

Legal update by reference  
to the months of **November** and **December 2010**

# Legal Brief

## Lina & Guia SCA

### Real estate      Important modifications to the legislation regulating expropriation for public utility

[Law no. 255/2010 regarding expropriation for public utility required for developments of national, county or local interest \(published in the Official Gazette no. 853 of 20 December 2010\)](#)

Law no. 255/2010 instates a wide derogation from the principle of fair and preliminary compensation at expropriation, enshrined in the Romanian Constitution and provided in the framework law regarding expropriation, namely Law no. 33/1994. Until Law no. 255/2010, this principle was derogated from in a limited number of cases, e.g. construction of roads and highways. However, Law no. 255/2010 largely expands the list of cases when compensation is no longer preliminary to the expropriation. Such situations now include, e.g., works and developments associated with: infrastructure of roads, public railways, underground trains, airports, water transport; water management; wetlands; construction, rehabilitation, upgrading and development of national interest resorts and seashore of the Black Sea; sky slopes, skating arenas and other facilities related to the national program "Sky in Romania"; transport and distribution of electric energy and natural gas; exploitation of lignite; certain forestations. All the works above are declared by Law no. 255/2010 as being of public utility.

The main aspects of interest regarding the procedure for expropriation are: (i) the expropriation is made by administrative

decision, before payment of the compensation; (ii) the expropriation cannot be challenged in court; (iii) no challenge regarding ownership over the expropriated property or amount of the compensation can suspend or cease the expropriation or the works following on the site.

The expropriators, as case may be, are: the Romanian State - for works of national interest, the relevant county - for works of county interest, and the cities, towns and communes - for works of local interest. For certain developments, the expropriator is represented by various public entities, depending upon the categories of works.

The Government or, as case may be, the county or local administrative authorities have to approve the technical-economical parameters of the works of public interest and, among others, the individual amounts estimated for compensation. Such amounts will be estimated by an authorized evaluator, based on the estimations used by the public notaries for fiscal purposes. The expropriator will deposit, for the benefit of the owners, the amounts estimated for compensation, and the latter will be notified by the intention of expropriation.

The expropriator will then issue an administrative decision of expropriation, which by effect of the law will operate the transfer of ownership from the private property of the expropriated person in the public property of the state, county, town or commune and in the administration of the expropriator, provided that the estimated compensations have been deposited.

Following expropriation, a specially commission appointed by the expropriator will receive and verify the claims of the expropriated owners and acknowledge their acceptance or refusal of the amounts proposed as compensation. Whenever there is any dispute regarding the ownership (e.g. multiple, dead or unknown owners), the com-

pensations will be paid only after clear identification of the beneficiary by an authentic deed. If the amount proposed as compensation by the expropriator is contested by the former owner, the latter will be entitled to address to court within the general statute of limitation (3 years in general) from the date when the decision determining the compensation was communicated to him. Neither a dispute nor litigation of any kind, nor the appeals in respect of such, will prevent transfer of the ownership right.

Law no. 255/2010 also regulates the cadastral operations in respect of the expropriated properties and expedited procedures for obtaining the various approvals and authorizations.

### [Law no. 210/2010 on measures preliminary to construction of networks for transport and distribution of electric energy \(published in the Official Gazette, Part I, no. 773 of 18 November 2010\)](#)

Law no. 210/2010 regulates the expropriation in respect of certain developments related to electric energy industry. The law declares as being of public utility all the works (either of national, county or local interest) for construction of networks for transport and distribution of electric energy. The expropriator is the Romanian State, represented by the operators of transport and distribution of electric energy.

Law no. 210/2010 seems to overlap with Law no. 255/2010 in what concerns the works of national interest related to transport and distribution of electric energy. While the procedures are similar, but not identical, it is debatable which of the two laws will prevail in practice.

After receiving a notification from the operators of transport and/or distribution of electric energy, the holders of rights over any building or land which is affected by the feasibility study on the route of the electric lines have the obligation to permit the access for performance of the cadastral sur-

vey, geotechnical studies or any other operations necessary for the feasibility study.

Based on the technical-economic documentation, a Government decision will approve the location, technical and economic features of the investment, commencement of the expropriation proceedings, together with the total amount estimated by the expropriator as necessary for compensations and the term for transferring such amount into an account of the expropriator.

Similar to the procedure under Law no. 255/2010, payment of compensations will be made at the request of the owners of real estate rights or any interested persons, a commission being appointed for verifying the ownership right or other real estate right over the land or building and noting the acceptance or refusal of the amounts proposed as compensation. The former owner unsatisfied with the amount of the compensation can address to the courts in 30 days since the decision determining the compensation was communicated to him.

After the date of the Government decision mentioned above, any deed transferring the envisaged properties from the public domain to the private domain, or from the *extra muros* area to the *intra muros* area, are null and void. After the date of communicating the decision determining the com-

penensation, the date of payment or the date when the compensation is deposited for the benefit of the owners, as case may be, any deed for creation or transfer of any real estate right over the expropriated property is null and void.

## Technical regulations regarding cadastre

[Regulation regarding the registration \*ex officio\* in the land book after finalisation of the cadastral works, approved by Order no. 844/2010 of the National Agency for Cadastre and Real Estate Publicity \(published in the Official Gazette no. 823 of 9 December 2010\)](#)

The recent changes in Law no. 7/1996 on Cadastre and Real Estate Publicity modify and detail the procedure for global and *ex officio* realisation, at national level, of the cadastral works and the registration in the land book of the real estate properties. For more details, please refer to our July-August 2010 newsletter.

In accordance with the new regulation, after finalisation of the cadastral works and resolving all the contestations, new land books will be opened in electronic form. Each property will be registered in a land book.

The registration in the Land Book is ordered by registration decision, based on: (i) the cadastral register of the properties and the deeds included therein; (ii) the confirmed cadastral plan. For each property a land book registration decision, an informative land book excerpt and a cadastral plan excerpt will be issued and communicated to the interested persons.

If it turns out that there are differences

between the surfaces mentioned in the ownership documents or in the real estate publicity records and the real situation resulting from the measurements made for the cadastral works, the surfaces corresponding to the real situation will prevail.

Following finalisation of the cadastral works, the cadastral plan will be the only valid graphic support for registration in the land book. In the cadastral sectors where new land books are opened *ex officio*, the new land books and cadastral plan will replace the old transcription registers (in Romanian "*registru de transcriptiuni si inscriptiuni*"), the land books opened by request, as well as any other cadastral or real estate publicity records. The old records will be kept in the archives and can be consulted for historical review.

Identification and numbering of the properties, as contained in the property deeds and previous real estate publicity documents and plans, will lose their validity.

## Energy/ Projects

### New Rules on Nuclear Security

The Rules on nuclear security for location of nuclear-electric power plants (hereinafter referred to as the "**Rules**") were adopted by Order no. 334/2010 of the National Commission for the Nuclear Activities Control (published in the Official Gazette no. 836 of 14 December 2010)

The Rules establish the general requirements of nuclear security for the location of nuclear - electric power plants. Also, the Rules are applicable in relation to the authorization process of new nuclear - electric power plants by the National Commission for Nuclear Activities Control, hereinafter named CNCAN.

Fulfilling the provisions of the Rules is a necessary condition for CNCAN to authorize the activities of any nuclear power plants, regardless of the technological pathway. During the authorization process, CNCAN may impose additional requirements and conditions, according to the proposed location and project.

Nuclear power plants site selection must be justified on the basis of a set of nuclear security assessments to demonstrate com-

pliance with the requirements established under the Rules. Evaluation must take into account all significant factors related to the location and estimate their evolution and the impact on nuclear security for the expected lifetime of the power plant.

The Rules also establish a set of criteria for the location of the nuclear power plant such as the determination of exclusion area and low population area. Defining exclusion area and low population area is based on nuclear security analysis aimed at estimating the potential consequences of a severe accident.

The documentation for the authorization of the location must contain the Initial Report on Nuclear Security with the information specifically listed in the new Rules.

### The 2011 Framework Contract for Transporting Crude Oil, Gasoline, Condensate and Liquid Ethane

The Framework contract for transporting crude oil, gasoline, condensate and liquid ethane for the year 2011 was adopted by Order no. 163/2010 of the National Agency on Mineral Resources (published in the Official Gazette no. 775 of 19 November 2010)

The framework contract contains information regarding the object of the contract, the transport programs, rates and method

of payment, penalties and compensations, obligations and rights of the sender and the carrier, complaints.

## Additional Rules on the Electric Energy Balancing Market

[Order no. 35/2010 of the National Agency for Energy Regulation establishing certain rules of the electric energy balancing market \(published in the Official Gazette no. 815 of 7 December 2010\)](#)

The new order supplements the legal framework on wholesale electricity market. The compliance with this order will be monitored by specialized departments

within the National Agency for Energy Regulation. The order came into force on 1 January 2011.

## Employment Constitutional control of the Trade Union Law

[Decision no. 1276/2010 of the Romanian Constitutional Court on certain provision of Law no. 54/2003 \(published in the Official Gazette no. 746 of 9 November 2010\)](#)

Through its Decision no. 1276/2010, the Romanian Constitutional Court concluded that the provisions of the Trade Union Law allowing employees who are also members of the management bodies of the relevant trade unions to benefit from a reduced monthly working program without any impact on salary rights is contrary to article 44 of the Romanian Constitution, violating the right to private property.

In its judgment, the Court considered that if an employee who is also a member of the management bodies of a union is recog-

nized the right to have the normal monthly working period reduced by 3 to 5 days without his/her salary being affected, then the employer suffers a pecuniary loss. In such a case, there is no just consideration from the employee, the employer being forced to pay for work that has not been carried out.

The provisions were also found to be unnecessary in a democratic society and also not justified as a proportional mechanism to protect the unions' rights by limiting the employer's rights.

## New value of the minimum guaranteed wage as of 1 January 2011

[Government Decision no. 1193/2010 establishing the minimum guaranteed wage \(published in the Official Gazette no. 824 of 9 December 2010\)](#)

The national minimum gross guaranteed wage has been set at the value of 670 RON/month for a full 170 hours/month working program (3.94 RON/hour), applicable as of January 1<sup>st</sup>, 2011. Salary levels for

employees in the public systems cannot be set under the level of the minimum gross guaranteed wage and that establishing a salary under this level is sanctioned by a fine ranging from 1,000 to 2,000 RON.

## Changes regarding maternity leave and monthly compensation for parents

Government Emergency Ordinance no. 111/2010 ("**GEO 111**") regarding maternity leave and monthly compensation (published in the Official Gazette no. 830 of 10 December 2010)

GEO 111 establishes 2 options available for parents as far as child care leave and the respective monthly indemnity are concerned.

The first option consists in an indemnity set at 75% of the average monthly salary, but in any event not less than 600 RON and not more than 3,400 RON if the parent chooses a 1 year child care leave.

If the parent decides to resume working in the first 12 months after the child's birth, he/she will also be entitled to receive a reinstatement bonus of 500 RON per month,

for each month remaining until the child reaches two years of age.

The second option provides for an indemnity amounting to 75% of the average monthly salary of the beneficiary, but in any event not less than 600 RON and not more than 1,200 RON.

Parents of disabled children are entitled to a 3 years child care leave, benefiting from an indemnity amounting to 75% of the average monthly income of the beneficiary, but in any event not less than 600 RON and not more than 3,400 RON.

## Labour permits for foreigners

Government Decision no. 1345/2010 ("**GD 1345**") on the number of labour permits that may be issued to foreigners during 2011 (published in the Official Gazette no. 887 of 29 December 2010)

GD 1345 provides that the aggregate number of labour permits which may be issued in 2011 to foreigners is limited to 5,500, broken down as follows:

- labour permits for permanent workers: 4,000;
- labour permits for seconded workers: 600;
- labour permits for seasonal workers: 200;
- nominal labour permits: 100;
- labour permits for trainee workers: 100;
- labour permits for athletes: 300;
- labour permits for cross-border workers: 200.

## Intellectual Property

### New Regulation for the application of the Romanian Trademark Law

Government Decision no. 1134/2010 approving the Regulation for the application of Law no. 84/1998 on trademarks and geographical indications (published in the Official Gazette no. 809 of 3 December 2010)

Following the overhaul of Law no. 84/1998 (the "**Trademark Law**") through Law no. 66/2010, the secondary legislation implementing the provisions of the Trademark Law needed to be aligned accordingly.

The new regulation (the "**Regulation**") repeals the previous Regulation approved through Government Decision no. 8831/1998 and includes detailed provisions relevant to:

- the scope of application of the Trademark Law;
- the method and procedure for acquiring trademark protection through registration with the Romanian Office for Inventions and Trademarks ("**OSIM**");
- representation through an attorney in fact before OSIM;
- the application for registration of the trademark and the registration procedure;
- the international registration of trademarks and Community trademarks;
- the transfer of rights over trademarks (i.e. through assignment, license or other arrangements);
- renewal of registered trademarks;
- the termination of rights over a registered trademark;
- the protection, application for registration and registration procedure in respect of geographic indications;
- challenges and contestations before OSIM;
- the Registry of Trademarks and Geographic Indications.

## Environment

### Changes in regime of waste from electric and electronic equipment

Government Decision no. 1037/2010 regarding waste from electric and electronic equipment (published in the Official Gazette no. 728 of 2 November 2010)

This new piece of legislation ("**GD 1037**") regarding waste from electric and electronic equipment (WEEE) brings important changes for all market players, be it producers, importers and collective associations, public authorities, collecting and recycling agents and even holders of WEEE.

GD 1037 repeals the former Government Decision no. 448/2005 which represented the framework of WEEE management previously.

The main amendments brought by GD 1037 refer to:

- Obligations of public authorities – such are bound to ensure that there is at least one operational WEEE collection point for every 50,000 inhabitants, but not less than one in each town;
- Distributors and sellers – these economic agents are under an obligation to take over, free of charge, any used

electric or electronic equipment, including light bulbs and fluorescent tubes, from any client who acquires a similar product. Additionally, sellers can no longer accept for sale/use equipment for which the supplier cannot produce a valid producer certificate.

All points of sale should inform clients with respect to recycling electronic and electric equipment and the adverse effects of WEEE on the environment and public health.

- Producers and importers – for the first time, producers and importers shall have individual targets for collecting and recycling WEEE, calculated as a percentage of the quantity of electric and electronic equipment placed on the market in the previous two years.

For those producers which may wish to manage their own WEEE, by not taking recourse to a collective management organization, GD 1037 sets forth for the first time legal obligations for organizing WEEE management on the basis of a clear operational plan (this provision was valid previously only for collective associations). In addition, they must submit a financial guarantee to prove that the requisite financing for such indi-

vidual WEEE management program is covered.

- Collective management organizations – these organizations shall need to fulfil the cumulated WEEE management targets of all producers which have transferred such responsibility to them and are obliged to make provisions for covering expenses necessary for the management of WEEE from equipment from producers which have exited the market, so that their WEEE are not let unmanaged.
- Collecting and recycling agents – these agents must maintain proper records of all WEEE coming into the recycling facility and exiting such facility. In addition, recycling agents are bound to be authorized (even of previously holding such an authorization), for each category of WEEE processed by its recycling facility.

GD 1037 also strengthens the sanctioning system, including temporary suspension of activity as a sanction until the economic agent complies with the rigours of the law.

The Methodological Norms for the application of GD 1037 should be adopted within a 90 day term from the publication of GD 1037.

## New revenues for the Environment Fund

[Emergency Government Ordinance no. 115/2010 amending Emergency Government Ordinance no. 196/2005 regarding the Environment Fund \(published in the Official Gazette no. 862 of 22 December 2010\)](#)

The modifying ordinance brings certain amendments concerning revenues of the Fund, as follows:

- operators introducing on the national market packaging materials and/or packaged goods shall pay a contribution of 2 RON/kg for the difference between the quantities of packaging waste which should have been incinerated or reused and the quantity of packaging waste which was effectively incinerated/reused;
- a new source of revenues has been introduced, consisting of a 100 EUR penalty for each ton of carbon dioxide equivalent for which the operator has failed to return to the National Environmental Protection Agency the greenhouse gas emission certificates.



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