

Bondoc și Asociații | About the validity of (integrated) environmental permits in 2021 – some practical points



Since November 2019 (more precisely since 18 November, date of entry into force of Law no 219/2019), the rules regarding the validity term of environmental permits (autorizații de mediu) and integrated environmental permits (autorizații integrate de mediu) have been fundamentally modified, the fixed validity term (5 or 10 years, as applicable) being replaced with validity for an indefinite period of time, conditional upon the obtaining of an annual visa.

However, the procedure for granting this visa (approved under Order no. 1150/27.05.2020 of the Minister of Environment, Waters and Forests) came into effect only 8 months later (on 11 July 2020). In the absence of clear rules indicating to both permit holders and environmental protection agencies (EPAs) the steps, deadlines and procedure to follow, there was much uncertainty in practice, especially in the first part of 2020, when different solutions were applied in the same type of situations, thus turning a regulation potentially in favor of permit holders (from the perspective of granting them the possibility of extending the validity of some of the most important authorizations) into a problematic regulatory act, potentially causing complications for ongoing businesses.

At the beginning of 2021, permit holders and competent authorities (EPAs, but, equally so, the inspection and control authority – the Environmental Guard) find themselves in the presence of a well-defined regulatory framework governing the annual visa, further to the supplementation of secondary legislation, as mentioned above. In this respect and in order to better understand the main practical aspects related to this regulation, it may be useful to briefly go over the main aspects and steps to follow in order to apply for and obtain the 2021 visa in due time. It is worth mentioning that the timely observance of this procedure is essential for maintaining the validity of the (integrated) environmental permit and avoiding the risk of having the business subject to authorization suspended.

For starters, please note that the mechanism of unlimited validity conditional upon obtaining of an annual visa is not completely new in Romanian legislation, with similar provisions having very recently existed for a short period of time (i.e. between 19 July 2018 and 3 June 2019) further to the Constitutional Court having upheld an unconstitutionality objection. Therefore, there are now 2 types of environmental permits and integrated environmental permits in Romania: permits valid for an indefinite term, provided that the annual visa has been obtained (i.e., those issued between 19 July 2018 and 2 June 2019, as well as those issued starting 18 November 2019), and permits with a fixed validity period (i.e., those issued before 19 July 2018, as well as those issued between 3 June 2019 and 17 November 2019).

Without going into much detail about the different scenarios where a permit might be included in light of the

legislative developments mentioned above, some essential elements of the annual visa system, as currently regulated, would be as follows:

- **What does the annual visa mean?**

According to the legal provisions, the annual visa confirms that the permit holder is carrying out activities under the same conditions as those considered at the moment when the environmental permit / integrated environmental permit was issued and that no changes have occurred that would affect the conditions established under the regulatory acts.

Therefore, the visa should be applied for only if no such changes have occurred in that year.

If changes in the conditions of the authorized activity occur, the obligation to inform the EPA in advance, provided under Government Emergency Ordinance no. 195/2005 on environmental protection, shall obviously remain applicable and, depending on the authority's decision, the procedure for revising or obtaining a new permit must be followed.

In this respect, for clarity purposes, it is expressly provided that the annual visa is not required in the year when a permit revision has been carried out. The regulation is not clear as regards scenarios where revision procedures are performed over several calendar years, but in an interpretation of the text of law which we consider to be reasonable, the rule should be the same for each of the years covered by such revision procedures.

On the other hand, we consider it useful to mention that, although the law does not expressly regulate the scenario where changes are to be made after the annual visa has been obtained, but in the same year, in such case the permit holder should still notify the EPA in respect of the contemplated changes, for compliance with the above legal obligation and the avoidance of sanctions.

- **Who must apply for and obtain the annual visa?**

In brief, all holders of environmental permits and integrated environmental permits, regardless of the issuance date, i.e. whether before or after 18 November 2019.

Regarding the permits issued before 19 July 2018, as well as between 3 June 2019 and 17 November 2019, it is worth noting that the obligation to obtain the annual visa remains in effect even where the permit concerned provides for a fixed validity term, as the validity will be lost in case of non-compliance with the visa requirement.

- **What is the procedure?**

If no changes have been brought to the conditions under which the authorized activity takes place, the permit holder must apply for the annual visa within a term of maximum 90 days and minimum 60 days before the day and month corresponding to the day and month when the permit was issued; this rule for determining the time limits by reference to the issuance date of the initial permit is also maintained if the environmental permit / integrated environmental permit has been revised.

The timeframe within which the application must be made is an essential aspect, as non-compliance is sanctioned with suspension of business for a period equal to that of the delay in submitting the application for visa. No exceptions to this sanction are provided.

The procedure in view of issuance of the decision to apply the annual visa will include on-site verifications by the EPA (for the first visa and subsequently at least every two years for environmental permits and annually for integrated environmental permits).

- **Modification of the validity term**

An aspect that needs to be considered specifically by holders of fixed-term permits (i.e., permits issued before 19

July 2018, as well as those issued between 3 June 2019 and 17 November 2019) is the procedure for having the permit validity modified.

Thus, the validity term of these permits did not automatically change further to the entry into force of Law no. 219/2019. This piece of legislation includes only a very broadly worded text which sets forth that holders of fixed-term permits may choose (at any time during the validity period thereof, but no later than 6 months prior to expiry) to request the amendment of the validity term in the sense that the permit is valid provided that the annual visa is obtained. Holders who do not apply for such amendment within the maximum period provided (i.e. no later than 6 months before the expiry of the permit) will be required to follow the procedure for requesting and obtaining a new permit. Most likely, this is not a desirable situation, given the long terms provided by law for the issuance of a new permit, which are currently in practice even longer in the context of the COVID-19 pandemic and, consequently, the potential risks of having the business suspended.

In practice, in the absence of any details or of a specific procedure to be followed for analyzing applications for amendment of environmental permits validity, the environmental authorities applied the specific revision procedure - the situation being assimilated to a permit revision even if this is not a revision in itself, being in fact a legislative amendment and not a change in the business conditions or even in terms of the elements taken into account for the environmental permit issuance.

The situation is likely to be solved through the simplification of procedures if the draft Procedure for the issuance of environmental permit, which was under public debate at the end of December 2020, is adopted in the form published on the website of the Ministry of Environment, Waters and Forests, at least as regards the change in the validity of fixed-term environmental permits which are still in force. Thus, this draft Procedure provides that, if the environmental permit holder only requests the change of the permit validity, the EPA will issue a new permit indicating a modified validity, within 10 working days from submission of the application and the statutory declaration that the activity is carried out under the same conditions for which the initial environmental permit was issued.