

Country Profile regarding the National Implementation of the Chemical Weapons Convention

Romania¹

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Introduction

Romania participated actively in the CWC negotiation process and signed the Chemical Weapons Convention (CWC) 13 January 1993 and ratified it 15. February 1995.²

In the period between the signature and the ratification, an intense and complex programme was carried out, aimed to prepare the internal conditions for implementing the CWC. The activities regarding the implementation of the CWC into an internal framework (both administrative and legal) were influenced by some specific internal particularities of Romania.

Romania has an economy in transition towards an open market economy, still featuring wide state ownership (especially in the industrial sector, chemical industry included). Romania possesses no CW and does not produce any. Romanian legal doctrine provides that international treaties, once ratified by the Parliament, become part of the national legislation.

The Romanian overall concept for the national implementation of the CWC is towards a single act. The solution is considered to be more adequate by offering a uniform, easy to apply regime.

Efforts were undertaken to accomplish as much as possible of the required internal legislative and administrative framework until the moment of ratification of the CWC by the Parliament. This task was carried out by an inter-ministerial working group involving, *inter alia*, the Ministry of Foreign Affairs, Ministry of Defence, Ministry of Industries, Ministry of Finance - Directorate General of Customs, Ministry of Internal Affairs, Ministry of Environmental Protection and the National Agency for Export Control.

For accelerating the accomplishment of a reliable national implementation and application framework, the working group took advantage of the already existing legal and administrative structures of export controls³ especially in establishing the National Authority.

The main achievements of the working group were the preparation of the internal forms for ratifying the CWC and the establishing of the National Authority as a distinct division at the National Agency for Export Control. The name is modified to the

¹ Acknowledgement: The version of draft the legislation used for this study (dated March 1995) is at the moment under consideration at the competent authorities of Romania, and therefore likely to suffer from some modifications. At the moment the legislation contains an introduction, nine chapters summing 58 articles, as well as two Annexes. Following the events in Tokyo the 20 March this year, it is likely that more strict control and authorising measures will be introduced in the text of the draft.

² Romania became the 25th ratifier of the CWC.

³ National Agency for Export Control, later to become National Agency for the Control of Strategic Exports and the Prohibition of Chemical Weapons, Governmental Decisions no. 594/1992, 31/1994 and 211/1994. For details see attached papers.

National Agency for the Control of Strategic Exports and of the Prohibition of Chemical Weapons (the Agency).

The Romanian National Authority was established in May 1994 and one of its major tasks has been to prepare the internal implementation act of the CWC. The result is the Draft-Law proposal on the Prohibition of Developing, Producing, Stockpiling and Use of Chemical Weapons, at time under consideration of the Parliament of Romania (Draft-Act).

Main Provisions

General aspects

The implementation of the CWC is towards a single act solution in the belief that a uniform and precise legal framework will offer the most adequate conditions for organising and surveying CWC related issues.

The full title of the Draft-Act is 'Draft Law on the Implementation of the Provisions of the Convention on the Prohibition of Developing, Producing, Stockpiling and Use of Chemical Weapons and their destruction'. In its present form the Act contains of 9 chapters summing 59 articles, and three Annexes.⁴ Data on some main characteristics of the Act such as language, field of application, object are found in chapter I, *General Dispositions*, which provides for:

- (1) definitions of terms used in the text (chemical weapon, precursor, toxic chemical, riot-control agents) - Article 1;
- (2) the presentation of the three schedules of toxic chemicals and precursors - Article 2;
- (3) the main object of the Act which is the prohibition, for any person, under any circumstances, to develop; produce; acquire in any way; stockpile; transfer, directly or indirectly; engage in military preparation for the use of chemical weapons; assist, encourage or determine anyone to engage in activities prohibited by the Convention; use riot-control agents as means of warfare- Article 3;

For ensuring these main objectives, a list of prohibitions (and the corresponding penal sanctions) is given in chapter VIII, *Sanctions*.

Under chapter III, *Unprohibited Activities*, precise licensing and permitting requirements and proceedings are provided for.

According to the provisions of chapter IX, *Final Dispositions*, the Act will enter into force 90 days before the EIF of the CWC. The Agency has to elaborate and implement

⁴ The titles of the chapters are:

- Chapter I- General Dispositions
- Chapter II- Declarations
- Chapter III - Unprohibited Activities
- Chapter IV - Transfers
- Chapter V - Verification
- Chapter VII- Other Dispositions
- Chapter VII- Sanctions
- Chapter IX - Final Dispositions

Annexes: Decision by the Government of Romania, No. 211/ 18 May, 1994, on some measures for implementing the international convention on the Prohibition of the Development, Destruction, Production, Stockpiling and Use of Chemical Weapons and on their Destruction; and The Principal Attributions of the Agency.

application instructions for the purposes of this Act, e.g., include model forms for declarations and details on the national and international inspections. The instructions are to be approved by the Government

The National Authority

Article 4 of chapter I designates the National Agency for the Control of Strategic Exports and of the Prohibition of Chemical Weapons (further called the Agency), as being the specialised governmental body which applies the control regime regarding the production, use, import and export of toxic chemicals and their precursors for activities not prohibited under the CWC. The Agency represents Romania as the National Authority in the relations with the OPCW, and with the National Authorities of other States Parties. The structure, attributions and logistics of the Agency are settled by a Governmental Decision.⁵

The task and powers of the National Authority are: (a) the issuing of the initial and annual national declarations to be transmitted to the OPCW, (b) the issuing of permits for the Schedule 1 facility, (c) systematic verification of chemicals and production facilities, through declarations of the operators and on-site routine inspections, (d) authorising the issue of import or export licences for scheduled chemicals, and notification of the Schedule 1 chemicals transfers to the OPCW, (e) collection of information for the annual national declarations, and the national data base, (f) organising the conditions for the international compliance inspections, (g) international co-operation for CWC related issues, and (h) informing the Government on CWC implementation issues.

The National Authority was established by a Governmental Decision,⁶ as a distinct administrative body (Directorate-General) within the National Agency for the Control of Strategic Exports and of the Prohibition of Chemical Weapons. It is an independent, formal body in the apparatus of the Prime Minister.

The Agency is headed by a Chairman with the ranking of a Secretary of State. The Directorate-General for the Control of the Prohibition of Chemical Weapons is headed by a Director-General.⁷

According to Chapter III, *Unprohibited Activities*, the Agency shall authorise the production of Schedule 1 chemicals for research and medical, pharmaceutical and protective purposes and the production facilities, including the single small scale facility. In order to prevent the use of any Schedule 1 chemicals for terrorist activities, the law sets no lower limits for the authorisation of their production, and no thresholds for Schedule 1 declarations.

The last article in chapter III provides for that the production of Schedule 2 and 3 toxic chemicals and precursors is a permitted activity, subject to the control of the Agency and to international verification, and according to the disposition of the law.

Collection of information

The Agency is responsible for the collection of information and data on CWC related issues. The main goal of this activities is the issuing of the initial and annual national declarations which are to be transmitted to the OPCW.

⁵ Decision No 211/94, 18 May 1994 and The Main Attributions of the Agency

⁶ Decision No. 211/94

⁷ For details see Annex 2.

The chapter II, *Declarations*, includes 9 articles covering all types of declarations provided by the Convention and it contains provisions on the obligations of the facility operators, public or private, regarding initial and annual declarations to be submitted to the National Authority, as a basis for the national declarations.

The time frames for the submission of the declarations are settled in a way which leaves to the Agency a 30 day period to process, finish and transmit the national declarations to the OPCW, on time.

The internal declaration thresholds of Schedule 2 and 3 chemicals are reduced to one half and 2/3 respectively of those provided by the CWC for enabling the Agency to keep a precise evidence of the operators likely to figure in the national declarations.

Verification - Inspections

General remarks

The Romanian view on verification inspections is presented in chapters V and VI, *The Control System* and *International Verification*, of the Draft-Act.

Facility Agreements

The Romanian draft-legislation provides for the conclusion of Facility Agreements. According to chapter VI of the Draft Act the proceedings for on-site international compliance inspections to Schedule 1 and 2 facilities are to be settled in details by Facility Agreements concluded between the Agency and the OPCW.

Systematic inspections

Chapter V, *The Control System*, provides for that the Agency for exercising its control attributions, sets up its own control body (CB), including own experts and outside specialists. CB staff will be attested by the Agency; for the purpose of conducting chemical analysis required by the inspection activities, the Agency designates and authorises specialised labs. The CB has unrestricted access to locations, installations, documentation and information, requested for the successful fulfilment of control duties during the inspection, national or international. The operator is required to: (a) inform the inspection team on the main characteristics of the plant site and facility, its main activities, the administrative, logistic and security measures necessary for the inspection; (b) operate the controlled facility at the request of the inspection team; (c) provide the inspection team with relevant documentation, at request; (d) allow the inspection team to interrogate the installation personnel, for the settlement of facts relevant for the purposes of the inspection; (e) ensure protective equipment, if necessary, and to permit the inspection team to use its own equipment, if this corresponds with the specifics of the facility; (f) ensure the installation and functioning of the permanent surveying equipment; (g) take appropriate measures for the circulation of information revealed during the inspection, for the protection of confidential information; (h) permit the inspection team to take samples, to analyse them and to transfer them for further analysis, to designated national laboratories, or to the OPCW; and (i) participate at the presentation, by the inspection team, of the preliminary results of the inspection and clarify unclear issues, if any.

The Agency ensures the compliance with the provisions of this Act, by surveying the production, consumption and import/export for scheduled chemicals, and also continuously surveying equipment installed at relevant facilities, initial and routine inspections at the premises suitable for the purposes of this Act.

The last 4 articles of the chapter provide the purpose and objectives of the inspection activities of the Agency at facilities producing Schedule 1, 2 and 3 chemicals, and at facilities declared under Part IX of the Verification Annex of the CWC.

International inspections

Chapter VI, *International Verification*, contains provisions aimed to ensure the successful carrying out of verification activities by OPCW inspection teams.

The on-site inspection proceedings for Schedule 1 and 2 chemicals installations, are to be settled in details, by Facility Agreements concluded between the Agency and the OPCW.

The internal escort for the OPCW inspection teams will be ensured by a team selected from the Agency's Control Body.

It is also provided for obligations of the operator of an inspected facility during an international inspection. The operators have to: (a) ensure the means and services requested by the work of the inspection team (transport, communication with the OPCW, translation, working spaces, lodgement, medical assistance), (b) ensure the protection of confidential information and data, which are not related to the objectives of the inspection; (c) provide the inspection team with maps and plans indicating, at the proper scale, the premises relevant for the purposes of the inspection; and (d) permit the application of the traffic control proceedings, by keeping entrance-exit to the premises registers, as well as by the use of video recording means and sensors by the inspection team.

The chapter also gives the obligations of different public institutions with regard to international inspections under the CWC.

The Agency, together with the Ministry of Interior Affairs (Directorate-General for Passports and Border Police) and the Ministry of Finance (Directorate-General of Customs), settles the point of entry for the inspection teams and transmits the information to the OPCW. The Ministry of Foreign Affairs transmits the information on the arrival time of the unscheduled aircraft of the inspection team to the Ministry of Transport (Air Transport Department). It obtains the unscheduled flight diplomatic authorisation, ensures the ground services for the aircraft and builds up the escort team from the CB staff members. The escort team ensures the compliance with the obligations and rights of the inspected party during the inspection.

The Ministry of Foreign Affairs grants the multiple entry-exit and transit visas for the members of the international inspection team, and ensures the inviolability of their documents, equipment and samples.

The Ministry of Finance permits the tax-free entrance of the inspection equipment and personal goods of the inspection team members.

The Ministry of Transport issues a permanent number of diplomatic authorisations for unscheduled flights of OPCW owned aircrafts to carry inspection personnel and equipment. It ensures the ground services for this aircraft and exempts OPCW aircraft from landing and take-off taxes or similar expenses. It approves the flight programmes transmitted by the OPCW.

The Ministry of Communication authorises the inspection team to use OPCW communication means for contacting the headquarters or between the members of the inspection team.

Privileges and immunities of international inspectors and team members

Privileges and immunities of the members of the international inspection team members are detailed in the Annex 3 to the Law and are those provided by the Verification Annex, Part II, Section B under the CWC and the Vienna Convention regarding the privileges and immunities of diplomatic personnel.

Export Control

Chapter IV, *Import and Export Operations*, deals with the transfer regime of scheduled chemicals in 4 articles. Schedule 1, 2 and 3 chemicals and their precursors are regarded as strategic products, in the acceptance of the export control legislation (Governmental Decision no 31/1994, enacted by the Parliament as Law 93/1994). The applications for licensing of exports or imports of scheduled chemicals have to be approved by the Agency. The export/import regime for Schedule 1 and 2 chemicals is the one provided by the CWC.

Protection of Confidentiality

Chapter VII, *Other Dispositions*, provides for the obligation of the Agency to ensure the protection of information considered to be confidential. The Agency is entitled to settle the confidential character of the declarations and other data transmitted to the OPCW.

The Agency, together with the competent ministries, has to examine, the list of inspectors and inspection assistants, transmitted by the OPCW, and to communicate the results to the OPCW.

The access of Agency control personnel to inspection sites occurs on the basis of identity cards, issued and signed, by the Chairmen of the Agency. The access of international inspection teams occurs only in the presence of national escort teams, on the basis of a verbal note issued by the Agency.

The Agency gives, at request, specialised consultancy to operators and other interested persons, on the control regime of utilising scheduled toxic chemicals for unprohibited activities, under the CWC.

Penal sanctions

Chapter VIII, *Sanctions*, provides the administrative (fines) and penal (imprisonment and fines) sanctions for breaches of the provisions of this Act. The sanction for the use of chemical weapons is to be punished with 15 to 25 years of imprisonment, which is the maximum penalty provided in the Romanian Penal Code.

Conclusions

Romania is a country in economic transition. It chose to create one single act (except for Penal Code and some export regulations) to implement the CWC. The Act enters into force 60 days before the entering into force of the CWC. Incorporation of international treaties to national law is made through ratification of the treaty.

The National Authority, the National Agency for the Control of Strategic Exports and of the Prohibition of Chemical Weapons, is already established. Its main task up to date has been to prepare implementation legislation. As concerns the tasks of the Agency its power is very centralised. The Agency applies the control regime as regards production, use, import and export of toxic chemicals and their precursors. Export and import licenses are approved by the Agency. It is also responsible to ensure that protection of CBI and to establish a data base under Article X of the CWC.

National inspections are provided for. The Agency sets up its own control body which has have unrestricted access to locations, installations, documentation and information for the successful fulfilment of the national verification regime.

The Act provides for international inspections and the conclusion of facility agreements.