



Legal update by reference to the months
of January & February 2012

Legal Brief

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Banking

A new regulation of the National Bank of Romania on the Payment Incidents Register

The National Bank of Romania („**NBR**”) issued Regulation no. 1/2012 on the organizing and functioning of the Payment Incidents Register (published in the Official Gazette no. 49 dated January 20, 2012)

The payment incident is defined as the non-fulfilment of the legal obligations incurring to the bank account holders during the settlement of a payment instrument; such non fulfilment must be reported to the Payment Incidents Register (“**PIR**”).

As provided also by the previous regulations, only certain payment incidents explicitly listed (i.e. the major payment incidents) entail the interdiction for the concerned bank account holder to issue bank checks for a period of one year (i.e. the banking interdiction).

The amendments brought by the new regulation include among others: (i) specific provisions regarding the suspension and resuming of the banking interdiction, (ii) the reduction of the fines applicable to the banks for failure to observe certain reporting obligations, etc.

The regulation entered into force on 6 February 2012. As of the date of the entering into force, the previous regulation no.1/2001 was repealed.

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A new regulation of the National Bank of Romania on the organisation and functioning of the Central Risks Office

The National Bank of Romania (“**NBR**”) issued Regulation no. 2/2012 on the organizing and functioning of the Central Risks Office (“**CRO**”) (published in the Official Gazette no. 49 dated 20 January 2012)

The regulation extends the sphere of the persons having a reporting obligation, as follows: (i) non-banking financial institutions registered in the special Register, for all credit risks information and fraud card information collected from their territorial units; (ii) Romanian branches of foreign financial institutions registered in the special Register for all credit risks information and fraud card information collected from their territorial units; (iii) institutions issuing electronic money, Romanian legal persons, registering a significant level of lending activity, according to Regulation no. 21/2009 on payment institutions, with subsequent amendments, for all credit risk information and information on fraud card information collected from their territorial units.

Regarding the transmission of the information to the CRO, the regulation establishes that non-banking financial institutions have to report to CRO in a 6 month term as of the issuing by the NBR of the document attesting the registration of these institutions in the special Register. Institutions issuing electronic money and payment institutions have an obligation to report to CRO the information in a term of 6 months as of the date the NBR establishes a significant level of the lending activity of the latter.

The regulation entered into force on 1 February, 2012. As of the entering into force, regulation no.4/2004 of the NBR was repealed.



NBR Regulation on the data reporting and statistical information

The National Bank of Romania (“**NBR**”) issued Regulation no. 31/2011 regarding the reporting of data and statistical information with the National Bank of Romania (published in the Official Gazette no. 67 dated 27 January 2012)

The regulation shall enter into force as of 27 April 2012. The regulation establishes reporting obligations and statistical information regarding: (i) the cash balance of monetary financial institutions, (ii) interest rate applied by monetary financial institutions, (iii) balance sheets of assets and liabilities of non-banking

financial institutions, (iv) assets and liabilities of investment funds, (v) balance of payments, (vi) capital transactions having the nature of private external debt for medium and long term, (vii) profile territorial structure of credits and deposits of non-banking and non-governmental clients.

Competition Amendments to the secondary legislation regarding merger control

Order no. 941/2011 of the Competition Council enforcing the Regulation modifying and completing the Regulation regarding merger control (the “**Merger control regulation**”) enforced by Order 385/2010 (published in the Official Gazette no. 23 dated 11 January 2012)

The most relevant amendments made to the Merger control regulation by the above cited order can be summarized as follows:

- the simplified merger notification procedure (previously applied only in specific cases) can now also be applied to mergers notified under the normal (complete) procedure, if the Competition Council decides to this end;
- if during an investigation the Competition Council comes across information potentially relevant for another authority, the Competition Council shall forward said information to the authority that has the competence to investigate it;
- the parties are given the right to submit their observations to the report of the in-

vestigation and they are entitled to request that hearings be held; if the Competition Council deems it useful, such hearings shall be organized;

- if a merger is deemed to potentially affect the national security, said merger shall also be analyzed by the Country’s Supreme Defense Council and the parties shall provide to the CSDC all the information needed for establishing whether the merger does indeed affect the national security (in which case it will be prohibited by Governmental Decision);

Enforceability wise, the modified Merger control regulation shall be also applicable to ongoing investigations (including the investigations started before 14 July 2011).



New rules regarding the organization and functioning of the Competition Council

Order no. 101/2012 of the Competition Council enforcing the Regulation regarding the organization, functioning and procedure of the Competition Council (the "**Regulation**") (published in the Official Gazette no. 113 dated 14 February 2012)

This Regulation contains extensive provisions regarding the structure of the Competition Council, providing a thorough description of the attributions of each division of the Council as well as additional information in respect to some of the Council's procedures: the preliminary examination, investigations procedure, request for information and statements, ac-

tual inspections, hearings, the works in plenary and in the committees, keeping records etc.

Also, as a novelty, the Regulation includes the Council's attributions regarding unfair competition acts and the resolution procedure of the claims concerning unfair competition acts.

Energy

Green Energy News

Romanian Energy Regulatory Authority ("**ANRE**") issued Order no. 4/2012 that established the limit-values of trading on the green certificates market applicable in 2012 (published in the Official Gazette of Romania, Part I, No. 129 dated 22 February 2012)

The Regulation establishes that the trading values of the green certificates applicable in 2012 are:

- the minimal trading value is of **RON 121.89 per each green certificate** (respectively EUR 28.172/each green certificate).
- the maximal trading value is of **RON 248.30 per each green certificate** (respectively EUR 57.389/each green certificate).

Also, the Regulation provides that the counter value of **a green certificate which has not been traded is of RON 496.61 per each green certificate** (respectively EUR 114.777 per each green certificate which has not been traded) in case the mandatory level of purchase of the green certificates has not been accomplished in 2012.

Romanian Energy Regulatory Authority ("**ANRE**") issued Order no.5/2012 that established the limit-values of trading on the green certificates market applicable in 2012 (published in the Official Gazette of Romania Part. I, No. 138 dated 29 February 2012)

ANRE establishes the mandatory level of acquisition of the green certificates for the economic operators that have the duty to pur-

chase green certificates, for the year 2011, at 0.03746 green certificates/MWh.



Labour

Updates to the Classification of Occupations in Romania

The Ministry of Labour, Family and social Protection and the National Institute of Statistics issued the common Order no. 177/81/2012 concerning the modification and completion of the Classification of Occupations in Romania (published in the Official Gazette no. 128 dated 22 February 2012)

Order no. 177/81/2012 changes and completes the Classification of Occupation in ROMANIA – occupation level (six characters) with new occupations practiced in the national economy. Among the occupations introduced by the new act are: expert/specialist in the public-private partnership, assessor of the cultural assets, TV journalist (with secondary

education, upper or senior), magician master, e-Business specialist, specialist in the social economy, TV producer. The regulatory provides the deletion of certain occupations, like: justice inspector, justice counselor, professional justice reviewer, general inspector of court, general inspector of notary, land registry book leader.

Amendments to the procedure for authorizing temporary work agencies

Government Decision no. 1256/2011 on operating conditions and the procedure for authorizing temporary work agencies (published in the Official Gazette no. 5 dated 4 January 2012)

Decision no. 1256/2011 repeals the former Government Decision no. 938/2004 on the conditions for operation and the procedure for the authorization of the temporary work agencies. Also, the new decision transposes the provisions of Directive 2008/104/CE of the European Parliament and European Council dated 18 November 2008 and aligns the authorization and operating conditions of the temporary work agencies with the provisions of the Labour Code, as amended last year.

Amongst the most important modifications introduced by the recently enacted act we mention:

- The fee for authorization and operation of the temporary work agent has been eliminated;
- It has been modified the competence of the public authorities concerning the issuance of the authorization necessary for an entity to perform activities specific to a temporary work agent;
- The temporary work agents are required to maintain records of temporary work contracts and register such data in the

General Registry of Employees under the provision of Law no. 53/2003 including subsequent amendments and additions (unlike the previous legislation which provided for the obligation to file such registers with the relevant territorial labour inspectorates);

- The term for submitting the functioning authorization to the territorial agency for social benefits upon ceasing the activity has been extended to 15 days (instead of 5 days, as previously provided);
- In line with the provisions of the Labour Code, placing at the disposal of a user a number of up to 5 temporary employees, outside a temporary work contract, represents an administrative offence and the temporary work agent, similar to any other employer, is subject to a fine ranging from Lei 10,000 to Lei 20,000 (approximately between EUR 2,300 to EUR 4,600).
- The level of pecuniary fines applied for the administrative offences provided by the decision has been increased.



Environment Tax on pollution emissions from vehicles

Law no. 9/2012 regarding the tax on pollution emissions from vehicles (published in the Official Gazette, Part I, no. 17, dated 10 January 2012)

Pursuant to Law no. 9/2012, the tax payment obligation occurs (i) upon the registration in the competent authority's records of the acquisition of ownership right of a vehicle by the first owner in Romania and the award of a registration certificate and of the registration number, (ii) upon the re-entry into circulation of a vehicle after the termination of an exemption or remission provided by the law, (iii) upon the reintroduction of a vehicle in the national park of vehicles if the residual value of the tax had been returned to the owner upon the removal from the national park of vehicles and also (iv) upon the first transfer of ownership right, in Romania, of a previously registered vehicle for which the special tax for cars and vehicles has not been paid, according with Law no. 571/2003, as amended and supplemented, nor the pollution tax for vehicles and which is not subject to exemption or remission for such taxes, according with the legal applicable regulations in force upon the registration date.

In the case of vehicles equipped with diesel particulate filter engines, which is to be confirmed by the Romanian Automobile Register, the amount of the tax is reduced by 25%.

Law no. 9/2012 repealed the Government Emergency Ordinance no. 50/2008 which imposed the pollution tax for vehicles, approved by Law no. 140/2011. The said Law also repealed the Government Ordinance no. 686/2008 regarding the approval of the Methodological Norms for the application of the Government Emergency Ordinance no. 50/2008.

Following the publication of the Law no. 9/2012, the Government issued the Decision no. 9/2012 (published in the Official Gazette no. 29 dated January 13, 2012) approving the Methodological Norms for the application of the said Law.

The Decision provides that in the case of vehicles registered after January 1, 2007 for which the first transfer of ownership right is

requested in Romania, the tax is to be paid also in case the special tax for cars and vehicles has not been paid, according with Law no. 571/2003, as amended and supplemented, nor the pollution tax for vehicles and which are not subject to exemption or remission for such taxes, according with the legal applicable regulations in force upon the registration date.

Subsequently, the President of the National Agency for Fiscal Administration (A.N.A.F.) issued the Order no. 28/2012 (published in the Official Gazette no. 31 dated January 13, 2012) for the approval of the Procedure regarding the determination of the tax on pollution emissions from vehicles.

The Ministry of Environment and Forests together with the Ministry of Public Finance issued Order no. 85/62/2012 (published in the Official Gazette no. 50 dated January 20, 2012) for the approval of the Procedure for the refund of the amounts paid pursuant to certain provisions of Law no. 9/2012 regarding the tax on pollution emissions from vehicles as well as for the refund of amounts determined by courts through final and irrevocable decisions.

Pursuant to the above mentioned Order, the amounts to be returned concern the (i) difference between the pollution tax for vehicles/special tax for cars and vehicles and the tax on pollution emissions from vehicles, (ii) difference resulted following the challenge of the tax and (iii) residual value of the tax for the pollution emissions from vehicles.

Certain provisions of the Law no. 9/2012 have been suspended following the issuance of the Government Emergency Ordinance no. 1/2012 (published in the Official Gazette no. 79 dated 31 January 2012) which stipulates also the refund of the amounts paid under certain conditions pursuant to Law no. 9/2012.



Consequently, the entry into force of the above mentioned Emergency Ordinance produces the following effects:

- The suspension until January 01, 2013 of the provisions regarding the calculation and payment of the tax on pollution emissions from vehicles due upon the first transfer of ownership right in Romania of a previously registered vehicle for which the special tax for cars and vehicles, nor the pollution tax for vehicles, has been paid. Likewise, this triggers the suspension of the relevant applicable provisions of the Methodological Norms for the application of the Law no. 9/2012 as well as those provided by the Order no. 85/62/2012
- The refund upon request of the tax on pollution emissions from vehicles following the first transfer of ownership right in Romania of a previously registered vehicle, paid in between 01 January 2012 – 31 January 2012 pursuant to the provisions of the said Emergency Ordinance corroborated with the relevant provisions of Government Ordinance no. 92/2003 regarding the Fiscal Procedure Code, republished, as amended and supplemented.

issued by the Ministry of Environment and Forests together with the Ministry of Public Finance.

Procedure regarding the fulfillment of annual objectives for recovery and recycling of packaging waste

Order no. 2.742/3.190/305/2011 of the Ministry of Environment and Forests, of the Ministry of Economy, Trade and Business Environment and of the Ministry of Administration and the Interior (published in the Official Gazette, Part I, no. 48, dated 20 January 2012) for the approval of the Procedure, authorization criteria, renewal of authorization, revision, annual approval, issuance and cancellation of operating license, of the minimum percentage of recovery of waste packages from the population, of the economic operators for the takeover of obligations regarding the fulfillment of annual objectives for recovery and recycling of packaging waste as well as for the approval of the composition and competences of the Commission of authorization.

The regulation establishes the Procedure to be met by economic operators in order to obtain the operating license for the management of packaging waste. In this respect, economic operators need to apply for an operating license which shall be awarded by the Commission for evaluation, authorization, renewal of authorization, revision, annual approval, issuance and cancellation of operating license regarding the fulfillment of annual objectives for recovery and recycling of packaging waste (the Commission).

The said Order stipulates also the composition of the Commission, its competences as well

as the charges to be paid by economic operators for the authorization.

Order no. 2.742/3.190/305/2011 repeals the Order no. 1.229/731/1.095/2005 of the Ministry of Environment and Water Management, of the Ministry of Economy and Trade and of the Ministry of Administration and the Interior for the approval of the Procedure and authorization of criteria of economic operators for the takeover of responsibilities regarding the fulfillment of annual objectives for recovery and recycling packaging waste.



Procedure for data reporting on packaging and packaging waste

Order no. 794/2012 regarding the procedure for reporting of data on packaging and packaging waste issued by the Romanian Ministry of Environment and Forests (published in the Official Gazette no 130 as of 23 February 2012)

Order no. 794/2012 settles the new procedure for reporting of data on packaging and packaging waste.

According to this Order, the manufacturers and importers of sales packaging, of packed products and those who over pack the packed products must report to the Environmental Protection Agency the data regarding the quantities of manufactured/imported packaging, the packaging used for the packaging of products introduced on the national market, and also the quantities of packaging waste delivered to an authorized economic operator.

The authorized economic operators, who took over the responsibilities of managing the waste generated by packaging placed on the national market from the manufacturers and importers, must report:

- the data regarding the total quantities of packaging for which they have concluded contracts with the responsible economic operators, and also the quantities of managed waste packaging;
- the data regarding the quantities of packaging for which they took over the responsibility from each economic operator.

The economic operators authorized to develop activities of collecting, recycling or recovering

of packaging waste, the packaging waste traders and the sanitary operators performing activities of collecting waste packaging are required to report data regarding:

- the quantity of collected packaging waste, their source, the amount of traded/ recycled/ recovered/exported waste packaging;
- the quantity of collected packaging waste taken over, the quantity which was recycled/sent for recycling.

The Environment Fund Administration puts at the disposal of the Environmental Protection Agency, in electronic format, a list with the economic operators registered as taxpayers for packaging, until January 31 of each year.

The county/regional agencies for the environment protection must transmit the centralized data to the Environmental Protection Agency until May 1, the latest. The reports shall be introduced in a national database, held with the Environmental Protection Agency.

Order no. 794/2012 repeals the Order no. 927/2005 regarding the procedure for reporting of data on packaging and packaging waste.



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