

## ATMOSPHERE PROTECTION IN INTERNAL LAW

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### Preamble

The life and health of people, the existence of flora and fauna depend upon the quality of the atmospheric air. Every person has the right to a healthy environment, so it was necessary to provide regulations for the activities performed by physical or legal persons, affecting or having the potential to affect the quality of the atmosphere in a direct or indirect manner.

In this respect, the Romanian legislator, in Emergency Ordinance No. 243/28 November 2000<sup>1</sup> regarding atmosphere protection, with its subsequent modifications and completions (which constitutes the special regulation on the subject) settled the legal frame “regarding the prevention, the elimination of deterioration and the improvement of atmosphere quality, for the purpose of avoiding negative effects on the health of man.”<sup>2</sup>

The passing of the above-mentioned normative document also had as a purpose the alignment of internal laws regarding the protection of the atmosphere to the international legal norms and to Community regulations.

The general regulation of atmosphere protection is, however, comprised in Chapter X, “Protection of the atmosphere, climatic changes, management of environmental noise” from Government’s Emergency Ordinance No. 195/2005 with subsequent modifications and completions.<sup>3</sup>

Unlike community and international law, or even other countries’ legislation, which employ the term “air protection”, Romanian law on the subject employs the expression “protection of the atmosphere”.

Emergency Ordinance No. 243/2000, with its subsequent modifications and completions, defines atmosphere – in appendix No. 1, letter c – as being “the air mass surrounding the terrestrial surface, including

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<sup>1</sup> Published in the Official Gazette No. 633 / 6 December 2000, modified and completed by Law No. 655/20 November 2001 and Emergency Ordinance No. 12 / 28 February 2007;

<sup>2</sup> In this respect, please refer to Art. 1, paragraph 1 of Government’s Emergency Ordinance No. 243/2000, with subsequent modifications and supplements;

<sup>3</sup> Published in the Official Gazette No. 1196/30 December 2005, modified and completed by Law No. 265/29 June 2006, published in the Official Gazette No. 586/6 July 2006 and Government’s Emergency Ordinance No. 57/ 20 June 2007, published in the Official Gazette No. 442/ 29 June 2007;

the protective ozone layer”. In the ordinance, however, the notion “ambient air” is also employed, defined as “the tropospheric air, exclusively the one in work places”, thus making the distinction between the environment and the work surroundings. The normative document also comprises other definitions of terms such as: mobile sources of pollution, diffuse sources of pollution, polluting agent, etc., but it does not define the notion of “atmosphere pollution”.

The notion of pollution was defined by the Romanian legislator in Government’s Emergency Ordinance No. 195/2005, with its subsequent modifications and completions, as being “the direct or indirect introduction of a polluting agent that is apt to bring prejudice to human health and/or to the quality of the environment, damage material goods or cause a deterioration or a hindrance to the usage of the environment to the purpose of entertainment or other legitimate purposes.” This, however, represents a general definition of pollution.

The Geneva Convention of 13 November 1979 on Long-range Transboundary Air Pollution, ratified by Romania in Law No. 8/ 1991, settles that “the pollution of the atmosphere designates the introduction into the atmosphere by man, directly or indirectly, of substances or energy that have noxious action, of a nature to endanger human health, to harm biologic resources and ecosystems, to damage material goods and to cause harm or damage to entertainment values and other legitimate uses of the environment.” We believe that this definition has a compulsory character for Romania.

**General aspects referring to the legal system regarding atmosphere protection set up by Government’s Emergency Ordinance No. 243/2000, with its subsequent modifications and completions**

As it results from the provisions of Art. 1, paragraph 1 of Government’s Emergency Ordinance No. 243/2000, with its subsequent modifications and completions (as we have already specified), the specific legal framework concerns “the prevention, the elimination, the limitation of deterioration and the improvement of atmosphere quality, for the purpose of avoiding negative effects on the health of man and on the environment.”

According to the provisions of Art. 2 of the same normative document, “the legal system of atmosphere protection is based upon the observance of the principle of integrated approach on environment protection.”

The framework law settles in Article 3 the main objectives of the national strategy regarding atmosphere protection, which mainly targets the issue of air protection and the proper fulfillment of the obligations assumed in the international agreements and treaties that Romania is a part of, as well as the participation in the international cooperation in the field.

The legislator settles in articles 7 and 8 of the ordinance the duties and responsibilities of central public authorities and of territorial public authorities for environment protection, in the field of atmosphere protection. Also, the legislator establishes in article 15 the duties and responsibilities of mayoralities and local councils, duties that aim, among others, at the obligation of integrating atmosphere protection policies in the strategy of durable development on a local level.

Also worth mentioning is the fact that in article 21 of the Emergency Ordinance No. 243/2000, with its subsequent modifications and completions, the legislator set up the principle of information, assigning as a task for public authorities the obligation of ensuring access to information and the participation of the public to decision making in the field of atmosphere protection, within the terms and conditions provisioned in the laws in force.

According to legal stipulations, information regarding the quality of the ambient air is public (unless it falls under the incidence of the provisions made by other normative documents on information protection) and as such, public authorities have the obligation of ensuring the access of the public to information. The competent environment authority has the obligation of bringing to the public's knowledge, in a prompt manner, the exceeding of alert thresholds<sup>4</sup>, as well as the measures that are imperative in the cause.

The framework law also settles the modality for holding responsible the persons guilty of violating the legal stipulations, by provisioning in article 46 that "the violation of the stipulations made in the ordinance regarding atmosphere protection attracts civil liability, contraventional or penal, depending on the case."

The legislator mentions in this respect restrictively in art. 47 the facts constituting contravention, the account for applicable fines, and in art. 49 the facts that constitute infractions and punishments applicable to each and every action.

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<sup>4</sup> The alert threshold was defined by the legislator in Appendix No. 1 to Government's Emergency Ordinance No. 243/2000 with its subsequent modifications and completions, as being "the level over which there is a risk to people's health, following a short term exposure, and towards which immediate measures must be taken, according to the laws in force.";

We must also mention the fact that GEO No. 243/2000, with its subsequent modifications and completions, reflects provisions of Council Directive No. 96/62/EC, regarding the evaluation and management of air quality published in the Official Journal of the European Communities (OJEC) No. L296/1996, page 55, of Council Directive No. 99/30/EC, regarding the limit values of sulphur dioxide, nitrogen dioxide, and oxides of nitrogen, particulate matter and lead in atmospheric air, published in the Official Journal of the European Communities (OJEC) No. L163/1999, page 41, of Directive No. 2000/69/EC of the European Parliament and of the Council, regarding the limit values for benzene and carbon monoxide, published in the Official Journal of the European Communities (OJEC) No. L313/2000, page 12 and of Directive No. 2002/3/EC of the European Parliament and of the Council regarding the ozone in the ambient air, published in the Official Journal of the European Communities (OJEC) No. L67/2002.

**General legal framework set up by GEO No. 195/2005 regarding environment protection, with its subsequent modifications and completions**

Government's Emergency Ordinance No. 195/2005, with its subsequent modifications and completions, represents the framework law that regulates environment protection. An important role in promoting the objectives referring to environment protection is granted by the Romanian legislator to the central public authority for environment protection, setting up specific duties and tasks. Thus, according to the provisions of article 59 of the ordinance, the central public authority for environment protection is authorized, among other things, to fulfill the following duties:

- a. Elaborates national policy and coordinates actions on a national, regional, and local level, regarding the protection of the atmosphere;
- b. Elaborates, promotes, and updates the National strategy in the field of atmosphere protection and the National action plan in the field of atmosphere protection;
- c. Coordinates the implementation of the flexible means provisioned in the Kyoto Protocol to the United Nations Framework Convention on Climate Change;
- d. Organizes the monitoring activity regarding air quality at the level of the entire country;
- e. Manages the Greenhouse effect gas emission national register.

At the same time, the legislator also expressly provisioned the obligations incumbent on physical and legal persons in the field of atmosphere protection. Thus, according to the provisions of art. 64 of GEO No. 195/2005, with its subsequent modifications and completions, the physical and legal persons have the following obligations in the field:

- To observe the regulations regarding atmosphere protection by adopting proper technological measures for retaining and neutralizing atmosphere polluting agents;
- To equip the technological installations that constitute pollution sources with automation systems and to ensure their correct functioning;
- To ensure qualified personnel and to provide, on request or according to the conformation program, the necessary data to the competent environment protection authorities;
- To ensure, at the request of competent environment protection authorities, the diminution, the modification, or the cessation of the pollution generating activity;
- To improve technological performance in order to diminish emissions and not to exploit the equipment through which the maximum residue levels provisioned in the laws in force are exceeded.

These fundamental regulations settled by the legislator have as their purpose the protection of the atmosphere, the general operative principle in the field of environment protection being the principle “the polluter pays”, through which the obligation is set up for physical and legal persons to meet the expenses for repairing a prejudice produced as a result of a pollution and of removing the results produced by it. The aspects presented above do not exhaust the theoretical problems regarding atmosphere protection settled by the Romanian legislator in the provisions of GEO 243/2000 and of GEO No. 195/2005, with their subsequent modifications and completions.

Although significant improvement has been brought in the diminution of pollution in the field of air and drinking water, the aquis must further develop, its reflection in the national law regarding environment protection, as well as its application constituting a significant objective for Romania

#### **References**

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