

Annual endorsement obligation for environmental permits currently off the table

By Laura Neacsu

Last summer, the Government of Romania obliged all beneficiaries of environmental permits to obtain annual endorsements for such permits to keep them valid. This regulation was introduced by Emergency Ordinance.

This April, the Romanian Constitutional Court has declared it as unconstitutional, which has alleviated the concerns of many companies.

Background

On 19th July 2018, the Romanian Government passed Emergency Ordinance 75/2018¹ ('**GEO 75**'), which amended the EO on environmental protection². Among other things, GEO 75 introduced the obligation of beneficiaries of existing environmental permits and integrated environmental permits to obtain an annual endorsement (*viză anuală*).

In November 2018, the Ministry of Environment approved a procedure to request such an endorsement by means of an Order³, which confirmed that permit holders needed an endorsement to certify that the permit conditions were maintained *de facto* on-site. This request had to be filed with the environmental protection authority at the latest 60 days before the anniversary of the original permit was granted.

If the holder failed to obtain an endorsement, the competent authority could grant a 30-day remedy period, but if this then expired without getting an endorsement, the permit became invalid.

But since environmental permits and integrated authorizations are issued for 5 or 10 years, this new regulation was seen to reduce the validity term of environmental permits *de facto*, which has been a source of legal uncertainty.

Court Decision

GEO 75 was considered to be in breach of the constitutional provisions by a group of 27 senators, who filed a constitutional complaint on the basis that the Government could not prove the urgency⁴ for any of the measures and amendments introduced by GEO 75. So, the senators complained that the Government only wanted to enforce its will by evading parliamentary legal procedure.

¹ Government Emergency Ordinance no. 75/2018 for the amendment and completion of certain normative acts regarding environmental protection and the legal status of aliens.

² Government Emergency Ordinance no. 195/2005 on environmental protection, as subsequently amended and completed.

³ Order no. 1171 as of 5th November 2018.

⁴ Mandatory for the effective enforcement of an emergency ordinance is the proof of urgency in the adoption of a legislative amendment, without going through the parliamentary procedure for this.

On 9th April 2019 the Constitutional Court of Romania declared GEO 75 as unconstitutional in its entirety⁵.

Status Quo

As per the Constitution of Romania⁶, provisions of laws and ordinances found to be unconstitutional cease their validity 45 days after the publication of the Constitutional Court's decision, unless the Parliament or the Government adapts the unconstitutional provisions to those of the Constitution. During this period, the provisions found to be unconstitutional are suspended as an effect of the law.

Therefore, the annual endorsement obligation ceases to apply for the 45-day term after the publication of the decision, i.e. until **18th July 2019**.

If the provisions of GEO 75 are not brought into line with the Constitution by that date, then GEO 75 ceases to be valid.

Summary

From an investor's point of view, GEO 75 was hard to understand. Once granted a permit for a certain period, one did not expect renewal obligations to be introduced at a later stage by Emergency Ordinance.

The decision of the Constitutional Court is a relief. We will follow up on any steps taken by the competent authorities.

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⁵ Decision of the Constitutional Court no. 214 as of 9th April 2019, published in the Official Gazette of Romania on 3rd June 2019.

⁶ Art. 147 para. (1) lit. c) of the Constitution.