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Legal Bulletin



Environmental Law

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Order No. 269/2020 on approval of the general guidelines applicable to the stages of the environmental impact assessment procedure, of the guidelines for the environmental impact assessment in transboundary context and other specific guidelines for different project areas and categories (“Order No. 269/2020”) was published in the Official Journal of Romania Part I, No. 211 of 16 March 2020. This legislative act came into force on the date of its publication.

The order is meant to implement the guides elaborated within EGEIA Project¹ carried on by the Ministry of Environment, Waters and Forests (“MEWF”) under the general name

¹ For details regarding EGEIA Project you may refer to MEWF website [here](#).

“Elaboration of necessary guidelines in view of improvement of to improve administrative capacity of environmental protection authorities for the purpose of the uniform conduct of the environmental impact assessment procedure (EGEIA)”.

Besides this, the issue of these guidelines was mentioned also by the Law No. 292/2018 on assessment of the impact of certain public and private projects on the environment (“**Law No. 292/2018**”). To this end, the law explicitly provided the approval by MEWF of the guidelines provided under art. 12, para (10) of the Law No. 292/2018 within 12 months from the entry into force of the law, i.e. 9 January 2019.

1. Brief history

The Partnership Agreement between the European Commission and Romania provides in the action plan approved by the Romanian Government by way of Memorandum No. 3680/19.03.2014 (which is an appendix to this partnership), for specific provisions necessary to be accomplished in order to achieve the strategical requirements in order to strengthen the performances of the cohesion policy for the period 2014-2020, entitled ex-ante conditionalities applicable to the use of the European funds.

Thus, one conditionality undertaken by the MEWF was to create a legal framework for the actual implementation of the EU environmental legislation on strategic environmental assessment (“**SEA**”) and environmental impact assessment (“**EIA**”).

2. Role of the Order No. 269/2020

In order to achieve the aforesaid ex-ante conditionality, by way of Order No. 269/2020, seven (7) methodological guidelines were approved which were developed within EGEIA project carried on by the MEWF during the period March 2016 - March 2019.

These EIA guidelines, out of which two (2) general guidelines and five (5) specific guidelines, include information required for the conduct of the stages involving the classification, definition of the assessment area and a quality review on the environmental impact report (“**EIR**”).

Such guidelines include recommendations with practical applicability for owners of projects in EIA procedures, for environmental authorities that carry out EIA procedures (especially for major projects financed with European funds), the drafters of EIR. These guidelines are of interest also to the other authorities that are consulted in the EIA procedures according to the legal provisions, and for the public, facilitating its better participation in the EIA procedure. At the same time, as stated in the MEWF Communication available [here](#), the guidelines function as a support for all Romanian authorities in accessing European funds.

These guidelines complement the guidelines approved by way of Order of the ministry of environment, waters and forests No. 1825/2016 for the approval of the guidelines on the environmental impact assessment.

The seven (7) guidelines provided by Order No. 269/2020 are the following:

1. *“General guidelines applicable to the stages of the environmental impact assessment procedure”* (Annex No. 1);

Such guidelines reflect the current European concept of environmental impact assessment, transposed in Romania by way of the Law No. 292/2018. Its enactment determined the repeal of the Order of the ministry of waters and environment protection No. 863/2002 on approval of the methodological guidelines applicable to the stages of the framework procedure for the environmental impact assessment.

2. *“Guidelines regarding the environmental impact assessment in transboundary context, which represents the adjustment of the guidelines to the requirements of the national legislation for the implementation of Article 7 of the EIA Directive developed by JASPERS in 2013”* (Annex No. 2);
3. *“Adjustment of the sectoral guidelines for the incineration of municipal waste, developed by JASPERS (2013) to the requirements of the national legislation and harmonization of the sectoral guidelines for the incineration of municipal waste with the relevant EU laws”* (Annex No. 3);
4. *“Guidelines on quarries, open-cast mining including surface industrial installations for extraction”* (Annex No. 4);
5. *“Guidelines on installations for the intensive rearing of livestock, including poultry and pigs”* (Annex No. 5);
6. *“Guidelines on projects for the construction of installations for hydroelectric energy production”* (Annex No. 6);
7. *“Guidelines on afforestation of land on which there was no previous forest vegetation or grubbing-up for land-use change”* (Annex No. 7).

Order No. 262/2020 for the amendment of the Methodological Guidelines on the adequate assessment

of the potential effects of the plans or projects on the protected natural areas of Community interest

Order No. 262/2020 for the amendment of the Methodological Guidelines on the adequate assessment of the potential effects of the plans or projects on the protected natural areas of Community interest, as approved by Order No. 19/2010 issued by the minister of environment and forests (“**Order No. 262/2020**”) was published in the Official Journal of Romania, Part I, No. 180 of 5 March 2020. The legislative act came into force on the publication date.

The enactment of Order No. 262/2020 was imposed to MEWF by way of the provisions of Article 33, para. (3) of Law No. 262/2018 which explicitly provide for the amendment of Order No. 19/2010 approving the Methodological Guidelines on the adequate assessment of the potential effects of the plans or projects on the protected natural areas of Community interest (“**Order No. 19/2010**”/ “**Guidelines**”) by way of an order to be issued by the MEWF ministry.

The guidelines set out the stages to be taken in order to carry out the appropriate evaluation, according to the provisions of Article 28 of the Government Emergency Ordinance No. 57/2007 regarding the regime of the protected natural areas, the conservation of natural habitats, of the flora and fauna. This evaluation is mandatory for any plan / project that can significantly affect the natural protected area of Community interest, alone or in combination with other plans / projects, which are under regulatory procedure or are provided for in development strategies.

As per the approval report ancillary to the issue of the Order No. 262/2020, such order was adopted in order to correlate the provisions of the Guidelines with the provisions of Law No. 292/2018, a legislative act transposing in the Romanian legislation Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment.

The main legislative amendments are indicated hereinbelow:

- Removal of the term “Natura 2000 endorsement” and the Annex No. 3 on the framework content of Natura 2000 Endorsement. This term has been removed following the amendments made to Government Emergency Ordinance No. 195/2005 on the environmental protection by Law No. 292/2018.
- Correlation of the Guidelines with the provisions of Law No. 292/2018 regarding the decisions which the authority may take following the carrying out of the procedural stages.
- Revision of the Annex to the Order No. 262/2020 having as object the template form which must be transmitted by the Romanian environmental authority to the

European Commission in line with article 6 of the Habitats' Directive 92/43/CEE² and the Commission Notice C(2018) 7621 "*Managing Natura 2000 sites - The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*".

- Removal of the stage of the alternative solutions as a distinct stage in the adequate assessment procedure, and its placement within the stage covering the adequate assessment study. This change is meant to implement art. 29 of Annex No. 5 of Law No. 292/2018 which provides that the stage for adequate assessment study includes the alternative solutions as well.

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² Art. 6 (4) "*If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted*".

Editors

Environmental Law and Permitting are two of the niche practice areas of Romanian and EU law in which Țuca Zbârcea & Asociații's attorneys have gained unique expertise by handling some of the most complex projects undertaken so far in Romania in the mining sector, energy and oil & gas, as well as in the steel industry. Our services cover all procedural steps to be undertaken before the competent authorities (city halls, local environmental authorities, Ministry of Environment, Water and Forests, etc.) in relation to complex procedures such as IPPC, BAT, environmental impact assessment procedures, issuance of city planning certificates, public debates and environmental organisations, cross border environmental procedures, etc. Also, our services include advice on the environmental aspects of projects such as mergers and acquisitions, partnerships, long term exploitation contracts etc. and drafting and negotiating environmental agreements for the separation of environmental liabilities, both historical and forthcoming.



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