of, has the intention to dispose of or is required by law to dispose of it.

There are special categories of waste which are subject to additional control procedures. Such dangerous waste is provided in a detailed list, which currently contains 40 definitions, attached as Appendix 1C to GEO No. 78/2000.

GEO No. 78/2000 stipulates that different categories of waste have to be separately stored. Mixing, in any way, waste which is considered dangerous requires prior approval by the environmental authorities.

Furthermore, Government Resolution No. 1132/2008 published in Official Gazette No. 667/2008 refers to the special conditions in which the collecting and disposing of batteries and storage batteries can be performed.

Government Resolution No. 1061/2008 published in Official

Gazette No. 672/2008 regarding the transportation of dangerous and of non dangerous waste on the Romanian territory provides for the conditions to be taken into account when transporting such waste on the Romanian territory. Moreover, Order No. 443/2008, issued by the National Commission for Nuclear Activities, published in Official Gazette No. 797/2008 refers to the special conditions required for cross-border transportation of radioactive waste and of used nuclear fuel.

3.2 To what extent is a producer of waste allowed to store and/or dispose of it on the site where it was produced?

A producer of waste is allowed to store and/or to dispose of such waste on the site of its production only with authorisation issued by the competent environmental agency.

As an exception, no prior authorisation is required if:

- the waste producer eliminates the waste on the site where it was produced, without affecting human health or damaging the environment; or
- the waste producer fully recovers the waste without affecting human health or damaging the environment.

Such exceptions are applicable if the waste producer has an environmental authorisation for an activity other than that of waste disposal. Such authorisation should specify the types and quantities of waste and the legal conditions regarding its disposal which shall not endanger the environment.

3.3 Do producers of waste retain any residual liability in respect of the waste where they have transferred it to another person for disposal/treatment off-site (e.g. if the transferee/ultimate disposer goes bankrupt/disappears)?

Producers of waste do not retain any residual liability regarding the waste, after the waste has lawfully been transferred to a waste disposal/treatment facility operator. Liability regarding the destination of the transferred waste rests with the transferee.

3.4 To what extent do waste producers have obligations regarding the take-back and recovery of their waste?

Legal entities which are producers of recyclable industrial waste are compelled to gather, sort and deposit the waste, on a temporary basis, duly observing the protective rules on the environment and population health, and to ensure their return into productive circuit. It is forbidden for legal entities and individuals to dump or to dispose waste in an uncontrolled manner, as well as to carry out any unauthorised operations using such waste.

4 Liabilities

4.1 What types of liabilities can arise where there is a breach of environmental laws and/or permits, and what defences are typically available?

Government Emergency Ordinance No. 68/2007 on environmental liability with regard to the prevention and remedying of environmental damage, published in Official Gazette No. 446/2007, as approved by Law No. 19/2008 (“**GEO No. 68/2007**”) transposes in Romanian legislation the European Parliament and Council Directive 2004/35/EC and is based on the “*polluter pays*” principle in order to prevent and remedy environmental damage.

GEO No. 68/2007 is applicable to: (i) environmental damage caused

by any of the occupational activities listed in Appendix 3 to GEO No. 68/2007 and to any imminent threat of such damage occurring by reason of any of those activities; and (ii) damage to protected species and natural habitats caused by any occupational activity other than those listed in Appendix 3 to GEO No. 68/2007, and to any imminent threat of such damage occurring by reason of any of those activities, whenever the operator has been at fault or negligent.

There are three basic types of liability under Romanian law: civil; administrative; and criminal liability.

Civil Liability

According to GEO No. 195/2005, each operator is objectively liable for the damage caused to the environment, and in case of several operators; these are jointly and severally held liable for any damage caused as a result of breaching environmental laws and/or permits. Consequently, any of the operators may be compelled to compensate third parties for the entire damage.

Administrative Liability

Administrative liability usually refers to fines that might be imposed by the environmental authority. Such sanctions may be imposed on the operator, as well as on the legal representatives/employees of the operator. The decision imposing the fine may be challenged with the competent court within 15 days as of the date of its receipt.

Criminal Liability

Under the Criminal Code currently in force, both individuals and legal entities may be subject to criminal liability.

Lack of a social threat constitutes a reason for non-punishment under the provisions of criminal law. However, the offender might still be held liable under the provisions of civil and administrative law.

GEO No. 195/2005 and GEO No. 68/2007 provide for certain criminal offences regarding the environment that may be punished under criminal law.

4.2 Can an operator be liable for environmental damage notwithstanding that the polluting activity is operated within permit limits?

Based on the “*polluter pays*” principle, regardless of compliance with the permit limits, the polluter shall be held liable for any damage caused to the environment or to any third party.

Nevertheless, in the case of full compliance with the limits set by the environmental permits, criminal or administrative liability shall not occur.

4.3 Can directors and officers of corporations attract personal liabilities for environmental wrongdoing, and to what extent may they get insurance or rely on other indemnity protection in respect of such liabilities?

Under Romanian civil law, both the company and its directors/officers are jointly liable if pollution is caused by the misconduct of such directors and officers. Consequently, any third party who has suffered damage may seek compensation from both the company and its directors/officers.

As regards administrative and criminal liability, both the company and its directors/officers may have sanctions imposed on them.

Directors’ civil liability shall not arise in the case of *force majeure* events. An indemnity might be sought, provided that it arises from *bona fide* agreements. It will usually cover only material losses and may not be considered as a relief from the administrative/criminal liability of the directors.

4.4 What are the different implications from an environmental liability perspective of a share sale on the one hand and an asset purchase on the other?

According to GEO No. 195/2005, a notification has to be addressed to the environmental authority in case an entity, holder of an environmental authorisation/integrated environmental authorisation contemplates a sale of the majority of shares or in the case of an asset sale. The environmental authority informs the concerned entities on the obligations that need to be undertaken, based on an environmental report.

Based on the environmental report, within 60 days as of the conclusion of the share sale, or as the case may be, asset purchase, the parties shall submit to the environmental authority, the extent of their liability, as freely negotiated.

4.5 To what extent may lenders be liable for environmental wrongdoing and/or remediation costs?

Based on the general “polluter pays” principle, the lender shall not be kept liable for pollution caused by its tenant.

However, if a cause-effect connection between the damage which occurred in relation to the leased asset and if the negligence of the lender is proved, the lender might be held liable for the damage caused to third parties, as well as for the remedy costs.

5 Contaminated Land

5.1 What is the approach to liability for contamination (including historic contamination) of soil or groundwater?

Under GEO No. 195/2005, pollution of the soil, atmosphere or water by evacuation of waste or dangerous substances is considered a criminal offence whenever such pollution poses a threat on human, vegetal or animal life.

As regards the historic contamination of soil and groundwater, GEO No. 195/2005 does not expressly provide for the extent of the parties’ liability. Therefore, the general principles of environmental legislation should apply. If pollution occurs, the actual owner of the polluting asset or activity shall be held liable for damages and shall be obliged to pay the costs for the rehabilitation of the contaminated area.

According to the “polluter pays” principle, the actual owner may then turn against the previous owner (seller) for the purpose of recovering the amounts paid as compensation or for the land rehabilitation.

5.2 How is liability allocated where more than one person is responsible for the contamination?

Under Romanian law, if more than one person is liable for environmental contamination, they shall be jointly and severally liable. Under the joint liability, each one of the liable persons shall bear the costs of the damage. In the relation between the jointly liable persons, the rules on the liability of the producer and of the user of a product shall apply.

Notwithstanding, criminal and administrative liability shall be incurred by each of the liable persons, based on their contribution to the damage.

Liability for damaging the environment has an objective nature, regardless of fault. As an exception, liability may be conditioned by the existence of fault, in the case of damage to protected species and natural habitats.

The allocation of liability in case of multiple polluters is especially regulated in case of land contamination, under the Government Resolution No. 1403/2007 on the rehabilitation of the areas where the soil, subsoil and terrestrial ecosystems have been affected, published in Official Gazette No. 804/2007 (“GR No. 1403/2007”). Thus, GR No. 1403/2007 provides that the liability of each polluter shall be established based on the feasibility study and/or on the technical project prepared with a view to clean, to remedy and/or to rehabilitate the contaminated land.

5.3 If a programme of environmental remediation is ‘agreed’ with an environmental regulator can the regulator come back and require additional works or can a third party challenge the agreement?

Programmes of environmental remedy are approved by the regulator, after the programme has been established with the operator.

The regulator has the right to amend or update the programme in the case that new, unknown elements that could have an impact over the environment or over the environmental remedy process occur after the approval of the initial remedy programme. Further, the operator has the duty to inform the regulator of any changes in the activity which could affect the performance of the environmental remedy programme.

If the amendment of the programme is made by the regulator in a wrongful manner, the operator is entitled to request (firstly from the regulator, and only after that, from the Court) either the rejection or a proper adjustment of the amendment.

Any third party may challenge the agreement between the regulator and the operator, provided that a “sufficient interest” is proved and that the agreement violates one or several legal rights or interests of such third party. Moreover, according to GEO 195/2005, non-governmental organisations active in the field of environment protection have an extensive right of action against decisions of environmental regulator.

5.4 Does a person have a private right of action to seek contribution from a previous owner or occupier of contaminated land when that owner caused, in whole or in part, contamination; and to what extent is it possible for a polluter to transfer the risk of contaminated land liability to a purchaser?

GEO No. 195/2005 does not explicitly provide natural persons or legal entities with the right to seek compensation for pollution due to historical contamination of land.

Notwithstanding, such right is available under the general principles of civil law. Thus, third parties who suffered damage due to historical pollution may claim compensation from the polluter.

If such a claim is submitted to a court of law, the claimant should prove the “cause-effect” connection between contamination and damage or prejudice.

Nevertheless, the polluter may be exempted from civil liability under contract.

5.5 Does the government have authority to obtain from a polluter, monetary damages for aesthetic harms to public assets, e.g., rivers?

The government is entitled to seek damages from the polluter for all types of damage which were caused to the environment, including aesthetic harms.

6 Powers of Regulators

6.1 What powers do environmental regulators have to require production of documents, take samples, conduct site inspections, interview employees, etc.?

The environmental regulators are authorised to conduct site inspections in order to verify the observance of the provisions of environmental laws.

During the inspections, the representatives of the environmental regulators are entitled to require any relevant document regarding the company's activity which has an impact on the environment. They are also authorised to take samples or to interview the company's employees.

The governmental regulator shall be granted the right to have access to the installations and equipment or to places where activities with an impact on the environment are conducted.

If necessary, the police and the financial guard shall assist the environmental regulator during the inspections.

7 Reporting / Disclosure Obligations

7.1 If pollution is found on a site, or discovered to be migrating off-site, must it be disclosed to an environmental regulator or potentially affected third parties?

According to GEO No. 195/2005, any natural person or legal entity is compelled to immediately report to the environmental authorities any release of polluting materials.

Any failure to report a major accident to the environmental authorities is considered a crime whenever such failure poses a threat to human or animal life or health.

The duty of disclosure is provided under the law for all environmental authorities, which have to warn a potential affected third party with regard to the occurrence of an ecological incident (including pollution, natural disasters etc.).

However, no duty of disclosure to a potentially affected third party is provided under the provisions of environmental law for natural persons or legal entities.

Notwithstanding, the duty to inform potentially affected third parties arises out of the general principles of civil law. Consequently, any failure to inform third parties might lead to liability under tort or negligence.

7.2 When and under what circumstances does a person have an affirmative obligation to investigate land for contamination?

Under the provisions of GEO No. 195/2005 and of the Government Resolution no. 1408/2007 on investigation and evaluation of soil and subsoil pollution, published in Official Gazette No. 802/2007 ("GR No. 1408/2007"), the owner of the land or the operator of activities which have as result the elimination of polluting elements in the environment are compelled to monitor such emissions themselves. For example, companies involved in activities in the nuclear field have to implement programmes for supervising the radioactive contamination of the environment.

Such monitoring reports must be submitted for review to the environmental authorities.

There should be mentioned that the environmental authorities are

drawing up a list of currently contaminated lands. According to unofficial data, in Romania there are currently about 1,000 contaminated industrial sites for the rehabilitation of which huge investments are necessary.

7.3 To what extent is it necessary to disclose environmental problems, e.g. by a seller to a prospective purchaser in the context of merger and/or takeover transactions?

GEO No. 195/2005 provides that in case of a merger and/or takeover transaction involving a company/companies who operate based on an environmental authorisation or an integrated environmental authorisation, as the case may be, the parties to such procedures have to draw up a document containing their environment obligations.

Within a 60-day term as of the conclusion of the merger/takeover, the seller and the buyer are compelled to inform the competent environment regulator about the environment obligations undertaken by each of them under the above mentioned document and submit to the authorities a certified copy of such document.

The environmental provisions within the said document are public, and they can be disclosed to any interested person.

8 General

8.1 Is it possible to use an environmental indemnity to limit exposure for actual or potential environment-related liabilities, and does making a payment to another person under an indemnity in respect of a matter (e.g. remediation) discharge the indemnifier's potential liability for that matter?

Under Romanian civil law, the extent of parties' liability is to be freely established by the parties. Thus, the parties may establish indemnities that cover either entirely or partially the environmental risks of a transaction. However, in order to be enforceable before environmental authorities, such indemnities should be included in a report submitted to such regulator.

Note should be made that the payment of an indemnity shall not discharge the criminal or administrative liability of the indemnifier, although it might discharge civil liability.

8.2 Is it possible to shelter environmental liabilities off balance sheet, and can a company be dissolved in order to escape environmental liabilities?

Any operator who has environmental liabilities should record such liabilities in separate accounts on the balance sheet.

According to Law No. 31/1990 on companies, published in Official Gazette No. 126/1990, as republished and amended, in the case of the winding-up of a company, a liquidator is appointed. The liquidator of a company, which performed its activity under an environmental authorisation, is compelled to take all the appropriate measures for performance of an environmental audit and to inform the territorial environmental protection agency about the results of such audit.

Furthermore, the GEO No. 195/2005 provides that the environmental obligations shall be fulfilled with priority in case of winding-up, dissolution, insolvency or ending of the activity of a company.

In the case that a company is dissolved for the purpose of avoiding environmental liability, its administrator may be held liable. If the liquidator does not assess environmental liabilities, it may be held

liable as well. The responsible authorities may start criminal proceedings against such persons.

8.3 Can a person who holds shares in a company be held liable for breaches of environmental law and/or pollution caused by the company, and can a parent company be sued in its national court for pollution caused by a foreign subsidiary/affiliate?

Under Romanian civil law, liability rests with the author of the tort. In cases where a company's subsidiary/affiliate has its own legal personality, the liability of the shareholders shall be limited to their contribution to the share capital of such subsidiary/affiliate. In the case of general partnerships, active partners in a limited partnership or in a company limited by shares are held jointly and severally liable for the company's obligations. Such liability may be incurred only in the case that the assets of the affiliate do not cover all the damages and that the affiliate was liquidated, according to law.

Generally, a parent company of a subsidiary/affiliate cannot be sued for the pollution caused by the subsidiary/affiliate, due to the fact that a subsidiary/affiliate has its own legal identity different from that of the parent company, so it holds its own liability for its actions. Exception is provided under the provisions of GEO No. 68/2007, according to which the operator whose activities caused damages or posed an imminent threat to the environment shall be liable jointly and severally with the consortium or the multinational corporation it is part of.

8.4 Are there any laws to protect "whistle-blowers" who report environmental violations/matters?

There is no Romanian legislation expressly applicable on "whistle-blowers" in the field of environmental violations. Witness protection legislation may be applicable in case of reports on wrongful use of nuclear or radioactive materials.

8.5 Are group or "class" actions available for pursuing environmental claims, and are penal or exemplary damages available?

If there is more than one claimant raising environmental claims, they may act jointly in their aim of being compensated. Such "group" is called "*litisconsortium*" by Romanian case-law.

With regard to the available damages, it should be mentioned that in the course of the criminal lawsuit the claimant can request compensation from the defendant for the damages resulting from the respective criminal offence. Exemplary damages are not available under the Romanian civil law.

9 Emissions Trading and Climate Change

9.1 What emissions trading schemes are in operation in Romania and how is the emissions trading market developing there?

Romania has adopted the Government Resolution No. 780/2006, published in Official Gazette No. 554/2006 on the scheme regarding the greenhouse gas emissions trading certificates, implementing the European Parliament and Council Directive 2003/87/EC and the European Parliament and Council Directive 2004/101/EC.

The evidence of the issued, transferred or annulled emission certificates is recorded in a National Registry, which may be freely

consulted by any interested person. Moreover, all decisions with regard to the allocation of these certificates, as well as the monitoring reports on the greenhouse emissions are made available to the public, based on the provisions of the Government Resolution No. 878/2005, published in Official Gazette No. 760/2005 on the public access to environmental information and according to the provisions of Aarhus Convention.

10 Asbestos

10.1 Is Romania likely to follow the experience of the US in terms of asbestos litigation?

Considering the current status of compensation awarded by the Romanian law courts in any kind of matters, it is highly improbable that in the near future this practice would change in a material way that would bring Romania closer to the US experience.

Moreover, the defendants in asbestos litigations are customarily former State-owned companies, most of them with a poor financial condition. As a consequence, it is not very likely that any compensation for such damage would actually be obtained.

10.2 What are the duties of owners/occupiers of premises in relation to asbestos on site?

According to Government Resolution No. 124/2003, published in Official Gazette No. 109/2003, regarding the prevention, reduction and control of environmental pollution with asbestos ("**GR No. 124/2003**"), which transposes Council Directive No. 87/217/CEE, any owner or occupier of such sites has the obligation to periodically measure asbestos emissions in the air and water. Failure to observe such obligation is considered a misdemeanour and is sanctioned by fine.

Moreover, such owners should take all the necessary measures:

- to ensure the lowest level possible of environmental pollution with asbestos;
- to ensure safety conditions when demolishing parts of the sites which contain asbestos;
- to transport and store the waste containing asbestos in such manner that the environment is not polluted; and
- to store the waste containing asbestos in the conditions which are the safest for the environment.

As of January 1, 2007, the trade, manufacture and storing of asbestos and products containing asbestos is forbidden in Romania.

11 Environmental Insurance Liabilities

11.1 What types of environmental insurance are available in the market, and how big a role does environmental risks insurance play in Romania?

Based on our research of Romanian insurance companies, we may assess that: (i) few Romanian insurers offer environmental insurance on their behalf and some share liability with a high-rated foreign insurer; (ii) there are no "regular" types of environmental insurance on the market, because most of the insurance policies are customarily structured for each particular case; and (iii) in most cases, environmental aspects are included in the general civil liability insurances.

The reluctance of local insurers, at least for the moment, to provide environmental insurance, seems to have the following causes:

- lack of expertise in the field, because of the lack of demand for environmental insurance in the market; and
- high environmental risks induced by many enterprises acting in the Romanian market.

In the first semester of 2008, the general civil liability insurances represented less than 2% from the total number of insurance policies concluded by the insurers, and damages amounting up to approx. EUR 1.4 million were paid by the insurers. The number of policies covering environmental liability and the level of the awarded damages cannot be estimated.

An increase in the number of environmental policies should be triggered by the adoption of secondary legislation in the field of environmental liability, and in particular regarding the financial guarantees of the operators. However, although the adoption of the above mentioned legislation was expected during the middle of 2008, no Government proposal in this respect can be identified yet.

An important step forward in the field of environment related insurances was made by the adoption of Law No. 260/2008 published in Official Gazette No. 757/2008, which provides for the compulsory insurance of all dwellings against risks such as earthquakes, landslides, or floods.

11.2 What is the environmental insurance claims experience in Romania?

To the best of our knowledge, no insurance claims in connection with environmental liability have been submitted to the review of Romanian courts of law so far. The case-law available is related to claims in case of agricultural activities (crops and animals) insured against natural disasters (drought, floods and others).

12 Updates

12.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Environment Law in Romania.

Recent developments in the field of Environment Law follow the trends at EU level, regarding for example public debates on biofuels, emissions reduction, promotion of renewable energy, eco-labelling, packaging and waste management, or eco-procurement. For example, a Roadmap for the years 2008-2009 for the implementation of the Action Plan for environment friendly technologies (ETAP Romania) was issued. Also, the introduction of a significant pollution tax at the first registration in Romania of second hand vehicles is under debate.

The concept of “*ecological security*” was introduced in the National Defence Strategy adopted by the Romanian Parliament (Resolution No. 30/2008 published in Official Gazette No. 799/2008). According to the said strategy, ecological security is achieved, among others, by using un-polluting or less polluting technologies, proper waste management, better organisation in case of natural disaster, and prevention of industrial pollution.

The National Strategy for Sustainable Development is implemented under the principle “think global, act local”, and it aims at identifying specific solutions to general problems. In this context, the environmental policy is being de-centralised, with the purpose of involving more the regional stakeholders, in particular local authorities and NGOs, in the environmental decision-making process.

With regard to specific projects, the financing of 9 major environmental projects from European funds in value of almost EUR 1 billion has been approved.



Laurențiu Pachiu

Pachiu & Associates
4-10 Munții Tatra Street, 5th floor
Bucharest 1, RO 011022
Romania

Tel: +40 21 312 1008
Fax: +40 21 312 1009
Email: laurentiu.pachiu@pachiu.com
URL: www.pachiu.com

Laurențiu graduated from the Law School of the Bucharest University in 1993 (J.D. equivalent). Laurențiu is a graduate of the Deutsche Genossenschafts Bank training courses in banking and market economy and a graduate of the Diplomatic Academy of the German Federal Ministry of Foreign Affairs. He served as a diplomat with the Romanian Ministry of Foreign Affairs and was assistant University Professor with the Law School of the University of Bucharest, Tax and Banking Chair. Laurențiu is a senior member of the Bucharest Bar Association and a member of the National Romanian Bars Association. He has extensive experience in assisting and representing foreign and Romanian clients in various matters of Romanian and international law, related to mergers and acquisitions, privatisations, project financing and banking, capital markets, state guarantees, tax and offshore structures, real estate, commercial and corporate law in general. Laurențiu is fluent in Romanian, German and English and conversant in French.



Alina Deiac

Pachiu & Associates
4-10 Munții Tatra Street, 5th floor
Bucharest 1, RO 011022
Romania

Tel: +40 21 312 1008
Fax: +40 21 312 1009
Email: alina.deiac@pachiu.com
URL: www.pachiu.com

Alina graduated the Law School of West University of Timișoara (J.D. equivalent) and holds a Master degree of Business Law awarded by the Law School of Bucharest University. Alina is a member of the Bucharest Bar Association and a member of the National Union of Lawyers. Her area of expertise includes labour and corporate law, as well as mergers & acquisitions. Alina is also a contributor to several reviews and legal publications, covering a broad area of legal issues, mainly related to corporate, environmental and competition law. Alina is fluent in English and conversant in Spanish.



PACHIU & ASSOCIATES

ATTORNEYS AT LAW | RECHTSANWALTE | ABOGADOS

Pachiu & Associates is a Bucharest based business law firm established by Romanian attorneys. The firm currently consists of 24 lawyers plus additional staff comprising paralegals, authorised translators and supportive staff. The lawyers of the firm are all graduates of leading universities in Romania or abroad. More than half of the lawyers are senior members of the Bucharest Bar Association. All lawyers are fluent in Romanian and English, and some are fluent in German, French, Spanish or Hungarian. The Firm provides for a full range of commercial and corporate legal advice from its main office in Bucharest and its secondary office in Cluj-Napoca (west of Romania).

The Firm has extensive expertise in matters related to corporate governance, corporate disputes, securities, mergers and acquisitions, insolvency, commercial contracts, offshore and tax structures, labour law, real estate, anti-trust law, intellectual property, banking and project financing, secured transactions, cross-border transactions, public acquisitions, procurement, and litigation. Apart from its consistent mergers & acquisitions and cross-border transactions practice, the firm has developed a strong practice in tax, securitisation and real estate, construction, labour and intellectual property. Any type of transaction is always duly considered from a tax point of view.

The firm maintains a close relationship with some leading multinational law firms and other small and medium-sized law firms from abroad, so as to ensure efficient liaison with important foreign business centres and jurisdictions.