

Legal update by reference  
to the months of **January** and **February 2010**

# Legal Brief

## Lina & Guia SCA

### Banking

### New Regulations of the National Bank of Romania

The Regulation of the National Bank of Romania ("**NBR**") no. 1/2010 amending NBR Regulation no. 18/2009 on the management activity of credit institutions, the internal assessment of the risk compliance of capital and the conditions for outsourcing their activities was published in the Romanian Official Gazette no. 39 of January 1st, 2010 (the "**NBR Regulation 1/2010**").

According to NBR Regulation 1/2010, upon the first classification subsequent to rescheduling and/or refinancing operations, upon ranking such loans in classification categories, the credit institutions will take into account the debtor's financial performance in

conditions more strict than those previously envisaged. At the same time, the quantitative and/or qualitative factors will also be revised accordingly, based on the updated information as of the date of such operations.

NBR Regulation no. 2/2010 amending NBR Regulation no. 20/2009 on non-banking financial institutions was published in the Official Gazette no. 39 dated January 18th, 2010 (the "**NBR Regulation 2/2010**").

NBR Regulation 2/2010 provides for the possibility of the restructured loans granted by non-banking financial institutions to be ranked in a classification category which is

more favourable, from the credit risk perspective, in certain conditions provided by the said Regulation.

## Capital Markets

## Classification of greenhouse emission certificates

The Romanian National Securities Commission ("**CNVM**") published on February 23rd, 2010 the notice no. 10/2010 on the classification of greenhouse emission certificates (the "**Notice 10/2010**") which came into force on the date of publication.

Notice 10/2010 provides for new rules regarding transactions in greenhouse emission certificates as follows:

1. the greenhouse emission certificates as defined under the Government Decision no. 780/2006 on the green house emissions permits trading system are deemed "transferable securities" (in Romanian: "*valori mobiliare*") within the meaning of the Capital Markets Law , and therefore the provisions of capital markets legislation are applicable to greenhouse emission certificates;
2. the investment services and activities with respect to greenhouse emission certificates may only be performed through the "intermediaries" defined in the Capital Markets Law at art. 2(1)(14); and
3. the provisions above at point (a) do not apply to transactions with greenhouse emission certificates by operators of installations within the meaning of the Government Decision no. 780/2006, when done in their own name and for their own account.

Please note that prior to the publication of Notice 10/2010, the greenhouse emission certificates were not treated as financial instruments (or transferable securities) and did not fall within the scope of the Capital Markets Law. Transacting the greenhouse emission certificates in Romania was therefore, up to February 23, 2010, in principle free of restrictions, a position reinforced by the basic principle of the Government Decision no. 780/2006 which stipulates under Art 18(1)(a)

that "*greenhouse emission certificates may be transferred between Romanian and European Union persons*", and under Art. 24(3) that "any person may own greenhouse emissions certificates".

Upon their classification as transferable securities, the greenhouse emission certificates become capable of being admitted to trading on regulated markets or alternative trading systems (as opposed to the situation prior to the enactment of Notice 10/2010, when it was possible to trade on such markets only financial instruments based on the greenhouse emission certificates). It should be pointed out that Notice 10/2010 covers only greenhouse emission certificates and not other types of emission quotas and incentives introduced by the Government Decision no. 780/2006.

However, Notice 10/2010 does not go further to detail how admission to trading and settlement of transactions with the greenhouse emission certificates would work.

Recently, the Board of Directors of the Bucharest Stock Exchanged approved the admission to trading of the greenhouse emission certificates. According to the representatives of the Bucharest Stock Exchanged, the next step would be for the Central Depository to connect to system of the National Environment Protection Agency in order for such transactions to be perfected.

Finally, according to a press release, it appears that currently the Notice 10/2010 is suspended. Please note that the Bucharest Court of Appeal suspended the Notice 10/2010 on March 18, 2010.

Such decision is subject to appeal and CNVM already announced its intention to appeal it. Nevertheless, under these circumstances, unless a decision to overturn the decision of

the Bucharest Court of Appeal will be issued, transacting the greenhouse emission certificates is once again free of restrictions.

## Labour Law

# Changes to rules on keeping and recording data in the General Employees' Registry

[Government Decision no. 37/2010 amending Governing Decision no. 161/2006 on the elaboration and filling in of the general employees' registry](#) has been published in the [Official Gazette no. 45 of January 20th, 2010](#).

The new legislation brings certain amendments to the rules regarding the keeping and recording of employee data in the General Employees' Registry, as follows:

1. it has now been clarified that diplomatic missions in Romania (i.e. embassies, consulates etc) are not required to maintain a general employees' registry;
2. in case of first or new hires, the employer is bound to record certain employee related data (i.e. identification data, date of hiring, position and type of employment agreement) in the general employees' registry at least one day in advance of the first day of effective work by the employee;
3. in case of terminations of employment, the general employees' registry must be updated with the relevant data (i.e. date and grounds of termination) not later than the last day of employment of the relevant employee with the employer;
4. within the same deadlines the employer is bound to send the Registry – in electronic format – to the Territorial Labour Inspectorate;
5. failure to update the general employees' registry in respect of new hires as per the aforementioned rules is sanctioned

by a fine of RON 1,500 (approximately EUR 370) per each case (without exceeding, in the aggregate, RON 20,000);

6. the employer's ability to pay only half of the fine (if such payment was done within 48 hours from the imposition of the sanction) has been repealed.

## Real Estate

## Modification of the regulation regarding construction and operation of roads

The Government Ordinance no. 7/2010 published in Official Gazette of Romania no. 70/30.01.2010 modifies Government Ordinance no. 43/1997 on regime of roads ("GO no. 7/2010").

GO no. 7/2010 brings extensive modifications to the existing regulation, both regarding construction and operation of roads. Among the relevant situations clarified or newly regulated, we mention:

1. transfer of a road from one functional category to another;
2. extension of the *intra muros* area of a locality along a national road;
3. constructions and exploitations in areas of road bridges;
4. definition of "*constructions generating supplementary traffic*".

With respect to the existing classification of roads in national, county and local roads, the GO no. 7/2010 clarifies the authorities competent to classify a road in a certain category, as well as to transfer a road from one functional category to another.

Extension of the *intra muros* area of a locality along a national road can be done only provided that secondary collecting roads are built alongside the respective national road. Such collecting roads are meant to collect the traffic generated by the local objectives and to direct it into the national road only in certain crossroads constructed in accordance with the regulations in force. The likely scope of this rule is to avoid traffic fluency and safety problems by preventing the properties along the national road to have direct exit to it.

New rules are introduced with a view to protect structural stability of road bridges. In this respect, it is forbidden to extract ballast or operate gravel sorting facilities at less than 1 km upstream and 2 km downstream of a bridge. Also, any construction or development works, as well as any works in the river bed generating descent of the thalweg, in both cases if such works are located less than 1 km upstream and 2 km downstream of a bridge, have to be approved by the administrator of the road including the bridge.

Since the regulation in force forbids the constructions generating supplementary traffic to be located less than 50 m from highways, express roads and European national roads, and less than 30 m from the other roads of national and county interest, GO no. 7/2010 also defines the notion of "*constructions generating supplementary traffic*".

Such are considered to be: production facilities, commercial centres, wholesale warehouses, show-rooms, touristic objectives, residential complexes, industrial parks, as well as any objectives and/or similar constructions housing economic activities.

## State Aids

# State aids granted to the agriculturalist producers starting with 2010

Government Ordinance no. 14/29.01.2010, published in the Romanian Official Gazette Part I no. 71/30.01.2010.

The above Government Ordinance establishes the legal framework for granting state aids for the agricultural producers in order to secure the mankind alimentation and to protect the environment.

In this respect, the Romanian Government is entitled to grant state aids for various domains, inter alia:

1. environment protection;
2. stimulation related to production and merchandising of the agricultural quality products;
3. offering technical assistance in the agricultural area;
4. remedying the losses produced by natural disasters or other unusual events;
5. animal and plants disease abatement;
6. insurance payments;
7. promoting the agricultural products;
8. aids for developing the animal' breeding area;
9. rural development activities, etc.

The beneficiaries of the state aids provided under the terms and conditions of the above Government Ordinance are:

1. the agricultural producers incorporated under the Government Emergency Ordinance no. 44/2008 and registered in the National exploitation registry, which

hold, breed and exploit animals;

2. the agricultural producers incorporated under the Government Emergency Ordinance no. 44/2008 and registered in the Agricultural registry, Farms registry, Win growing registry, which exploit the agricultural plots of land;
3. the agencies and the federations for territorial improvements incorporated in the National registry of the territorial agencies improvements as defined under the provisions of Law no. 138/2004;
4. the agencies for research purposes, namely the universities, the institutes and the investigation stations from agricultural area.

## State aids for developing the electrical and natural gas networks

Order no. 2243/22.12.2009, published in the Romanian Official Gazette Part I no. 41/19.01.2010.

The hereby Order establishes the lay-out (schedule) for encouraging the investments and the upgrading of the electrical and natural gas networks. In this respect, the Order

expressly stipulates the conditions for the projects to be selected, the criteria for choosing the potential beneficiaries, the eligible expenses and the finance to be approved.

## Competition

### New leniency regulation – the competition council sets up the “leniency module”

Leniency Module related to the Instructions regarding the conditions and criteria for the application of the leniency policy according to Article 51 (2) of the Competition Law, published in the Official Gazette of Romania no. 610 dated 7 September 2009.

Pursuant to the Instructions regarding the conditions and criteria for the application of the leniency policy according to Article 51 (2) of the Competition Law, published in the Official Gazette of Romania no. 610 dated 7 September 2009, as subsequently modified, (“**Instructions**”), the Competition Council set up the Leniency Module in order to ensure a better relationship between the economic operators and the competition authority.

The new leniency regulation provides for the implementation of the 2006 European Commission Notice on Immunity, as revised and improved. The Instructions present the possibility of full immunity or the reduction of the amount to be fined to the economic operator.

The immunity that may be granted is divided into two types: A (for the first operator to supply information that allows the Competition Council to start an investigation and in-

spectations) and B (for the first operator to supply information that allows the Competition Council to establish the breach of art. 5 (1) of the Competition Law or art. 81 of the Treaty). The Instructions provide the conditions that the economic operators must fulfil in order to benefit from the immunity.

However, the Instructions state that the economic operator which initiated the agreement and/or takes actions that constrain other economic operators to participate in such agreement shall not be eligible to benefit from immunity, but they may qualify for a reduction of the fine.

An important improvement brought by the new Competition Council Notice is the introduction of the marker system, which is used to confirm that an applicant for leniency has a priority ranking while allowing for additional time for gathering evidence.

## Contact Information

### Lina & Guia SCA

16 Ion Campineanu Street, 2nd floor, District 1, 010036  
Bucharest, Romania

T: +40 21 311 2561  
F: +40 21 311 2562  
E: [office@lina-guia.ro](mailto:office@lina-guia.ro)  
W: [www.lina-guia.ro](http://www.lina-guia.ro)

#### Mihai Guia

*Managing Partner*  
[Mihai.Guia@lina-guia.ro](mailto:Mihai.Guia@lina-guia.ro)

#### Cristian Lina

*Managing Partner*  
[Cristian.Lina@lina-guia.ro](mailto:Cristian.Lina@lina-guia.ro)

#### Adrian Iordache

*Partner*  
[adrian.iordache@lina-guia.ro](mailto:adrian.iordache@lina-guia.ro)

#### Cristian Guia

*Partner*  
[Cristian.Guia@lina-guia.ro](mailto:Cristian.Guia@lina-guia.ro)

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