



Legal update by reference to the months  
of March & April, 2013

# Legal Brief

## Eversheds Lina & Guia SCA

### Banking

### Establishment, organization and functioning of the Financial Supervisory Authority

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Enactment of Law no. 113/2013 approving the Government Emergency Ordinance no. 93/2012 dealing with the establishment, organization and functioning of the Financial Supervisory Authority ("FSA") (published in the Official Gazette no. 234 of 23 April 2013)

As of 26 April 2013, the regulations concerning the FSA, which were initially issued in December 2012, were amended in respect of *inter alia*: the definition of the entities falling under the FSA control, the number of FSA's members, the eligibility requirements etc.

The aim of the FSA is to maintain stability, competition and good functioning of capital markets, promoting trust in the markets and investment in financial instru-

ments. FSA shall ensure protection for operators and investors against unfair and fraudulent practices. In addition, it shall promote stability in the insurance activity and protection of policy holders. With respect to private pensions, the FSA seeks to maintain efficient functioning of the private pension system and to protect interests of participants as well as of beneficiaries.

### Corporate/ Commercial

### Prevention delay in execution of payment obligations deriving from agreements concluded between professionals and between professionals and contracting authorities

Law no. 72/2013 on measures to prevent the delayed performance of payment obligations deriving from agreements concluded between professionals and between professionals and contracting authorities (published in the Official Gazette no. 182 of 2 April 2013)

According to the provisions of the law, **for private sector agreements** the legal payment term (for situations in which the agreement does not stipulate a payment term) is of **30 calendar days**, calculated as of:

- the receipt of the invoice,
- the receipt of the goods or provision of services, if the date of the receipt of

the invoice is uncertain;

• the date of the completion of the reception procedure (the receipt procedure can last maximum 30 days as of the goods delivery and the provision of the services. By way of exception, the parties can stipulate in the agreement a receipt term longer than 30 days, subject that such a clause is not an abusive clause).



On the other hand, the contractual payment term, in case of economic transactions in the private sector is of maximum **60 calendar days**. However, parties can stipulate longer payment terms, subject that such a clause is not abusive for the creditor.

The legal and contractual payment term rules are also applicable for goods and services procured by the state from economic operators in the private sector. However, the parties cannot agree with respect to the date of issuance/receipt of the invoice, any such clause is deemed to be null and void.

The failure to observe the maximum payment terms mentioned above is sanctioned with the payment of a penalty interest.

According to the law, the creditor may claim damages for all expenses incurred with the recovering of the debt. Moreover, as of the first day of delay in payment, the creditor has the right as of law to request a compensation of minimum Euro 40 (in RON equivalent) in addition to the expenditures generated by a potential enforcement procedure.

## Competition Secondary legislation regarding the Railroad Supervisory Council

[Order no. 62/2013 of the Competition Council enforcing the Regulation regarding the organisation and functioning of the Railroad Supervisory Council \(published in the Official Gazette no. 120 of 04 March 2013\)](#)

The recently published regulation details the organisation and functioning of the Railroad Supervisory Council, an independent body, without legal capacity, functioning within the Romanian Competition Council. In addition to procedural aspects pertaining to the appointment of

the members of the Council, the piece of legislation lists the main attributions of the Railroad Supervisory Council and it also details its functioning (quorum rules, conflicts of interest situations, decision making procedure etc).

## Real Estate Amendment to permitting formalities related to several specific drilling works

[Law no. 81/2013 on approving Government Emergency Ordinance no. 85/2011 related to amendments brought to Law no. 50/1991 authorizing the performance of construction works \(published in the Official Gazette no. 199 dated 9 April 2013\)](#)

The main amendment brought by Law no. 81/2013 refers to a series of works which can be performed without prior obtaining of the building / demolition permit, but only based on a notice issued by the relevant authority in the gas, oil, electricity or communication field, as the case may be. According to these new provisions, such permit shall fully replace the concerned building/demolition permit.

As such, the specific category of works

which can be performed without further obtaining building/demolition permit consist of carrying out drilling works required to perform geotechnical studies and geological prospecting, designing and opening oil and gas exploitation, other underwater operations, as well as the construction of submarine energetic transport networks and communications within the territorial sea, contiguous zone or exclusive economic zone of the Black Sea.



The new provisions clarify Government Emergency Ordinance no. 85/05.10.2011, which only provided that no building permit was necessary in order to further perform specific drilling works required for underwater operations within the Romanian continental shelf of the Black Sea (but without mentioning the requirement of any notice issued by the relevant public authority instead).

## Labor

### Amendments of the regulation regarding preventing and sanctioning of any form of discrimination

[Government Emergency Ordinance no.19/2013 amending and completing the Government Emergency Ordinance no.137/2000 on preventing and sanctioning of any form of discrimination \(published in the Official Gazette no. 183 dated 2 April 2013\)](#)

The Government Emergency Ordinance no. 19/2013 has been issued following the European Commission Letter regarding inadequate transposing in Romania of the European Directive 2000/43/CE.

The main amendments of the Government Emergency Ordinance no. 137/2000 on preventing and sanctioning of any form of discrimination are in connection with the rules pertaining to acts of direct discrimination. Moreover, the exception from acts of direct discrimination has been ranked as a general principle, in accordance with the European Directive 2000/43/CE and all other contrary provisions have been repealed. Therefore, whenever the nature and context in which some activities are carried out require the application of differential treatment based on one of the criteria protected by the law, such treatment may not be considered as an act of discrimination, if such conduct is proportional and justified.

Amendments have also been brought to the sanctioning system, by increasing the level of fines in order to align them with the ones set out by Law no. 202/2002 regarding the equal treatment between men and women. These fines may be applied only within a 6 months period from the moment when the National Council against Discrimination has been notified.

## Environment

### The scheme for trading greenhouse gas emission certificates

[Decision amending and supplementing Government Decision no. 780/2006 regarding the establishment of a scheme for trading greenhouse gas emission certificates \(published in the Official Gazette no. 205 of 23 April 2013\)](#)

This decision establishes the scheme for trading greenhouse gas emission certificates to promote the reduction of greenhouse gas emissions in an economically efficient way.

Also, it establishes a higher level of reducing greenhouse gas emissions so as to contribute to achieving reduction levels considered scientifically necessary to avoid dangerous climate change.

According to the decision the phrase "National Agency for Environmental Protection" is replaced by "central public authority for environmental protection".



## Energy

### Mandatory green certificates acquisition quota

Romanian Energy Regulatory Authority ("ANRE") issued Order no. 8/2013 establishing the mandatory quota of green certificates for the year 2012 (published in the Official Gazette no. 118 dated 1 March 2013)

Mandatory quota of green certificates for 2012 is set at 0.1188 green certificates to be acquired by operators who have certificates / MWh. the obligation to acquire green certifi-

### Green certificates updated trading values

ANRE issued Order no. 10/2013 regarding the updating of the trading limit values of green certificates for 2013 (published in the Official Gazette no. 151 dated 21 March 2013)

ANRE established the trading value of green certificates for 2013: The value of a not acquired green certificate by the operators who have the

- the minimum value of 129.64 lei/ green certificate (i.e. 28.876 euro/ green certificate);
  - the maximum value of 264.09 lei/ green certificate (i.e. 58.823 euro/ green certificate).
- annual obligation to acquire green certificates for 2013 is 528.17 lei/ not acquired green certificate (i.e. EUR 117.646/green certificate not acquired).

### ANRE finds promotion scheme for renewable energy to lead to overcompensation

Order no. 17/2013 amending the Monitoring Methodology of the system regarding promotion of energy from renewable energy sources, approved by Order of ANRE no. 6/2012 (published in the Official Gazette no. 181 dated 1 April 2013)

ANRE published its report on over-compensation analysis of the green certificates promotion scheme for energy produced from renewable energy sources (E-RES). tendency of increase of the internal rate of return with more than 10% compared to the reference level, the Government should reduce the number of green certificates for each such technology.

The review is based on annual recalculation (during the application of the promotion scheme) of the number of green certificates/MWh so that the internal rate of return for each technology, for new entrants, at an aggregate level, be equal with the internal rate of return established at the moment of the authorization of the promotion scheme. In case there is a Following the cost-benefit analysis performed at an aggregate level for each technology of production of E-RES, taking into account certain cost indicators and also capacities to be commissioned, ANRE recommends that the number of green certificates to be granted in order to avoid over-compensation should be as follows:



<b>E-RS/Technology</b>	<b>Number of green certificates currently granted</b>	<b>Number of green certificates to be granted following overcompensation analysis</b>
<b>New wind installations</b>	<b>2</b>	<b>1,5</b>
<b>Reused wind installations</b>	<b>2</b>	<b>1,3</b>
<b>New hydro installations &lt;=10 MW</b>	<b>3</b>	<b>2,3</b>
<b>Solar</b>	<b>6</b>	<b>3</b>

The reduction of the number of green certificates as mentioned above should be made by Government Decision.



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