



Legal update by reference to the months  
of May & June 2012

# Legal Brief

## Eversheds Lina & Guia SCA

### Banking & Finance

### New regulation of the National Bank of Romania on the procedure for the resolution of the disputes between the payment services users and the providers of such services

The National Bank of Romania („NBR”) issued Regulation no. 9/2012 on the procedure to be implemented by the NBR for the resolution of the disputes between payment service users and payment service providers (published in the Official Gazette no. 408 of 19 June 2012)

The said procedure is free of charge and can be used by any payment services user who considers himself prejudiced by his payment services provider. However, the dispute resolution procedure is optional and does not prejudice the user’s right to file a complaint with the National Authority for Consumer’s Protection or to refer the case to the competent court.

The NBR shall render its solution within 30 days. The solution is not mandatory for the parties and cannot be challenged before NBR’s Board of Directors (as per the provisions of art. 73 and 74 of the Emergency Government Ordinance no. 113/2009) or before any court. Nonetheless, the parties may render NBR’s solution binding on them by means of a written agreement, or take the dispute to court for settlement.

Prior to addressing to the NBR, the user bears the obligation of sending a written notification to the provider with the purpose of amicably settling the dispute. If the provider does not answer or the answer is considered non-satisfactory, the user may further file its petition for dispute resolution with the NBR.

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### Amendments to certain regulations regarding the payment services

The Romanian Government issued Emergency Ordinance no. 31/2012 amending certain regulations in the payment services sector (published in the Official Gazette no. 433 of 29 June 2012)

According to the ordinance, payment services users and other interested parties can resort to the mediation procedure, under the terms of Law 192/2006, in order to amicably settle potential disputes with payment services providers.

Furthermore, the mediation procedure applies also in respect of out-of-court procedures regarding adequate and efficient compensation

for the settlement of the disputes arising between the payment services users and the providers of such services.

The petitions for dispute resolution which have been filed with NBR up until the moment the ordinance has entered into force, shall be ruled upon as per the former dispute resolution procedure.



## Amendments brought to the capital markets law and to the legislation regulating undertakings for collective investments in transferable securities ("UCITS") and investment management companies ("IMCs")

Government Emergency Ordinance no. 32/2012 regarding UCITS and IMCs, as well as for amending and supplementing the Capital Markets Law no. 297/2004 (published in the Official Gazette no. 435 of 30 June 2012)

The ordinance brings important novelties with respect to the activity of UCITS and IMCs, implementing the following European Directives:

- Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);
- Directive 2010/43/EU of the Commission implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);
- Directive 2010/42/EU of the Commission implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure.

Among others, the new provisions refer to:

- the regulation of the possibility to authorize master/feeder structures;
- a simplified procedure of notification ac-

ording to which UCITS authorized in other member states may distribute units in Romania based on an improved notification procedure between the competent authority of the UCITS's home member state and the Romanian National Securities Commission;

- regulation of the possibility of national or cross-border UCITS mergers, (iv) the possibility for the IMCs situated in a member state to manage UCITS from other member states etc.

In relation to the amendments brought to the Capital Markets Law, among the most important we mention:

- the implementation of the concept of "delegated agents", "independent operators", "qualified participation";
- harmonization of the provisions of the Capital Markets Law with the provisions of the New Civil Code, including those regarding the creation and enforcement of movable securities and with the provisions regarding the legal interest etc.

For further information on this particular matter, please do not hesitate to contact us at [office@eversheds.ro](mailto:office@eversheds.ro).



## Public Procurement

### National Authority for the Regulation and Monitoring of Public Procurement establishes a stricter regime on clarifications to the award documentation

Order nr. 171/2012 of the President of the National Authority for the Regulation and Monitoring of Public Procurement regarding clarifications to the award documentation (published in the Official Gazette no. 328 of 15 May 2012 "**Order 171**")

According to Order 171, whenever the contracting authority is faced with a request for clarifications from one of the bidders/ participants to the procedure, it must do so without generating modifications to the award documentation as a result.

If the contracting authority fails to observe such provisions (and, through its response, amends or modifies the awarding documentation), the statutory deadline of 5 days or 10

days respectively (depending on the value of the contract to be awarded) for challenging the awarding documentation shall begin to run from the date the response of the contracting authority to the request for clarifications is communicated to the interested party. The legality of the amendment so generated by the contracting authority's response shall be subject to the scrutiny of the National Council for the Settlement of Disputes.

### The Constitutional Court confirms the possibility to file a public procurement related claim directly before court, by-passing the administrative-jurisdictional phase

Decision no. 284/2012 of 27 March 2012 rejecting the constitutionality objection raised with respect to art. 255 paragraph (1) of Government Emergency Ordinance no. 34/2006 on the awarding of public procurement contracts, public work concession contracts and of service concession contracts (published in the Official Gazette no. 344 of 21 May 2012 "**Decision 284**")

Decision 284 states that the prior administrative-jurisdictional procedure established by art. 255 paragraph (1) of Government Emergency Ordinance no. 34/2006 requiring that disputes related to a public procurement awarding procedure be first brought before the National Council for the Settlement of Disputes is in

effect optional and does not restrict the right of the interested party to file a claim in the field of public procurement directly before the court. This is consistent with the constitutional principle that administrative jurisdictional forums are generally optional.



## Antitrust & Competition

### Establishment of the Advisory College of the Competition Council

Government Decision no. 390/2012 approving the Regulation for the organization and operation of the Advisory College of the Competition Council (published in Official Gazette no. 305 of 8 May 2012)

Advisory College of the Competition Council is ment to be a non-permanent technical body within the structure of the Council formed by representatives of the business environment and consumer protection associations, former presidents of the Competition Council and also legal, economic and competition experts. Main activities will consist of expressing non-binding opinions, recommendations and standpoints at the request of Competition Council's Plenum or President regarding relevant aspects of the competition policy in Romania as well as investigation reports and annual reports drafted by the Competition Council.

## Energy & Projects

Romanian Energy Regulatory Authority ("**ANRE**") issued Order no. 15/2012 approving the regulated transit tariff charged by the transport operator and by the system from the economic operators which conclude service supply agreements regarding the electric power transit from/to the perimetric countries through the National Electro-Energy System ("**NES**").

The Order approves the charging by CNTEE Transelectrica SA of the regulated transit tariff of 0,8 euro/MWh, exclusive of VAT for the supply of the service of electric power transit from the perimetric countries through NES.

ANRE issued Order no. 19/2012 regarding the approval of the amount of the contributions due to Authority (published in the Official Gazette of Romania Part. I no. 339 of 17 May 2012)

The Order establishes the rates/values and the contributions perceived by the ANRE for granting or amending the authorizations, licenses, approvals at the request of the individuals or legal entities. The Order also approves the tariffs charged by ANRE with regard to the assessment and endorsement of the technical and economic documents in the files submitted upon the initiation of the financing, for the investment objectives aimed at the increase of the energetic efficiency and the use of renewable energy resources.

The order approves the taxes charged by ANRE for granting or modifying the certificates, permits and licenses requested by natural persons or legal entities.

ANRE issued Order no.16/2012 regarding the approval of the connection of the users to the electric networks in the vicinity of the oundary of the activity area of certain distribution operators (published in the Official Gazette of Romania Part. I no. 339 of 18 May 2012)

The order establishes the steps that must be followed in order to establish the optimal solutions for the connection of the users and also emphasizes the responsibilities incumbent upon the distribution operators.



ANRE issued Order no.22/2012 regarding the Methodology of the approval of the prices and the establishment of the rates in the field of the natural gases (published in the Official Gazette of Romania Part. I no. 379 of 07 June 2012)

The Annex to the present Order provides the methodology for approving the prices and es- natural gas.

ANRE issued Order no. 24/2012 approving the specific tariffs for the distribution of electric energy due by the main operators (published in the Official Gazette of Romania Part. I no. 428 of 28 June 2012)

The Annex to this Order provides the specific tariffs due by the main operators for providing electric energy. This Order entered into force on the 1st of July 2012 when the Order no. 44/2010 issued by ANRE (published in the Official Gazette of Romania Part I no. 889 of 30 December 2010) was repealed.

## Labor

### Processing of personal data by video surveillance means

Decision no. 52/2012 on the processing of personal data by video surveillance means ("**Decision 52**") adopted by the Romanian Data Protection Authority ("**DPA**") and published in Official Gazette no. 389, of 11 June 2012

While Decision 52 has a broader scope (*please see below page 8 of this Legal Brief*), it also touches on the surveillance of employees by video surveillance means at the work place (in order to protect the employees' right to privacy), as further detailed below:

- as a rule, the processing of personal data of the employees by video surveillance means at the work place is permitted only for the purposes of complying with express legal obligations or on the basis of a legitimate interest;
- if neither of the conditions above are met, then the processing of personal data of the employees at the work place may only be done on the basis of the employees express and freely expressed consent;
- in either case, the employer is bound to ensure the observance of the rights of the employees as data subjects, especially those related to prior information – the employees shall be informed in advance with respect to:
  - i) the existence of the video surveillance system and the purpose of data processing by use of such means;
  - ii) the identity of the data controller;
  - iii) the fact that image data shall be recorded and the recipients thereof;
  - iv) the rights of the employees as data subjects and the manner in which such rights may be exercised.
- Decision 52 provides also that the processing of the employees' personal data by video surveillance means in the offices where the employees carry out their activity is not permitted, except where provided by law or authorized by the DPA;
- the duration for storing the data processed through the video surveillance cannot exceed 30 days, except for well grounded cases or if subject to a legal obligation – at the expiry of this term, the records shall be destroyed or deleted, as appropriate;
- video surveillance cameras must be located in visible places, it being prohibited to use hidden video surveillance cameras;
- Decision 52 prohibits the processing of personal data by video surveillance means in places where there is a reasonable expectation of privacy, such as lockers, changing rooms, shower cabins, toilets and similar locations.



## Environment & state aid Notification procedure from the standpoint of water management

Order no. 873/2012 issued by the Ministry of Environment and Forests approving the notification procedure from the standpoint of water management (published in the Official Gazette no. 287 of 2 May 2012)

According to the new regulation, the notification represents a regulatory act based on which the investment beneficiary or titleholder may execute or bring into operation certain categories of works and/or activities performed on water or in relation thereto, for which the law does not provide the obligation to obtain a water management approval/permit.

We mention, *inter alia*, the following categories of works and/or activities performed on water or in relation thereto, for which the investment beneficiary or titleholder has the obligation to notify the commencement of the execution:

- refurbishment works, without the modification of the quantitative and qualitative parameters of the existing installations;
- the temporary installations, if the sampled flow rate does not exceed 10 litres/second and the evacuated waters do not influence the quality of the water resources;
- crossings of watercourses by service roads, rural or county roads in the hydrological basins smaller than 10 sq. km;
- forest cultivation and restoration works on surfaces smaller than 20 sq. km;
- new water capture works, if the sampled flow rate does not exceed 2 litres/second, and the evacuated waters do not require treatment;
- road and bridge repair works.

The bringing into operation shall be notified for the previously mentioned works, as well as for:

- the works regarding the electric lines;

- defence and strengthening works;
- the works for adjustment of runoff slopes, torrent corrections;
- prevention works for soil erosion.

The application shall be submitted by the investment beneficiary at least 20 days prior to the commencement/bringing into operation of the investment, by filling in a standard form and shall be accompanied by other documents the beneficiary or the competent authority deems necessary (copies of the water management approvals/permits, technical documentation etc).

Within 10 days from registration, the competent authority (namely the water management system within the National Administration "Apele Romane" on whose territory the work / activity is located) shall analyse the possibility to accept or reject the notification. According to the new regulation, the notification shall be rejected (in writing) in case the performance of the activities lead to significant modifications of the leakage system, water quality decrease, water source reallocation, river bank stability loss, danger of floods, loss or limitation of the access of the population to water, etc.

The notification is valid for a maximum period of 4 years, provided that the initially notified parameters are maintained. For temporary installations, the notification is valid for a maximum of 1 year from its issuance.

## Procedure for issuing certificates of origin for biomass from forestry and related industries

Order no. 1341/2012 issued by the Ministry of Environment and Forests approving the procedure for issuing certificates of origin for biomass from forestry and related industries (published in the Official Gazette no. 360 of 28 May 2012)

The procedure establishes the conditions to be met by electricity producers from renewable energy sources in order to obtain certificates of origin for biomass as well as the competent authority to issue the said certificates.

There are also specific provisions provided with regard to the caloric efficiency of wood, sawdust, waste wood processing and chop wood, on each forestry species, for biomass from forestry and related industries.



## Reorganisation of the Ministry of Environment and Forests

Government Decision no. 544/2012 regarding the organisation and functioning of the Ministry of Environment and Forests (published in the Official Gazette no. 368 of 31 May 2012)

The said Decision provides the general functions and competences and the organisational structure of the Ministry as well as the specialised technical and consultative entities functioning under the Ministry which carry out its objectives and competences.

## State aids for agricultural producers

Government Decision no. 559/2012 for the modification of the annex to the Government Decision no. 975/2011 regarding the approval of state aids awarded to agricultural producers for 2011-2012 period and of the total value allocated to such state aids (published in the Official Gazette no. 375 of 01 June 2012)

According to the new regulation, the amount of certain state aids has been modified while the total amount awarded for all state aids has remained the same, namely RON 866,839. The modified state aids include:

- fulfillment of commitments assumed for poultry welfare – amount increased from RON 246,480 to RON 291,080;
- fulfillment of commitments assumed for swine protection and welfare – amount increased from RON 170,000 to RON 235,400;
- diesel used in agriculture – amount reduced from RON 380,995 to RON 290,995;
- payment of insurance premiums – amount reduced from RON 42,549 to RON 22,549.

## Dispute resolution

### The New Civil Procedural Code

Law no. 76/2012 for the enforcement Law no. 134/2010 on the Civil Procedure Code (published in the Official Gazette no. 365 of 30 May 2012)

The New Civil Procedural Code, approved by Law no. 76/2012, will enter into force on the 1st of September 2012 and intends to bring an efficient restructure of the domain. Divided into a number of 7 (seven) distinct books (*addressing some general dispositions, the contentious or non-contentious or procedure, arbitration, the enforcement procedure; certain special procedures; and the international civil lawsuit*), the Codex introduces a series of new procedural institutions which will offer great support to the judicial system, by ensuring a more prompt and transparent judicial procedure, both before the Court and also during the enforcement stage.

For a more detailed analysis of the novelties brought by the New Procedural Civil Code, please do not hesitate to contact us at [office@eversheds.ro](mailto:office@eversheds.ro).





## IP/IT/Data protection

### Processing of personal data through video surveillance means

Decision no. 52/2012 of the National Authority for Supervision of Personal Data Processing regarding the processing of personal data through video surveillance means (Published in the Official Gazette no. 389 of 11 June 2012)

Collecting, recording, storing, use, transmission, disclosure or any other image processing operations allowing direct or indirect identification of natural persons are personal data processing operations which fall under the provisions of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, amended and completed.

The decision stipulates that the images regarding determined or determinable natural persons, processed through video surveillance means can be considered personal data:

- even if not associated with identity data of such a person; or
- even if they do not contain the image of the person but other information that can lead to the identification of the person (for example: the vehicle registration number).

According to the decision, the processing of personal data shall be made in accordance with the principles stipulated in the law on personal data processing, especially the proportionality of the scope principle.

Video surveillance can be made mainly for the following scopes: prevention of criminal offenses, the surveillance of road traffic and violation of road traffic rules, ensure security and protection of persons, goods, values, buildings and public facilities as well as their affected enclosures, achievement of legal interests, under the condition not to prejudice the fundamental rights and freedoms of the data subjects.

The decision also contains provisions as to the performance of the video surveillance, thus the video surveillance can be made in open spaces, accessible to the public, including public access roads from the public or private domains in the conditions stipulated by law. The video surveillance equipment has to be installed in visible places - the law prohibits their installing in hidden places (excepting situations expressly regulated by the law). The video surveillance is

prohibited in locations where it is necessary to ensure privacy of individuals, such as: fitting rooms, changing rooms, showers, toilets and other similar locations.

The processing of personal data is made with the express and unequivocal consent of the data subject or without the data subject's consent in cases expressly stipulated by Law no. 677/2001.

The personal data processing of the employees through video surveillance means can be made only for the fulfilment of legal obligations or for a legitimate interest with the observance of the rights of the employees, especially their prior information. In any other cases the processing of personal data of the employees can be made only with the express consent of the employees. The decision strictly prohibits the personal data processing at the place of work, excepting situations expressly regulated by law or the existence of the approval of the National Authority for Supervision of Personal Data Processing.

Personal data operators have the obligation to provide the authority including the following information:

- the existence of the video surveillance system and the scope of the surveillance,
- the identity of the operator,
- the recording of the images and categories of recipients,
- rights of data subjects and the means of exercising of such rights. The existence of the video surveillance system must be reported via an icon with a sufficient visibility and positioned at a reasonable distance from where the surveillance equipment is installed.





## Processing of personal data through video surveillance means (continued from previous page)

The personal data operators have to adopt adequate technical and organisational measures of security according to the provisions of art. 19 and 20 of Law no. 677/2001.

The storage of data must be proportional with the scope for which personal data is processed, but not more than 30 days, except for the cases expressly stipulated by law or duly justified situations. At the expiry of the storage term, the operator must destroy the data.

The processing of data through video surveillance means, including their transfer abroad

must be notified to the National Authority for Supervision of Personal Data Processing.

Failure to comply with the dispositions of the decision is considered offence according to the provisions of Law no. 677/2001.

The decision entered into force as of the date of publication in the Official Gazette. In a 60 day term as of the publication of the decision, operators which process personal data, as stipulated in the decision, have to undertake the necessary measures for the fulfilment of the requirements of the decision.



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