

## Questionnaire on Air Pollution Law

### **I. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe<sup>1</sup> and Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air<sup>2</sup>**

1. Have there been problems to fulfil the obligations, set out in these directives, *in practise*? Are there effective systems in place to ensure detection of possible non-compliance and relevant follow-up, including prosecution and adjudication?

Poor air quality continues to be a problem in Romania. The main sources of air pollution come from the transport and energy sectors, especially from the use of fossil / solid fuels in households. At the same time, serious and structural deficiencies were identified in the air quality data measured by the Romanian monitoring network and reported to the European Commission. In reality, the situation could be much worse than actually reported.

National Air Quality Assessment and Integrated Management System (SNEGICA) implement the ambient air quality law. SNEGICA provides the organizational, institutional and legal framework for cooperation of public authorities and institutions with competences, in order to assess and manage ambient air quality, in a uniform manner, throughout Romania, as well as to inform the population and European and international bodies on ambient air quality. SNEGICA comprises, as integral parts, the following two systems:

- National Air Quality Monitoring System (SNMCA) and
- National Air Pollutant Emission Inventory System (SNIEPA).

The Central Public Authority for Environmental Protection (MMP) is the authority with the role of regulation, decision and control in the field of assessment and management of ambient air quality throughout the country. For the purpose of air quality management, in each zone or agglomeration, areas are classified in management regimes (I or II) according to the result of the evaluation of the ambient air quality. At national level, air quality data can be accessed on the website: [www.calitateaer.ro](http://www.calitateaer.ro)

2. Are those directives properly implemented in your Member State? Have stricter or complementary air quality standards been introduced?

The two directives have been implemented in Romanian legislation by the following normative acts:

- LAW No. 104/2011 of June 15, 2011 on ambient air quality;
- GOVERNMENT DECISION No. 257 of April 15, 2015 on the approval of the methodology for the development of air quality plans, short-term action plans and air quality maintenance plans;

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<sup>1</sup> <http://data.europa.eu/eli/dir/2008/50/2015-09-18>

<sup>2</sup> <http://data.europa.eu/eli/dir/2004/107/2015-09-18>

-The Minister of the Environment Order no. 1095 / 02.07.2007 for the approval of the Norm regarding the establishment of air quality indices in order to facilitate the public information (published in the Official Gazette no. 513 / 31.07.2007).

Romania has not implemented stricter or complementary air quality standards in national legislation compared to European legislation.

3. Have EU infringement proceedings in relation to these directives been brought against your Member State?

Romania was convicted at the CJEU for systematic and persistent non-compliance, from 2007 until at least 2016, of the daily limit values for PM10 concentrations and of the annual limit values for PM10 concentrations in the area RO32101 (Bucharest), Romania:

” Romania, on the one hand, by systematic and persistent non-compliance, from 2007 until at least 2016, of the daily limit values for PM10 concentrations and by systematic and persistent non-compliance, from 2007 to 2014 inclusive, with the exception of 2013, the annual limit values for PM10 concentrations in the RO32101 area (Bucharest, Romania) did not fulfill its obligations under Article 13 (1) of Directive 2008/50 / EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe in conjunction with Annex XI thereto and, on the other hand, has not - complied with this area since 11 June 2010, obligations under Article 23 (1) of that Directive in conjunction with Annex XV thereto, in particular the obligation laid down in Article 23 (1) the second sub-paragraph of Article 1 of that Directive, in order to ensure that the period for exceeding it is as short as possible.” (C-638/18 CJUE, decision of the Court 30<sup>th</sup> of April, European Commission against Romania)

The infringement procedure formally started in 2009, when Romania was warned that in several cities certain limit values regarding air pollution with suspended dust (PM10) are exceeded. The CJEU decision does not establish a fine that should be paid by Romania for violating the European air quality treaty and legislation, but only the obligation to comply with them.

4. Is there national case law in which these directives are relied upon and what are the most relevant subject areas (e.g. concerning adoption and content of air quality plans, access to relevant environmental information and public participation, etc.)?

1. A few environmental associations filed a lawsuit against the General City Hall of Bucharest regarding its inability to provide clean air for the citizens of the Capital. According to the legislation in force, the Capital City Hall is responsible for preparing and adopting air quality plans for the capital region. The complainants are suing a series of provisions of the Integrated Air Quality Plan (PICA), developed by the City Hall in order to combat air pollution. The lawsuit targets PICA in its content, not just formal requirements. An in-depth analysis by the complainants showed that almost all the measures proposed in the PICA do not comply with the legal requirements to be quantifiable and effective in solving specific problems. They are so evasive that it is impossible to assess their impact. Consequently, the content of the Plan does not reach its objective, and the City Hall must improve the PICA in order to meet the legal requirements provided in Law no. 104/2011 on ambient air quality - transposing Directive 2008/50 / EC of the European Parliament and of the Council on ambient

air quality and cleaner air for Europe. The applicants further claim that the Annexes to the Directive set the maximum levels for certain pollutants. The limits for PM10 and NO2 came into force in 2005 and 2010, respectively, but were then consistently exceeded in Romania. Despite this fact, the Romanian Government and local authorities have failed to take adequate measures to protect the health of citizens. Exceedances are recorded in particles (PM10 and PM2.5) and nitrogen dioxide (NO2), both of which are harmful to human health.

The action is pending and is to be solved by the court.

2. Individual plaintiff requested the court to order the defendant to submit to the approval of the local council of Timișoara the air quality plans and to inform the public about the ambient air quality at local level. The complainant mentioned that air pollution in Timișoara continues to damage health and the environment, in particular particulate pollution and ozone pollution pose serious risks to citizens' health, affecting quality of life and reducing life expectancy. The court rejected the action because it found that the local administration had fulfilled its legal obligations, by elaborating the Plan for maintaining air quality for Timis county. (Decision no. 10813/2018 of 10/01/2018 - Timișoara Local Court - Civil Section I.

3. Three civil associations asked the court to order, by way of emergency, to stop the grubbing of trees and sub-trees on the land with an area of 20,107 sqm located in Bucharest. The owner of the land requested the granting of the clearance of trees and shrubs of ornamental species and fruit trees for the land his property, but the City Hall of Bucharest refused to issue the permit. The court admitted the action and found that the existence of a building permit for that land does not oblige the administrative authority to issue the deforestation permit, given that such an approach would mean the defeat of mandatory provisions of the law. The Bucharest Tribunal emphasized that, although the non-issuance of the grubbing-up notice could be regarded as State interference with the applicant's property rights, it was lawful and foreseeable, pursued a legitimate aim and was proportionate to the public interest in complying with European green space per capita of the localities, established by the Directive 2008/50 / EC of 21.05.2008 on ambient air quality and cleaner air for Europe, prevailing in this case the private interest of the applicant. ( Decision no. 299/2015 from 27/01/2015 - Bucharest Court - 5th Civil Section)

a) Are there specific difficulties to enforce judgements in these cases? If yes, please explain in more detail.

It depends on what was decided. If there was imposed a fine, there are no difficulties to enforce. If an obligation has been imposed to take action or to take certain measures, there could be some difficulties. However, there are general rules that establish financial obligations for authorities who do not comply with court decisions.

b) Who are the claimants in the different categories of cases (e.g. local authorities, non-governmental organisations, private persons)?

In general, in environmental cases, the applicants are non-governmental organisations and private persons.

c) Is there case law, in which claimants demand the withdrawal of measures aimed at improving the air quality (e.g. annulment of ban of certain cars)?

1. For the first time, in 2007, the Romanian Government introduced the first car tax and since then, it has undergone various amendments as it has been opposed by the Romanian courts and even by the CJEU, as being contrary to the TFEU. Thus, from the name of the first registration tax (regulated by Law no. 343/2006) it was changed to the special pollution tax (regulated by GEO 50/2008), which later became the tax for polluting emissions (regulated in finally by Law No. 9 of January 6, 2012), and the last under the name of environmental stamp (regulated in the Ordinance for amending and supplementing Law no. 9/2012). However, the Romanian magistrates almost unanimously appreciate that the car tax, regardless of the name and form adopted, is, in fact, a kind of "disguised customs tax".

In this way, all the intentions of the Romanian legislator to impose a tax on cars, such as the environmental tax, were declared illegal and contrary to the TFEU by the national courts because they do not respect the property right and the community legislation.

CJUE ruled in the cases regarding the pollution taxes imposed on cars in Romania, through the following decisions: C-402/09, C-263/10, C-565/11, C-97/13, C-214/13, C-331/13, C-586/14.

2. Individual plaintiffs requested the suspension of the execution of the decision of the Bucharest General Council regarding the area of action for air quality and the ban on the entry into this area of vehicles with non-Euro, Euro 1 and Euro 2 pollution norms between 07:00-22:00; starting with 01.01.2022 and the prohibition of the access of these cars in Bucharest. The court ruled that Law no. 104/2011 transposes into national legislation Directive no. 2008/50 / EC on the quality of the environment and cleaner air for Europe, the content of these normative acts being favorable to the solution adopted by the Romanian national authorities. Also these measures do not violate the right to property, and the protection of the environment and the health of the individual weigh decisively against the limitation of the use of a good material and the economic protection of the individual. (Decision no. 489/2020 from 07/02/2020 - Bucharest District Court - Second Administrative and Fiscal Litigation Section)

d) With a view to the penalty clauses of Article 30 Directive 2008/50/EC and Article 9 of Directive 2004/107/EC:

- What type of penalties are applicable in your country to breaches of obligations deriving from these two directives? More specifically:

Both directives were implemented in domestic legislation by Law 104/2011. Violation of the provisions of this law entails civil, contraventional or criminal liability, as the case may be.

- Are the sanctions specifically stipulated in the transposing national legislation or are there sanctions of a general kind established in other legislation and applicable more widely?

The civil liability is the general one, provided by Romanian civil code. But, the national law on air quality specifically provides contraventions and offenses applicable only to the violation of the obligations mentioned in this law.

- Are the sanctions directed explicitly or implicitly against competent authorities? Are the sanctions addressed to private natural and legal persons and/or economic operators?

In national law on air quality there are contraventional and criminal sanctions applicable to legal and natural persons. Special sanctions are also provided for the competent authorities (“Failure to comply with the provisions by the mayors, the Presidents of the County Councils and the General Council of the Municipality of Bucharest constitutes a contravention and is sanctioned with a fine from 3,000 lei to 7,500 lei” – between 650-1550 euro)

- Are the sanctions of administrative or criminal nature or both? What is their range?

The administrative fines vary between 500 lei to 10,000 lei (100-2000 euro) for individuals, and between 3,000 lei to 15,000 lei (650- 3000 euro) for legal persons. Criminal sanctions consist of fines or imprisonment from 3 months to 5 years.

- Are the sanctions established as a function of obligations stemming from sources legislation? If so, how is that articulated in national law?

Yes. Non-compliance with the following obligations deriving from the national legislation transposing the above directives is sanctioned:

- obligations of business owners with fixed sources of air pollution to participate in the development of emission reduction programs, air quality plans and short-term action plans;

- the obligations of the holders of activities that have fixed sources of air pollution, according to the provisions contained in the emission reduction programs, in the air quality maintenance plans, in the air quality plans and in the short-term action plans;

- the obligations of business owners when the territorial public authority for environmental protection launches a short-term action plan to take urgent and effective measures to reduce emissions of pollutants into the air so that their concentration in ambient air is reduced until the limit value is reached, including by temporarily stopping the activity, if applicable;

- the obligation of the users of mobile sources to ensure the compliance with the emission limits established for each specific type of source, as well as to subject them to technical inspections, according to the provisions of the legislation in force;

- the obligation to comply with all legal procedures and requirements that lead to the prevention, elimination or reduction of the impact on the environment and the environment as a whole;

- the obligation to transform diffuse sources into directed emission sources, if technically and economically possible;

- the obligation of the activity holder to provide to the competent authorities the information requested for the elaboration of the inventories of air pollutant emissions;

- the obligation of the activity holder to inform the competent authorities in case of exceeding the emission limit values, imposed by the regulatory acts.

- the obligations of business owners who have fixed sources of air pollution to submit to the control of the competent authorities, according to the legislation in force;

- the obligations of the activity holders to notify, immediately, the territorial public authority for environmental protection about the occurrence of damages, accidents, incidents, accidental stops / starts.

Constitute offenses and are punished as follows:

a) with imprisonment from 3 months to one year or with a fine for the non-elaboration, by the owners of the activities that constitute important fixed emission sources, of the emergency plans, which establish the applicable measures inside the site, as well as the non-approval of the authorities competent for the measures established to be applied off-site;

b) with imprisonment from 1 to 5 years for not stopping in case of imminent danger the operation of installations that constitute a source of danger with an impact on the ambient air quality or failure to notify the competent authorities about the danger.

- Are there any case law statistics available? Or statistics on the application of penalties outside of court proceedings?

Case law: City Hall C was fined by the Environmental Guard for failing to build 5 wind farms for electricity production, a measure that had a deadline of December 15, 2010, assumed by the Air Quality Management Program. The mayor's office challenged the fine in court, and the court annulled the contravention report because the active subject of the deed was the mayor, and not the mayor's office as an institution. (Decision no. 635/2011 of 14/11/2011 - Buzau District Court- Second Civil Section, of administrative and fiscal contentious)

## **II. Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants<sup>3</sup>**

1. Is this directive properly implemented in your Member State? Have stricter emission reduction commitments been introduced? Has national legislation been adapted to meet the emission reduction commitments?

The Directive (EU) 2016/2284 has been implemented in domestic legislation by Law 293/2018 on reducing national emissions of certain air pollutants. This law aims to develop, adopt and implement a national air pollution control program and achieve the European Union's biodiversity and ecosystem objectives, in accordance with the 7th Environment Action Program.

Related to this objective there are following normative acts:

-Government Decision no. 1879 / 21.12.2006 for the approval of the National Program for the progressive reduction of emissions of sulfur dioxide, nitrogen oxides, volatile organic compounds and ammonia;

-Law no. 264/2017 on the establishment of technical requirements for the limitation of emissions of volatile organic compounds (VOCs) resulting from the storage of petrol and its distribution from terminals to petrol stations, as well as during the refueling of motor vehicles at petrol stations

- Order Nr. 657/2018 of July 3, 2018 for the approval of protection zones for fixed air quality measurement points, included in the National Air Quality Monitoring Network.

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<sup>3</sup> <http://data.europa.eu/eli/dir/2016/2284/oj>

2. Have EU infringement proceedings in relation to this directive been brought against your Member State?

In 2018, the European Commission initiated the infringement procedure against Romania for non-compliance. The object of action was finding the non-fulfillment of the obligations having as object the non-communication of the national measures transposing the Directive 2015/2193 / EU regarding the limitation of the emissions into the atmosphere of certain pollutants coming from medium combustion plants. The European Commission has approved the withdrawal of this procedure due to the adoption by Romanian Parliament of Law 293/2018.

In February this year, the Commission issued a letter of formal notice, giving Romania two months to respond and to adopt and transmit to the European Commission its national air pollution control plans, according to the Directive (EU) 2016/2284. Otherwise, the Commission may send a reasoned opinion to the Romanian authorities, which precedes the initiation of the infringement procedure. The deadline by which these programs were to be developed and sent to the European Commission is 1 April 2019.

3. Is there national case law in which this directive is relied upon?

I did not identify national case law in which this directive is relied upon.

**III. Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles<sup>4</sup> and Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information<sup>5</sup>**

1. How has your Member State implemented these EU vehicle type approval rules?

- Law no. 289/2009 for the amendment and completion of the Government Ordinance no. 78/2000 on the homologation, issuance of identity card and certification of the authenticity of road vehicles for their registration or registration in Romania;
- Law No. 212 of 21 July 2015 on the management of vehicles and end-of-life vehicles;
- Law no. 101/2011 for the prevention and sanctioning of some facts regarding the environmental degradation;
- Order no. 1147/2009 amending the Regulations on the type-approval and issuance of the identity card of road vehicles, as well as the type-approval of products used in them - RNTR;

2. Treatment of diesel vehicles when using illegal shutdown devices:

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<sup>4</sup> <http://data.europa.eu/eli/dir/2007/46/2019-09-01>

<sup>5</sup> <http://data.europa.eu/eli/reg/2007/715/2012-06-04>

a) Are there national regulations or jurisprudence according to which an issued EC type approval (Directive 2007/46/EC) loses its legal effect if an (impermissible) shutdown (defeat) device is discovered, which was already installed, when approval was granted? (A shutdown device - usually a cheat software - manipulates gas measurements.)

There are no specific regulations in Romanian legislation, but the provisions of EU Regulation 2018/858 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, will be directly applicable from 1 September 2020

b) What legal measures have been taken in your Member State (if any) against car manufacturers, which have failed to comply with vehicle type approval rules? These legal measures might include court cases, including between car buyers and manufacturers.

I have not identified such jurisprudence.

c) Which requirements will be imposed on the request to retrofit a vehicle in your Member State?

In order to keep in circulation, the road vehicles registered or registered in Romania, which have undergone modifications of the constructive characteristics mentioned in the CIV, must be submitted to the homologation and modification of the CIV. The construction conditions in force in Romania on the date of the first registration of the vehicle (or the year of manufacture of the vehicle, if the date of the first registration is not known) shall be applied to the approval in force in Romania on the date of approval carried out as a result of the modification of the vehicle, except for the requirements regarding pollutant emissions, the applicable condition being to maintain at least the same EURO pollution norm in relation to the vehicle that has been modified.

In the case of intervention in systems relating to traffic safety, environmental protection, energy efficiency and protection against theft and which are governed by EEC / EC directives / regulations or UNECE regulations, only equipment must be used, components, technical entities, parts and operating materials of origin or approved or certified according to the legislation in force.

Modification of a vehicle is accepted, and RAR modifies the data entered in the CIV only if that change shall not adversely affect, in terms of road safety and environmental protection, the behavior of the systems, components or separate technical units of the vehicle. (Order of the Minister of Transport, Construction and Tourism for the approval of the Regulations on individual homologation, issuance of identity card and certification of authenticity of road vehicles)

d) How does the authority get information about the lack of implementation of any software updates in your Member State?

*Please provide a concise overview of cases of particular interest.*

e) Are there less onerous measures under the law of the Member State than imposing a driving ban on a vehicle? Have such less burdensome measures possibly been developed by case law?

In accordance with the Romanian legislation, the lack of homologation according to the Directive 2007/46/EC, leads to a driving ban on a vehicle, and there is no way to avoid this sanction.

#### **IV. Domestic Law**

Please provide information, including case law, on additional domestic air protection law that could be interesting for other Member States.

1. The court allowed the action of some natural person plaintiffs to cancel a building permit. The Court held that the obligation of the agreement of the owners of the neighboring building in Law no. 50/1991, was a right recognized to any European citizen to live in a healthy environment, so maintaining ambient air quality where it is appropriate and / or improving it in other cases was therefore an obligation which belonged to the authorities according to Law no. 104/2011 on ambient air quality transposing into national legislation EU provisions on environment and air quality, namely Directive 2008/50 / EC. , these cannot be seen as an interference with the right of disposal of landowners. (Decision no. 2992/2012 din 03/12/2012 -IAȘI Court of Appeal - Administrative and fiscal contentious section)

2. Court obliged the defendant to rebuild the applicant's household in an appropriate area in terms of environmental conditions, and otherwise to pay the plaintiff the amount of 473,052 lei representing the value of real estate located on the land, and the amount of 75,848 lei representing the value of the land for construction and value investment in land for replanting trees and vines. In the present case, it has been established that the defendant carries out an activity which harms the applicant's health and property and the environment, and by law all natural and legal persons have an obligation to protect the environment, otherwise the polluter bears the cost for repairing the damage.

It is about the extension of the coal deposit of the coal quarry in Rosiuta, the plaintiff proving that his household is practically unusable due to the existence of a permanent cloud of dust that makes the air unbreathable; the impossibility of maintaining an environment in the living space where coal dust is placed on all goods; the noise of heavy machinery and heavy machinery loading, unloading and transporting coal, machinery and machinery operating at a very short distance from his home; lack of drinking water in the well; the impossibility of using a vegetable garden and plantations of fruit trees and vines that for the most part have dried up; the inability to have resting conditions due to infernal noise; major damage to the residential building.

The court established that, based on a risk study carried out in 2004 for the area of the Roșiuta coal depot, a number of eight houses were identified for which the environmental risk at that time was assessed as unacceptable. The houses were purchased and the owners were compensated. It was later noted that other owners, whose households were in the vicinity of the same coal deposit of Roșiuta quarry, sued the same defendant, requesting the latter to rebuild the household they own in Roșiuta village and oblige the defendant to compensation. (Decision no. 599/2015 from 08/10/2015 -CRAIOVA Court of Appeal - Civil Section I.)