



Annex I

# Romania

Improving financial security in the context of the  
Environmental Liability Directive

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## 1. INTRODUCTION

Financial security for ELD liabilities in the form of stand-alone environmental insurance policies that provide cover for sites and/or operations in Romania is not generally available.

Environmental extensions to general liability policies are not generally available.

Environmental extensions to property policies are not available.

Romania transposed the ELD by Government Emergency Ordinance No 68/2007 with regard to preventing and remedying environmental damage, as amended (*Ordonanță de Urgență nr. 68 din 28 iunie 2007 privind răspunderea de mediu cu referire la prevenirea și repararea prejudiciului asupra mediului*; GEO 68/2007).<sup>1</sup> In addition, Government Emergency Ordinance No 195/2005 on environmental protection (*Ordonanță de Urgență nr. 195 din 22 decembrie 2005 privind protecția mediului*)<sup>2</sup> sets out provisions on accidental pollution.

GEO 68/2007 includes provisions for Romania to introduce mandatory financial security for ELD liabilities. When this report was published, Romania had not issued the Government Decision to introduce it.

Romania has not introduced mandatory financial security requirements under other environmental legislation.

## 2. ENVIRONMENTAL INSURANCE MARKET

In 2008, insurance companies based in, or with branches in, Romania did not generally offer stand-alone environmental insurance policies. Thus, it was difficult or, sometimes, almost impossible to obtain the policies as a practical matter.<sup>3</sup>

The 2017 Environmental Implementation Report for Romania stated that there was ‘insufficient insurance on offer’ for ELD liabilities. The report suggested that Romania should, among other things, ‘take further steps to ensure an effective system of financial security for environmental liabilities (so that operators not only have insurance cover available to them but actually take it out)’.<sup>4</sup>

The 2019 Environmental Implementation Report stated, among other things, that Romania should ‘Improve financial security for liabilities’.<sup>5</sup>

This situation had not changed when this report was published. The availability of stand-alone environmental insurance policies, as well as demand for them, is still extremely low. On the rare occasion that a business based only in Romania requests a stand-alone environmental

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<sup>1</sup> Ordonanță de Urgență nr. 68 din 28 iunie 2007 privind răspunderea de mediu cu referire la prevenirea și repararea prejudiciului asupra mediului; <http://legislatie.just.ro/Public/DetaliuDocument/83294> (in Romanian)

<sup>2</sup> Ordonanță de Urgență nr. 195 din 22 decembrie 2005 privind protecția mediului; <https://lege5.ro/Gratuit/hazdinsr/art-1-principii-si-dispozitii-generale-ordonanta-de-urgenta-195-2005?dp=ge2dqmrsgiydg> (in Romanian)

<sup>3</sup> See Nestor Diculescu Kingston Petersen, ‘An Overview of Environmental Law in Romania’ (January 2008); <https://www.nndkp.ro/articles/environment-handbook/#>

<sup>4</sup> EU Environmental Implementation Review 2017; Country Report – Romania (SWD(2017) 55 final, 3 February 2017), 28; [https://ec.europa.eu/environment/eir/pdf/country-reports-archive/report\\_ro\\_en.pdf](https://ec.europa.eu/environment/eir/pdf/country-reports-archive/report_ro_en.pdf)

<sup>5</sup> EU Environmental Implementation Review 2019; Country Report – Romania (SWD(2019) 130 final, 4 April 2019), 32; [https://ec.europa.eu/environment/eir/pdf/report\\_ro\\_en.pdf](https://ec.europa.eu/environment/eir/pdf/report_ro_en.pdf)

insurance policy, the insurer must obtain agreement from its reinsurer to provide it. The policy is then obtained by passporting.

Environmental extensions to general liability policies are not generally available. When they are available, cover tends to be limited to claims for bodily injury or property damage from accidental pollution caused by the insured. They do not provide cover for preventing and remediating environmental damage under the ELD and often do not provide cover for remediating pollution under other environmental legislation. Demand is very low.

## **2.1. Commercial insurers**

### *2.1.1. Number of insurers*

As indicated in section 2 above, no insurers that are based in or have branches in Romania offer stand-alone environmental insurance policies for risks in Romania.

The National Association of Insurance and Reinsurance Companies in Romania (*Uniunea Națională a Societăților de Asigurare și Reasigurare din România*; UNSAR) has 20 members.<sup>6</sup>

### *2.1.2. New insurers entering the market since 2009*

As indicated in section 2.1.1 above, no insurers based in, or with branches in, Romania, offer stand-alone environmental insurance policies.

### *2.1.3. Existing insurers that introduced environmental insurance policies since 2009*

See section 2.1.1 above.

## **2.2. Re/insurance pools**

There is no re/insurance pool in Romania that offers environmental insurance policies.

### *2.2.1. Date of establishment*

Not applicable

### *2.2.2. Descriptions of policies issued*

Not applicable

## **2.3. Mutuals**

No mutual in Romania offers environmental insurance policies.

### *2.3.1. Date of establishment*

Not applicable

### *2.3.2. Descriptions of policies issued*

Not applicable

## **2.4. Other**

There are no captives or other types of providers of environmental insurance policies in Romania.

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<sup>6</sup> UNSAR, 'About us'; <https://unsar.ro/en/about-us>

### **3. VOLUNTARY INSURANCE POLICIES FOR ELD AND OTHER ENVIRONMENTAL LIABILITIES**

#### **3.1. Environmental insurance policies**

As indicated in section 2 above, no insurers based in, or with branches in, Romania offer stand-alone policies that provide cover for ELD and other environmental liabilities to businesses that have sites and/or operations only in Romania.

Environmental insurance policies provided by multinational insurers to operators with sites in Romania and other Member States by passporting are available. Some of these policies provide meaningful cover for legal and licensing requirements under the law of Romania; others provide limited cover due to the lack of adaptation to legal and licensing requirements in Romania.

#### **3.2. Cover for ELD preventive costs**

As indicated in section 3.1 above, insurers based in, or with branches in, Romania do not offer stand-alone environmental insurance policies.

Stand-alone environmental insurance policies offered by way of passporting to businesses with sites and/or operations in other Member States as well as Romania provide cover for preventive measures under the ELD.

#### **3.3. Cover for ELD primary, complementary and compensatory costs**

As indicated in section 3.1 above, insurers based in, or with branches in, Romania do not offer stand-alone environmental insurance policies.

Stand-alone environmental insurance policies offered by way of passporting provide cover for primary, complementary and compensatory remediation measures under the ELD.

#### **3.4. Cover for non-ELD liabilities**

As indicated in section 3.1 above, insurers based in, or with branches in, Romania do not offer stand-alone environmental insurance policies.

Stand-alone environmental insurance policies offered by way of passporting provide cover for non-ELD liabilities such as the remediation of pollution under other environmental legislation and cover for third-party claims for bodily injury and property damage from environmental damage. Cover is subject to agreement by individual insurers.

#### **3.5. Nature of policies (liability only or liability and on-site remediation)**

As indicated in section 3.1 above, insurers based in, or with branches in, Romania do not offer stand-alone environmental insurance policies.

Stand-alone environmental insurance policies available by passporting provide cover for the costs of remediating environmental damage, including soil and water pollution, caused by an insured to third-party sites as well as the costs of remediating such damage on an insured's own site. The policies also provide cover for third-party claims for bodily injury, property damage and economic loss from environmental damage.

Stand-alone environmental insurance policies do not provide cover for damage to on-site property in the form of buildings, other structures and equipment unless, under some policies, the damage results from carrying out remediation measures themselves.

### **3.6. Description of policies**

#### *3.6.1. Format*

As indicated in section 3.1 above, insurers based in, or with branches in, Romania do not offer stand-alone environmental insurance policies.

Stand-alone environmental insurance policies offered by multinational insurers generally have a menu format so that an insured may select the insuring agreement(s) it requires. There is a wide range of such policies (see section 3.6.3 below).

#### *3.6.2. Claims made or occurrence based*

As indicated in section 3.1 above, insurers based in, or with branches in, Romania do not offer stand-alone environmental insurance policies.

Stand-alone environmental insurance policies offered by multinational insurers are underwritten on a claims made basis. That is, a claim must be made against the insured during the policy period and reported to insurers during the policy period or, if available, the extended reporting period.

#### *3.6.3. Policies for operators*

As indicated in section 3.1 above, insurers based in, or with branches in, Romania do not offer stand-alone environmental insurance policies.

Depending on the insurer, stand-alone environmental insurance policies offered by multinational insurers to operators with sites and/or operations in more than one Member State may include insuring agreements for the following:

- the remediation of on-site and off-site environmental damage under the ELD caused by operations, including transportation, carried out by the insured operator;
- the remediation of pollution under other environmental legislation caused by operations, including transportation, carried out by the insured operator;
- emergency remediation costs and costs of preventive measures under the ELD;
- emergency costs under other environmental legislation;
- third-party claims for bodily injury and property damage;
- third-party business interruption;
- the insured's business interruption costs and extra expense caused by environmental damage including pollution; and
- related legal costs.

Only the first and third items are liabilities under the ELD. The policies are thus designed to include, not only protection under the ELD but also protection under other public law as well as civil law and non-liability requirements.

Some stand-alone environmental insurance policies offered by passporting are adapted to reflect – and provide cover for – the legal and licensing situation in Romania; others are not.

#### *3.6.4. Policies for contractors and others*

As indicated in section 3.1 above, insurers based in, or with branches in, Romania do not offer stand-alone environmental insurance policies.

Stand-alone environmental insurance policies offered by multinational insurers that provide cover for ELD and other environmental liabilities are also available for contractors. The policies tend to provide similar types of cover as the policies for operators, as described in section



3.6.3 above, including liability for remediating environmental damage including pollution at sites at which the contractor is carrying out operations in addition to the insured contractor's own site.

### **3.7. Model terms and conditions**

There are no model terms and conditions for environmental insurance policies, endorsements to other policies, or any other financial security instruments for ELD or other environmental liabilities in Romania.

#### *3.7.1. Organisation issuing model terms and conditions*

Not applicable

#### *3.7.2. Description of model terms and conditions*

Not applicable

#### *3.7.3. Relationship between policies with model terms and conditions and environmental insurance policies*

Not applicable

### **3.8. Date of general availability of environmental insurance policies**

As indicated in section 2, stand-alone environmental insurance policies issued by insurers based in, or with branches in, Romania are not available.

### **3.9. Environmental assessments and audits**

Not applicable

### **3.10. Average premium**

Not applicable

### **3.11. Average policy limit**

Not applicable

### **3.12. Average deductible or self-insured retention**

Not applicable

### **3.13. Average policy period**

Not applicable

### **3.14. Sizes of typical insured businesses**

Not applicable

### **3.15. Industrial and commercial sectors that typically purchase policies**

Not applicable

### **3.16. Industrial and commercial sectors with limited or no accessibility to policies**

Not applicable

**3.17. Number and amount of claims**

Not applicable

**3.18. Coverage litigation**

Not applicable

**3.19. Cover for ELD liabilities in general liability policies**

Environmental extensions to general liability policies are not generally available. Even when they are available, they do not provide cover for preventing and remediating environmental damage under the ELD and often do not provide cover for remediating pollution under other environmental legislation.

**3.20. Cover for ELD liabilities in property policies**

Environmental extensions to property policies are not available.

**4. OTHER VOLUNTARY FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS**

**4.1. Type(s)**

Voluntary financial security instruments such as bank guarantees are not generally available for liabilities under the ELD or other environmental legislation. There is no demand for them because they are geared towards mandatory financial security requirements for known responsibilities such as closure and post closure of a landfill, not voluntary financial security for accidental ELD.

**4.2. Availability**

Not applicable

**5. MANDATORY FINANCIAL SECURITY FOR ELD LIABILITIES (ARTICLE 14(1))**

Article 33(1) of GEO 68/2007 states that Romania will issue a Government Decision, based on a proposal by central governmental authorities, to set out forms of financial security, including for insolvency, and measures to develop financial security instruments. Article 33(1) further provides that the Ordinance will be issued within 12 months of the entry into force of GEO 68/2007.

Article 33(2) provides that in setting out the forms of financial security instruments, the following factors are to be taken into consideration:

- the financial guarantee shall be based on the degree of danger from the proposed or actual activity;
- the degree of danger shall be established with respect to potential damage that can be caused by the activity to the environment; and
- the potential damage shall be assessed on the basis of environmental impact assessments and/or risk assessments to be submitted by operators.

Romania had not issued the Government Decision referred to in article 33 of GEO 68/2007 when this report was published. Accordingly, Romania had not introduced mandatory financial security for ELD liabilities when this report was published.

**5.1. Competent authority(ies)**

Not applicable

**5.2. Legislative provisions**

Not applicable

*5.2.1. Name(s) of legislation*

*5.2.2. Stand-alone requirement or hybrid*

*5.2.3. Consideration of mandatory financial security legislation (if not enacted)*

*5.2.4. Reasons for decision not to enact mandatory financial security legislation*

*5.2.5. Revisions to legislation*

*5.2.6. ELD liabilities covered by mandatory financial security*

*5.2.7. Description of mandatory financial security provisions*

*5.2.8. Exception for low risk sites*

*5.2.9. Exception for ISO 14001 certification or EMAS registration*

*5.2.10. Other exceptions*

**5.3. Environmental licence conditions**

Not applicable

*5.3.1. Stand-alone requirement or hybrid*

*5.3.2. Revisions to licensing requirements*

*5.3.3. ELD liabilities covered by mandatory financial security*

*5.3.4. Description of mandatory financial security conditions*

**5.4. Date of introduction**

Not applicable

**5.5. Effective date**

Not applicable

**5.6. Key reasons for introduction**

Not applicable

**5.7. Withdrawal of mandatory financial security**

Not applicable

**5.8. Guidance**

Not applicable

**5.9. Operators subject to mandatory financial security**

Not applicable

**5.10. Amounts and limits of mandatory financial security**

Not applicable

**5.11. Growth of mandatory financial security**

Not applicable

**6. REGULATORY OVERSIGHT OF FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS**

**6.1. Review of financial security instruments or mechanisms**

Not applicable

**6.2. Financial security instruments and mechanisms accepted**

Not applicable

*6.2.1. Templates*

*6.2.2. Requirements for environmental insurance policies*

*6.2.3. Form of mandatory environmental insurance policy*

**6.3. Financial security instruments and mechanisms not acceptable**

Not applicable

**6.4. Time of review**

Not applicable

**6.5. Regulatory costs of review**

Not applicable

**6.6. Requirements for operator to review**

Not applicable

**7. ENFORCEMENT OF FINANCIAL SECURITY REQUIREMENTS**

Not applicable

**8. EX POST ENVIRONMENTAL DAMAGE MANDATORY FINANCIAL SECURITY (ARTICLE 8(2))**

Article 29(2) of GEO 68/2007 states that the Environmental Protection Agency (*Agencia pentru Protecția Mediului*; APM) 'shall recover, inter alia, via security over property or other appropriate guarantees from the operator (garnishment) who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions' set out in it. This is identical language to section 8(2) of the ELD.

Article 29(3) further provides that the registration of the security over property shall be recorded in the Land Registry Office.

That is, the APM may require an operator that has caused an imminent threat, or actual, environmental damage under the ELD to provide financial security for costs incurred by the APM in carrying out measures to prevent or remediate environmental damage. The APM may do so by creating a mortgage on real property owned by the operator as well as creating a garnishment on the operator's bank account.

As indicated directly above, the APM may register the security over property in the Land Registry Office. It may also register the garnishment in the Electronic Archive for Security Interests in Movable Property.<sup>7</sup>

#### **8.1. Date legislation or policy for mandatory financial security introduced**

Article 29 of GEO 68/2007 was published on the same date as the remainder of GEO 68/2007, shortly after Romania joined the EU on 1 January 2007.

#### **8.2. Effective date for *ex post* mandatory financial security**

Article 29 of GEO 68/2007 entered into force on 30 April 2007, the same date as the remainder of GEO 68/2007.

#### **8.3. Financial security instruments and mechanisms accepted**

See section 8 above indicating that the creation of a mortgage by the APM or garnisheeing the responsible operator's bank account is acceptable.

Note that these are not financial security instruments to be taken out by the responsible operator but, rather, mechanisms imposed by the APM to ensure that it is reimbursed.

#### **8.4. Financial security instruments and mechanisms not acceptable**

There is no list of financial security instruments or mechanisms that are not acceptable.

### **9. PROVIDERS OF MANDATORY FINANCIAL SECURITY INSTRUMENTS**

#### **9.1. Insurers**

Not applicable

#### **9.2. Banks and other financial institutions**

Not applicable

#### **9.3. Sureties**

Not applicable

#### **9.4. Providers outside Member State**

Not applicable

### **10. MEASURES TAKEN BY MEMBER STATE TO DEVELOP FINANCIAL SECURITY MARKETS**

Romania's 2013 report to the European Commission under then article 18(1) of the ELD states as follows:

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<sup>7</sup> See Robert-Ernest Cruceru, 'Environmental Liability in Romania / Regulatory & Environment' (4 February 2016); <https://www.cruceu.eu/article-3-environmental-liability-in-romania>

[the] Ministry of Environment and Climate Change [now the Ministry of Environment, Waters and Forests (*Ministerul Mediului, Apelor și Pădurilor*)] has started proceedings for awarding a public procurement contract for a study on the financial instruments needed in Romania that will enable operators to cover their responsibilities under ELD (in 2009 and 2011). Unfortunately, no one participated in the auction.

Romania has not yet developed any financial security instrument according to this Directive.<sup>8</sup>

The report further provided in respect of financial security that:

the operators working the mining field are obliged to have a financial guarantee according to the Mining Law no. 85/2003.

The most difficult problem, for the time being, is the calculation of the financial guarantee and the development of the financial security instruments and markets, as required by ELD. The same requirement exists within the national legislation in force as a result of the transposition of the [Extractive Waste Directive (2006/21/EC)].

We encounter difficulties due to the lack of expertise in financial, economical and liability matters.<sup>9</sup>

The Ministry of Environment, Waters and Forests is resuming the public procurement procedure for a study on the financial instruments needed to cover insurance for environmental damage. The most difficult problem identified by Romania is establishing the amount for the financial security instruments and the development of them and markets for them.

## **11. EU ENVIRONMENTAL LEGISLATION WITH MANDATORY FINANCIAL SECURITY PROVISIONS**

### **11.1. Landfill Directive**

#### *11.1.1. Competent authority(ies)*

The competent authority for the Landfill Directive (1999/31/EC), which is implemented in Romania by Government Decision No 349 from April 21, 2005, on waste storage (*Guvernul României – Hotărâre nr. 349 din 21 aprilie 2005 privind depozitarea deșeurilor*; GD 349),<sup>10</sup> is the APM. The APM is organised at county level for each of Romania's 41 counties.

#### *11.1.2. Financial security provisions*

Article 11 of GD 349 requires an applicant for an environmental permit for a landfill to have a financial guarantee before the applicant may begin disposal operations. The purpose of the financial guarantee is to ensure compliance with obligations in the permit concerning the safety of the landfill and the protection of human health and the environment. The applicant

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<sup>8</sup> Report of Romania on the experience gained in the application of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (24 April 2013), Voluntary Part, s 2; [https://ec.europa.eu/environment/legal/liability/pdf/eld\\_ms\\_reports/RO.pdf](https://ec.europa.eu/environment/legal/liability/pdf/eld_ms_reports/RO.pdf)

<sup>9</sup> Ibid

<sup>10</sup> Guvernul României – Hotărâre nr. 349 din 21 aprilie 2005 privind depozitarea deșeurilor; <http://alturl.com/dgfz3> and <http://alturl.com/3m9e4> (in Romanian)

must maintain the permit throughout the operational period of the landfill as well as closure and post closure (aftercare).

#### *11.1.3. Financial security instruments and mechanisms accepted*

GD 349 simply states that the acceptable financial security instrument is a financial guarantee, without providing any further details. In practice, the acceptable instrument is a financial guarantee letter issued by a bank.

#### *11.1.4. Templates*

There are no applicable templates.

#### *11.1.5. Financial security instruments and mechanisms not acceptable*

There is no list of financial security instruments or mechanisms that are not acceptable.

### **11.2. Extractive Waste Directive**

#### *11.2.1. Competent authority(ies)*

The Extractive Waste Directive (2006/21/EC) is implemented in Romania by the following legislation:

- Government Decision No 856 of August 13, 2008, on management of waste from extractive industry (*Guvernul României - Hotărâre nr. 856 din 13 august 2008 privind gestionarea deșeurilor din industriile extractive; GD 856*);<sup>11</sup>
- Government of Romania - Emergency Ordinance No 57 of September 19, 2016 on regulating some measures regarding the application of environmental obligations for the task of the economic operators in the extractive industry, under the authority of the Ministry of Economy, Trade and Relations with the Business Environment (*Guvernul României - Ordonanță de Urgență nr. 57 din 19 septembrie 2016 privind reglementarea unor măsuri în vederea conformării statului la unele obligații de mediu din sarcina operatorilor economici din industria extractivă, aflați sub autoritatea Ministerului Economiei, Comerțului și Relațiilor cu Mediul de Afaceri*);<sup>12</sup> and
- Technical Instructions of December 4, 2013 on the application and follow-up of the measures set out in the environmental restoration plan, in the waste management from extractive industry plan and in the environmental restoration technical project, as well as the mode of operation with financial guarantee for the restoration of the environment affected by mining activities, Approved by Order no. 202/2.881/2.348/2013 issued by the National Agency for Mineral Resources, the Ministry of Environment and Climate Change and the Ministry of Economy (*Instrucțiuni Tehnice din 4 decembrie 2013 privind aplicarea și urmărirea măsurilor stabilite în planul de refacere a mediului, în planul de gestionare a deșeurilor extractive și în proiectul tehnic de refacere a mediului, precum și modul de operare cu garanția financiară pentru refacerea mediului afectat de activitățile miniere, Aprobate prin Ordinul nr.*

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<sup>11</sup> Guvernul României - Hotărâre nr. 856 din 13 august 2008 privind gestionarea deșeurilor din industriile extractive; <http://alturl.com/jfkjs> (in Romanian)

<sup>12</sup> Guvernul României - Ordonanță de Urgență nr. 57 din 19 septembrie 2016 privind reglementarea unor măsuri în vederea conformării statului la unele obligații de mediu din sarcina operatorilor economici din industria extractivă, aflați sub autoritatea Ministerului Economiei, Comerțului și Relațiilor cu Mediul de Afaceri; <http://alturl.com/zm2yx> (in Romanian)

*202/2.881/2.348/2013 emis de Agenția Națională pentru Resurse Minerale, Ministerul Mediului și Schimbărilor Climatice și Ministerul Economiei; Technical Instructions).*<sup>13</sup>

The competent authority indicated by the above legislation was the Ministry of Economy, Commerce and Business Environment Relations, through the National Agency for Mineral Resources (*Ministerul Economiei, Comerțului și Relațiilor cu Mediul de Afaceri prin Agenția Națională pentru Resurse Minerale (ANRM), din cadrul Ministerului*) (now the Ministry of Economy, Energy and the Business Environment).

#### *11.2.2. Financial security provisions*

Article 50(1) of GD 856 requires the operator of a facility for the accumulation or storage of extractive waste to have proof of the establishment of a financial guarantee before operations begin.

Article 50(2) states that the financial guarantee must cover all obligations from the environmental permit/integrated permit issued under the decision including post-closure (aftercare) provisions. It also provides that funds must be available at any time for the restoration of the site affected by the waste facility, as it appears in the waste management plan.

Article 50(3) directs the procedure set out in article 50(2) to be approved by common order of the president of the National Agency for Mineral Resources, of the Minister of Environment and Sustainable Development (now the Ministry of Environment, Waters and Forests) and of the Ministry of Economy and Finance (now the Ministry of Economy, Energy and the Business Environment), and must then be published in the Official Gazette of Romania, Part 1 within 60 days of the decision.

Article 51 of GD 856 states that the financial guarantee shall be calculated taking into account the possible impact of the waste facility on the environment, characteristics of the waste, and the future use of the restored land, with the presumption that independent and properly qualified third parties evaluate and carry out any necessary restoration work.

Article 52 provides that the amount of the guarantee shall be revised in accordance with any such restoration work that is carried out.

Article 53 directs the National Agency for Mineral Resources to provide the operator with a written declaration releasing the financial guarantee when the waste facility has been closed, except for post-closure obligations.

Emergency Ordinance No 57 provides authorisation for the relevant authorities in respect of the Extractive Waste Directive.

Article 5 of the Technical Instructions states that acceptable financial guarantees for exploration and exploitation licences may be in the form of a bank deposit, a bank guarantee letter and/or an insurance policy issued by a recognised insurer (*sub formă de depozit bancar, scrisoare de garanție bancară și/sau sub forma unei polițe de asigurare încheiate în favoarea titularului la un asigurator recunoscut*).

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<sup>13</sup> Instrucțiuni Tehnice din 4 decembrie 2013 privind aplicarea și urmărirea măsurilor stabilite în planul de refacere a mediului, în planul de gestionare a deșeurilor extractive și în proiectul tehnic de refacere a mediului, precum și modul de operare cu garanția financiară pentru refacerea mediului afectat de activitățile miniere, Aprobate prin Ordinul nr. 202/2.881/2.348/2013 emis de Agenția Națională pentru Resurse Minerale, Ministerul Mediului și Schimbărilor Climatice și Ministerul Economiei; <http://alturl.com/u5zjf> (in Romanian)



Article 6 of the Technical Instructions states that acceptable financial security for activities involving closure, greening (*ecologizare*), restoration and post-closure monitoring costing less than Romanian Leu 4,000,000 (EUR 836,400) must exclusively be by a bank deposit.

Article 7 of the Technical Instructions states that acceptable financial security for restoration of the environment under an exploration or exploitation licence must exclusively be by a bank deposit.

Article 9(1) of the Technical Instructions states that establishment of the financial guarantee for restoration of the environment can be carried out by acceptance by the ANRM of a bank guarantee letter issued by a bank registered in Romania or another Member State with relations to the Export-Import Bank of Romania EXIMBANK-SA. Article 9(3) states that the holder of the exploration or exploitation licence may submit to ANRM only bank guarantee letters with an initial period of validity of a minimum of two years.

#### *11.2.3. Financial security instruments and mechanisms accepted*

See section 11.2.2 above.

#### *11.2.4. Templates*

There are no templates for acceptable financial security instruments.

#### *11.2.5. Financial security instruments not acceptable*

There is no list of financial security instruments that are not acceptable.

### **11.3. Carbon Capture and Storage Directive**

#### *11.3.1. Status of implementation*

There was no storage of carbon dioxide in Romania when this report was published.

#### *11.3.2. Competent authority(ies)*

The competent authority for implementing the Directive on the geological storage of carbon dioxide (2009/31/EC), which is implemented in Romania by Emergency Ordinance of the Government No 64 from July 29, 2011, on geological storage of carbon dioxide (*Guvernul României - Ordonanță de Urgență nr. 64 din 29 iunie 2011 privind stocarea geologică a dioxidului de carbon; GEO 64*),<sup>14</sup> is the ANRM.

#### *11.3.3. Financial security provisions*

Article 20(1) of GEO 64 requires a potential operator to submit, in its application for authorisation to store carbon dioxide, proof that it has adequate financial resources in the form of a financial guarantee or other equivalent measures (*sub forma unei garanții financiare sau a oricăror alte măsuri echivalente*).

Article 20(2) requires the financial guarantee or equivalent measures to ensure that obligations under the storage permit, including closure and post-closure measures and

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<sup>14</sup> Guvernul României - Ordonanță de Urgență nr. 64 din 29 iunie 2011 privind stocarea geologică a dioxidului de carbon; <http://alturl.com/nenci> (in Romanian)

obligations under the EU Emissions Trading System (implemented in Romania by Government Decision No 780/2006 (*Hotărâre nr. 780/2006 din 14/06/2006*)),<sup>15</sup> are carried out.

Article 20(3) requires the financial guarantee to be valid and in effect before injection measures commence.

Article 20(4) requires the financial guarantee to remain valid and in effect after closure of the storage site until responsibility for the site is transferred to ANRM, as well as after the cancellation of a storage authorisation.

Article 20(7) states that the method of establishing the financial guarantee or equivalent measures, as well as their use, shall be determined by a Government Decision.

No Government Decision had been issued when this report was published.

#### *11.3.4. Financial security instruments and mechanisms accepted*

See section 11.3.3 above.

#### *11.3.5. Templates*

There are no templates for acceptable financial security instruments.

#### *11.3.6. Financial security instruments and mechanisms not acceptable*

There is no list of financial security instruments and mechanisms that are not acceptable.

## **12. EU RECOMMENDATION ON HYDRAULIC FRACTURING**

### **12.1. Status**

There has been vigorous opposition by the public and local communities to hydraulic fracturing (fracking) in Romania.<sup>16</sup> When this report was published, Romania had awarded licences for the exploration of unconventional hydrocarbons but had not awarded any licences for its exploitation.<sup>17</sup>

### **12.2. Competent authority(ies)**

The competent authority for mineral resources, which includes fracking, is the National Agency for Mineral Resources.

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<sup>15</sup> Hotărâre nr. 780/2006 din 14/06/2006; <http://legislatie.just.ro/Public/DetaliuDocument/72971> and [http://www.caa.ro/media/docs/G.3.3.\\_HG\\_780\\_din\\_14\\_iunie\\_2006.pdf](http://www.caa.ro/media/docs/G.3.3._HG_780_din_14_iunie_2006.pdf) (in Romanian)

<sup>16</sup> Laurentiu Pachiu and Raluca Mustaciosu, Pachiu & Associates, 'Oil and gas regulation in Romania: overview' (1 September 2019); [https://uk.practicallaw.thomsonreuters.com/2-566-0966?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/2-566-0966?transitionType=Default&contextData=(sc.Default)&firstPage=true)

<sup>17</sup> See Milieu, 'Study on the application in relevant member states of the Commission recommendation on minimum principles for the exploration and production of hydrocarbons (such as shale gas) using high-volume hydraulic fracturing; National Report: Romania' (December 2015), 6 (describing the situation in 2015); <https://www.fracrisk.eu/sites/default/files/Romania-2016-Milieu%26Ricardo.pdf> This situation had not changed when this report was published.

### 12.3. Financial security provisions

Romania has not adopted Commission Recommendation on minimum principles for the exploration and production of hydrocarbons (such as shale gas) using high volume hydraulic fracturing (2014/70/EU) in Romanian law.<sup>18</sup>

There are no financial security provisions in Petroleum Law No 238/2004 (*Legea petrolului nr. 238/2004*)<sup>19</sup> that require the holder of an exploration or exploitation licence for unconventional (or conventional) oil and gas to have financial security for preventing and remediating environmental damage under GEO 68/2007. The financial security provisions are to ensure that the licence holder has adequate finances to carry out obligations under the licences and to restore the environment of a site that has been used for exploration or exploitation.<sup>20</sup>

### 12.4. Financial security instruments and mechanisms accepted

Not applicable

### 12.5. Templates

Not applicable

### 12.6. Financial security instruments and mechanisms not acceptable

Not applicable

## 13. EU ENVIRONMENTAL LEGISLATION WITH NO MANDATORY FINANCIAL SECURITY PROVISIONS

### 13.1. Industrial Emissions Directive

#### 13.1.1. Competent authority(ies)

The competent authority for the Industrial Emissions Directive (2010/75/EU), which is implemented in Romania by Law No 278 from October 24, 2013, on industrial emissions (*Lege nr. 278 din 24 octombrie 2013 privind emisiile industriale*; Law 278) with subsequent amendments,<sup>21</sup> is the APM.

#### 13.1.2. Financial security provisions

Law No 278 does not contain any financial security provisions.

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<sup>18</sup> See Laurentiu Pachiu and Raluca Mustaciosu, Pachiu & Associates, 'Oil and gas regulation in Romania: overview' (1 September 2019); [https://uk.practicallaw.thomsonreuters.com/2-566-0966?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/2-566-0966?transitionType=Default&contextData=(sc.Default)&firstPage=true)

<sup>19</sup> *Legea petrolului nr. 238/2004*; <https://lege5.ro/Gratuit/gu3dkoju/legea-petrolului-nr-238-2004> (in Romanian). An unofficial English translation of the Petroleum Law is available at [http://www.namr.ro/wp-content/uploads/2014/03/PLaw\\_238.pdf](http://www.namr.ro/wp-content/uploads/2014/03/PLaw_238.pdf)

<sup>20</sup> See Milieu, 'Study on the application in relevant member states of the Commission recommendation on minimum principles for the exploration and production of hydrocarbons (such as shale gas) using high-volume hydraulic fracturing; National Report: Romania' (December 2015), 19; <https://www.fracrisk.eu/sites/default/files/Romania-2016-Milieu%26Ricardo.pdf>; see also

<sup>21</sup> *Lege nr. 278 din 24 octombrie 2013 privind emisiile industriale*; <http://alturl.com/79nne> (in Romanian)

*13.1.3. Financial security instruments and mechanisms accepted*

Not applicable

*13.1.4. Templates*

Not applicable

*13.1.5. Financial security instruments and mechanisms not acceptable*

Not applicable

**13.2. Seveso III Directive**

*13.2.1. Competent authority(ies)*

The competent authorities for the Seveso III Directive (2012/18/EU), which is implemented in Romania by Law No 59/2016, on the control of major accident hazards, involving dangerous substances (*Lege nr. 59/2016 din 11 aprilie 2016 privind controlul asupra pericolelor de accident major în care sunt implicate substanțe periculoase*),<sup>22</sup> are the Ministry of Environment, Waters and Forests through its Risk Secretariat, together with its central and local subordinated organisations, and the Ministry of Internal Affairs through the Department for Emergency Situations, represented by the General Inspectorate for Emergency Situations and its local subordinated organisations.

*13.2.2. Financial security provisions*

Law No 59/2016 does not contain any financial security provisions.

*13.2.3. Financial security instruments and mechanisms accepted*

Not applicable

*13.2.4. Templates*

Not applicable

*13.2.5. Financial security instruments and mechanisms not acceptable*

Not applicable

**13.3. Other legislation**

No other legislation in Romania requires mandatory financial security for civil claims or other liabilities arising from environmental damage.

**14. MANDATORY FINANCIAL SECURITY FOR OFFSHORE OIL AND GAS OPERATIONS**

**14.1. Competent authority(ies)**

The competent authority for offshore oil and gas operations in Romania is the National Agency for Mineral Resources.

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<sup>22</sup> Lege nr. 59/2016 din 11 aprilie 2016 privind controlul asupra pericolelor de accident major în care sunt implicate substanțe periculoase; <http://alturl.com/ggqut> (in Romanian)

#### **14.2. Status of offshore oil and gas operations**

Romania has a long history of offshore oil and gas operations, with oil production having begun in 1987.<sup>23</sup>

In July 2019, the National Authority for Mineral Resources launched Licensing Round XI/2019. The round includes the concessions for 28 onshore and offshore exploration, development and exploitation petroleum blocks.<sup>24</sup>

#### **14.3. Requirements for financial security**

The Petroleum Law does not require the applicant for a prospecting permit or a petroleum agreement to submit evidence of financial security for obligations under a permit or agreement, or for compensation for claims for harm from offshore oil and gas operations. The requirements focus on the financial and technical capabilities of the bidders for a permit or agreement.<sup>25</sup> The holder of a petroleum agreement must have a bank guarantee to cover its timely performance of the minimum exploration programme under the agreement.<sup>26</sup>

#### **14.4. Requirement for financial security for ELD liabilities**

There is no requirement for an applicant for a prospecting permit or a petroleum agreement to submit evidence of financial security for ELD liabilities.

### **15. FAILURE OF FINANCIAL SECURITY**

#### **15.1. Inadequate level of financial security instrument or mechanism to pay claims**

No information was available as to whether there has been any cases in which a financial security instrument or mechanism was inadequate to pay the costs to remediate environmental damage when this report was published.

#### **15.2. Insolvency of operator leading to failure of financial security instrument or mechanism**

No information was available as to whether there has been any cases in Romania in which the insolvency of an operator led to the failure of a financial security instrument involving the prevention or remediation of environmental damage including pollution when this report was published.

#### **15.3. Other**

No information was available on any other failure of financial security in Romania.

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<sup>23</sup> See Bio by Deloitte and Stevens & Bolton LLP, 'Civil liability, financial security and compensation claims for offshore oil and gas activities in the European Economic Area; Lithuania' (31 October 2014), 455; [https://ec.europa.eu/energy/sites/ener/files/documents/BIO\\_Offshore%20Civil%20Liability\\_Revised%20Final%20Report%20%2831102014%29.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/BIO_Offshore%20Civil%20Liability_Revised%20Final%20Report%20%2831102014%29.pdf)

<sup>24</sup> See Ruxandra Bologa, '2019 Romania – Call for Petroleum Blocks Tender; A Breath of Fresh Air?' (Nestor Diculescu Kingston Petersen, August 2019); <https://www.nndkp.ro/articles/2019-romania-call-for-petroleum-blocks-tender-a-breath-of-fresh-air/>

<sup>25</sup> See *ibid* 463

<sup>26</sup> See *ibid* 465

**16. FUNDS**

The Romanian Government has not established a fund to provide funding for preventive and remedial measures under GEO 68/2007.

Article 34 of GEO 68/2007 provides that 'Costs of preventive and remedial measures shall be allocated through Governmental Decision to the Central Public Authority for Environmental Protection from the governmental emergency fund for financing the emergency situations with regard to preventing effects of imminent threat of damage and/or remedying the effects produced by environmental damage'.

**16.1. Name(s)**

Not applicable

**16.2. Extension of existing fund to cover remedial costs under the ELD**

Not applicable

**16.3. Purpose**

Not applicable

**16.4. Type**

Not applicable

**16.5. Source(s) of funding**

Not applicable

**16.6. Number and amount of claims**

Not applicable

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### Romania

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