



Legal update by reference to the months
of July & August 2012

Legal Brief

Eversheds Lina & Guia SCA

REAL ESTATE

New rules regarding the real estate publicity

[Law no. 133/2012 for the approval of the Government Emergency Ordinance no. 64/2010 regarding the modification and amendment of Law no. 7/1996 regarding Cadastre and Real Estate Publicity \(published in the Official Gazette no. 506 of 24 July 2012\)](#)

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The new regulation stipulates that the record of the immovable property which is registered with the cadastral plan and with the land book is made and updated ex officio, at the request of interested persons or at the initiative of public authorities.

Another amendment regards the integrated cadastre and land book system, which is to be made also by means of the real estate publicity, thus ensuring the opposability of property rights as well as other real rights.

The collaboration relationship between the local authorities, courts of law, public notaries and the National Agency of Cadastre and Real Estate Publicity (ANCPI) is also envisaged. In this respect, certain persons shall be assigned to directly collaborate with the National Agency or with the regional office, as the case may be. Moreover, public institutions as well as public notaries shall have a direct and permanent access to the land book data base in order to obtain the necessary information. ANCPI bears the obligation to make available the said service by the end of 2012.

Registration applications and information requests may also be made via electronic means, as well as the provision of cadastre and real estate services.

A special procedure has been introduced in order to acknowledge a person possessing an immovable property, whose ownership has not been challenged, as the recognized owner of the respective property. Such person shall be recorded with the land book on the basis of the procedure to be performed by the public notary. The procedure is to be set up by means of protocol concluded between ANCPI and the UNNP (National Union of Public Notaries).

This piece of legislation also stipulates that in the case of immovable properties whose owners cannot be identified during the ex officio

execution of cadastre works, the ownership shall temporarily be recorded in favour of the local public authority, while the ownership right may be registered later, upon request.

Other significant provisions regard the extension until the 31 December 2020 of the deadline within which the holders of encumbrances registered in the transcriptions – inscriptions registers may request the opening of the land books for the respective immovable properties and the transcription of the valid encumbrances, being exempted from tariff payment.

Furthermore, as a novelty, the law acknowledges a mortgage right over an immovable property in favor of a natural person who borrowed, by means of an authenticated agreement, an amount of money in order for the respective property to be purchased.

Certain amendments of the new regulation address the public notaries, which bear the obligation of requesting, ex officio, the registration of a deed drafted by the respective public notary, whereby an immovable property right is being transferred, modified, established or extinguished. In this respect, the public notary shall submit the application for the registration on the same day when the deed was drafted or on the following day, at the latest.

With regard to the land book excerpt requested upon the authentication of notary deeds concerning the transfer, modification or establishment of immovable property rights, such excerpt shall be requested by the public notary and has a validity of 10 business days from the registration date of the application. The regulation stipulates also that the officer in charge shall be only entitled to make the registration for which the excerpt was issued, while the validity of the excerpt shall cease by expiry of the term or at the request of the public notary.



Energy

New legal framework in Energy field

Law no. 123/2012 of electric energy and natural gases (published in the Official Gazette no. 365 of June 16, 2012 and entered into force on July 19, 2012).

The Law no. 123/2012 (the "Electricity and Gas Law") is set to prepare the Romanian electricity market for total liberalization and brings increased transparency, stability and predictability to the electricity and natural gas market. The law replaces almost integrally former electricity law no. 13/2007 and natural gas law no. 351/2004, except for the provisions regarding the organization and functioning of the National Regulatory Authority in the Energy Sector ("ANRE").

The Law no. 123/2012 transpose in Romanian law the provisions of the Directive 2009/72/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity and of Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas.

The enactment of new provisions triggers a massif elaboration process of a new secondary legislation. According to the Electricity and Gas Law, ANRE has up to six months for electricity sector, respectively 9 months for the natural gas sector to draft/amend the regulatory framework accordingly. During this transitory period, the old secondary legislation is still applicable.

The first title of the Electricity and Gas Law substitutes the former electricity law no. 13/2007 in settling the main rules of (i) the elaboration and implementation of government energetic policy and strategy; (ii) the authorizations, licenses and concessions for certain activities and assets; (iii) the electricity market; (iv) the preferential regime and facilities for the electricity production from renewable energy sources; (v) the rates and charges for activities in the electricity sector.

As in the former piece of legislation, proper authorizations are required in order to establish new energy entities or to refurbish the existing ones. The licenses are required in order to perform both commercial operations of an energy entity as well as activities of generation, transmission, system service, distribution and supply of electricity. The activities which can be performed without holding a license are expressly regulated.

The Electricity and Gas Law maintains the obligation to obtain the authorization, but in addition to the previous regulation, it imposes the obligation to notify the competent authority about the investment project and to report periodically the project implementation stage.

It was abrogated the provision that forbids/suspends the authorization/license to applicants under judicial reorganization or bankruptcy. But ANRE still can decide to refuse/ revoke the authorization/license in the case of bankruptcy or judicial reorganization of the holder.

Also, the Electricity and Gas Law provides that the electrical energy transactions shall take place on the competitive market transparently, publicly, centralized and without discrimination. The law is relatively unclear and it seems to require that all electrical energy sale-purchase contracts be concluded by auctions on the centralized market (apparently, sale of electricity by using OPCOM platform).

The new provisions establish the obligation of a customer (wholesale customer or final electricity customer) to set-up financial guarantees in order to avoid the default payment risks on the electricity market.

The Electricity and Gas Law imposes a detailed calendar of liberalization of the regulated energy and natural gas market.

The gradual elimination of the regulated tariffs on energy market shall start as of 1st of September, 2012 and be completed at 31 December 2013 for non-household clients, respectively as of 1st of July, 2013 to 31 December 2014 for household clients.

The gradual elimination of the regulated tariffs on natural gas market shall start as of 1st of December, 2012 and be concluded at 31 December 2018 for industrial clients, respectively as of 1st of July, 2013 to 31 December 2018 for household clients.

The law institute a commission specialized in settlement of disputes between electrical energy market participants on both en gross and en detail markets.



Law no. 134/2012 approving the Government Emergency Ordinance no. 88/2011 concerning amendment and completion of Law no. 220/2008 establishing the promotion system concerning energy produced from renewable sources (published in the Official Gazette no. 505 of July 23, 2012 and entered into force on July 26, 2012).

Law no. 134/2012 introduces the obligation of energy suppliers to quarterly report the implementation of mandatory green certificates acquisition quotas.

New provisions states that green certificates may be granted for electricity produced by power plants using biomass obtained from scrap wood including for example wood leavings resulted from wood exploitation or from cleaning of forests.

Also, Law no. 134 provides that suppliers and producers who are not reaching the quarterly mandatory quotas have the obligation to pay within maximum 45 days as of the end of trimester, for each not acquired green certificate, the maximum price published by ANRE for the respective year.

It provides that the value of green certificates shall be mentioned on electricity invoices separately from the electricity tariffs/prices.

Romanian Energy Regulatory Authority ("ANRE") issued Order no. 30/2012 approving Metodology of establishing the prices and tariffs for final customers who do not use the eligibility right (published in the Official Gazette no. 626 of August 31, 2012 and entered into force on September 1, 2012)

The provisions of above mentioned order rule the procedure, the participants, the criteria and the methods of establishing the prices

and tariffs for final customers who hasn't use the right of choose its power provider.

ANRE issued Order no. 28/2012 for designation of the electricity providers of the last option.

ANRE nominates as electricity providers of the last resort the following companies: ELECTRICA FURNIZARE S.A., ENEL ENERGIE S.A.,

ENEL ENERGIE MUNTENIA S.A., CEZ VÂNZARE SA., and E. ON ENERGIE ROMÂNIA S.A.

Environment **A new category of used motor vehicles is included in financing guide of the national incentive program for the renewal of the national car fleet**

Order no. 2691/2012 issued by the Ministry of Environment and Forests amends the financing guide applicable to the incentive program for the renewal of national car fleet ("Incentive Program")

The concept of "used motor vehicles" falling within the scope of the Incentive Program is extended and now includes all motor vehicles that are at least 10 years old, or as the case may be, at least 5 years old if such vehicles are owned by territorial administrative units or by public institutions.

Also, used motor vehicles that have first been registered in Romania after 31 December 2006, will also fall under the provisions of the Incentive Program, if they belong to territorial administrative units or to public institutions.



Dispute Resolution

The New Civil Procedure Code postponed

Government Emergency Ordinance no. 44/2012 regarding the amendment of article 81 from Law no. 76/2012 for the enforcement of Law 134/2010 regarding the Civil Procedure Code (published in the Official Gazette no. 606 of 23 August 2012)

Due to the administrative difficulties raised by the implementation of the New Civil Procedural Code, the Romanian Government decided to postpone the entering into force of the new Code until the 1st of February 2003. The law's explanatory memorandum specifies that the postponement was necessary since the courts are not yet prepared and otherwise

it could have led to both the impairment of the right of access to justice and the right to a fair trial within a reasonable time limit.

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.



Contact Information

Eversheds Lina & Guia SCA

Victoria Center, 9th floor
145, Calea Victoriei,
Bucharest, Romania

T: +40 21 311 2561
F: +40 21 311 2562
E: office@eversheds.ro
W: www.eversheds.ro

Mihai Guia

Managing Partner
MihaiGuia@eversheds.ro

Cristian Lina

Managing Partner
CristianLina@eversheds.ro

Adrian Iordache

Partner
AdrianIordache@eversheds.ro

Cristian Guia

Partner
CristianGuia@eversheds.ro



www.facebook.com/EvershedsLinaGuia



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