

Legal update by reference to the months
of November & December 2011

Legal Brief

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Banking Measures to protect the authenticity of Euro monetary instruments

The National Bank of Romania („**NBR**”) issued Regulation no. 17/2011 for ensuring the authenticity of Euro banknotes and coins (published in the Official Gazette no. 801 dated 11 November 2011)

Banking	1
Real estate	2
Competition	3
Energy	4
Labour	7
Environment	8
Data Protection	10

The regulation establishes the measures necessary for the circulation of Euro banknotes and coins under conditions which guarantee their authenticity, as well as the procedure for transmission to the competent national authorities of Euro banknotes and coins which are counterfeit /under suspicion of being counterfeit.

Under the regulation, credit institutions, exchange offices as well as other agents and institutions operating with cash have among others the following obligations:

- to check the authenticity of Euro banknotes and coins that are received in the

course of their activity and that they intend to recirculate;

- to withdraw from circulation any such monetary instruments which are counterfeit /under suspicion of being counterfeit, and to deliver them to the competent authorities, etc.

The authenticity control shall be made by qualified personnel either manually or with automated equipment certified by the Central European Bank and the European Commission.

The regulation entered into force as of 11 November 2011.

New liquidity requirements for credit institutions

The National Bank of Romania („**NBR**”) issued Regulation no. 25/2011 on the liquidity of credit institutions (published in the Official Gazette no. 820 dated 21 November 2011)

As of 1 January 2012, a new regulation on liquidity of credit institutions came into force.

As to the former requirements of Regulation 24/2009 which was repealed, the most important amendments envisage:

- the liquidity threshold for certain specific operations;

- the instruments which are taken into account for determining the actual liquidity and the necessary liquidity, etc.

The credit institutions have to comply with these new requirements by 30 June 2012.

Real Estate Provisions on expropriation for public utility reasons

Law no. 205/2011 amending Law no. 255/2010 regarding expropriation for public utility reasons, required for the accomplishment of national, county and local objectives (published in the Official Gazette no. 813 dated 17 November 2011)

One of the main amendments provided by Law no. 205/2011 concerns the extension of the list of works declared as being of public utility provided by Law no. 255/2010, as following:

- the production, the development and the generation of electricity are classified as being works of national interest;
- the transmission, distribution and extraction of natural gas are classified as being works of national interest;
- public construction works, rehabilitation and refurbishment of the water supply infrastructure, residual water infrastructure and works for the construction, rehabilitation and refurbishment of the treatment stations;
- the works for the development, refurbishment and rehabilitation of the National System for the Transmission of Crude Oil, Gasoline, Ethane, Condensate.

Law no. 205/2011 brings certain amendments related to the representation of the Romanian State as expropriator, through the Ministry of Economy, Commerce and Business Environment and also through the territorial administrative units.

Law no. 205/2011 also provides that the expropriation for the maximum 300-meter strip of land measured on horizontal, from the farthest sea line heading towards the land or up to the shore which is in contact with the sea or the state public property, and up to 10 meters behind the top of the shore, respectively, shall be performed according to the expropriation corridor established based on the topographic-cadastral documentations, including the list of immovable assets to be

expropriated, approved by Government decision. This provision shows that Law no. 205/2011 states an exception from the disposal according to which the expropriation for the purpose of greening and rehabilitation targets set for the Coastal Area of the Black Sea is performed based on the urbanism and land planning documentations or topographic and cadastral documentations initiated by the public authorities.

Law no. 205/2011 reduces the term in which the owners of the immovable assets to be expropriated have the obligation to appear at the headquarters of the expropriator in order to establish a fair compensation, from 30 days to 20 calendar days as of the notice of the expropriation intention.

Another novelty brought by Law no. 205/2011 is the expropriator's obligation to establish, through the notice regarding the expropriation intention, the exact term for the expropriated persons to vacate the immovable assets, which may not be less than 30 working days.

Moreover, according to the provisions of Law no. 205/2011, upon the expiry of the 30-day term notice delivered to the territorial administrative units, the transfer of the immovable assets from the property thereof into the state public property and management of the expropriators' representatives shall occur by operation of law, with immediate effect. This provision is an exception from the disposals of the Law no. 213/1998 on the regime of public property according to which an immovable asset may be transferred, at the request of the Government, from the public property of a territorial administrative unit in the state public property only as a result of a local or county council decision.

Competition New rules regarding the hearings in front of the Competition Council

[Order no. 789/2011 enforcing the Regulation regarding the hearings in front of the Competition Council and issuance of decisions \(published in the Official Gazette no. 792 dated 11 November 2011\)](#)

The hearing procedure in front of the Competition Council implies three steps: (i) a preliminary step, (ii) the actual hearings, and (iii) ruling, issuing and communicating the decision.

The preliminary steps consist in ensuring that all the administrative requirements for the hearings are met. After receiving the investigation report, the chairman of the Competition Council establishes whether hearings are necessary or not. Hearings can also be held if the (investigated) parties wish so. After the date of the hearing has been set and the summoning procedure is completed, the hearing begins.

According to the newly established rules, the actual hearings are not public, the only attendees being the Competition Council's members assigned to conduct the hearing/the investigation itself and the (investigated) parties and their advisors. Should it be necessary, the chairman of the Competition Council can also assign experts and also hear the author of the complaint and any other person who might have relevant information. In cases of alleged vertical agreements or abuse

of dominance, when the parties wish to preserve the confidentiality of conduct they are accused but also the confidentiality of their commercial information, the hearings shall be held in private. The hearings can also be recorded (both on audio and video support).

The parties will be informed, at the end of the hearing, of their entitlement to a reduction of the fine if during the hearings they admit to the accusations. However, the remedies and admission of guilt can also be submitted after the hearings have been closed, but they are conditioned on being accepted by the Competition Council.

The ruling is secret, only the Competition Council's Plenary being present. All decision shall be taken by a majority of votes. The decision shall be communicated to the parties in no more than 30 days from when it was issued (or in exceptional cases within 45 days from its issuance). The decision will also be published (in original and an English summary) on the Competition Council's website.

[Order no. 898/2011 enforcing the Instructions for modifying and completing the Instructions for individualizing the sanctions for the contraventions provided by art. 51 of Competition Law no. 21/1996 \(published in the Official Gazette no. 932 dated 29 December 2011\)](#)

The novelty brought by this new provision consist, among others, of two additional mitigating circumstances. Consequently, the base level for establishing a fine for the contraventions set out in art. 51 of the Competition Law might also be decreased (i) if the turnover corresponding to the relevant market/markets where the competition law breach was identified represents less than 20% of the entire turnover of the undertaking (in which case the base level can be decreased with up to 25%); and also (ii) if the undertaking proves the existence and effective implementation of a competition compliance conformity programme.

The amended instructions also detail admission of liability procedure. Firstly, the admission of liability is considered to be a mitigating circumstance and can trigger a decrease of the base level of up to 30% (previously, the maximum possible decrease of the base level was set at 25%).

The admission of liability needs to be direct and unequivocal, it has to concern the facts referred to and described in the Competition Council's investigation report and it has to be made in writing. The admission of liability can also be partial (for example, it can refer only to some of the actions in the Competition Council's report or it can refer to a different

to a different period than the one indicated in the investigation report), in which case the Competition Council can decline to grant the decrease (to the extent the partial admission of liability is considered to be insufficiently indicative of the undertakings actual acknowledgement of its noncompliant conduct).

The actual decrease to be applied in a case of admission of liability shall be determined by considering the nature of the behaviour (whether it is abuse or dominant position, concerted practices or other types of anticompetitive behaviour), the extent of the admission (total or partial), but also the possibility that an undertaking involved in the investigation benefits from leniency.

Energy

Green Energy News

[Romanian Energy Regulatory Authority \("ANRE"\) issued Order no. 42/2011 that approved the Regulation on accrediting producers of electricity from renewable energy sources with a view to implementing the system of promotion by green certificates \(published in the Official Gazette No. 770 dated 1 November 2011\)](#)

The Regulation establishes the organization and functioning of the green certificates market, the parties involved and their responsibility in the organization of the green certificates market, the mo-

dality of registering and inventory of all the information regarding the transactions of the green certificates and all the information regarding the supervising of the green certificates market.

[ANRE issued the Order no. 43/2011 approving the Green Certificates Issuance Regulation \(published in the Official Gazette No. 768 dated 4 November 2011\)](#)

The Regulation provides the conditions required and the necessary documentation in order for the green certificates to be issued as well as the obligations of all the parties involved in the process of green certificates issuance. The Regulation stipulates also how

are established the quantities of renewable energy sources ("E-RES") in order to benefit of the green certificates system, the conditions of annulment of the green certificates and the obligation of monitoring the issuance of the green certificates.

[ANRE issued Order nr. 44/2011 approving the Regulation for the Organization and Operation of the Green Certificates Market \(published in the Official Gazette No. 784 dated 4 November 2011\).](#)

This Regulation provides how the green certificates market operates, the parties involved and their responsibilities in the operation of

such market, the required information in order to monitor the operation of green certificates market.

ANRE issued Order no. 45/2011 approving the methodology of establishment of the annual rates of the green certificates trading (published in the Official Gazette No. 769 dated 1 November 2011)

Among the main provisions regulated by all the above mentioned regulations are:

- Operators developing power plant projects larger than 125 MW and having the obligations to notify the European Commission according to Law No. 220/2008 may request accreditation only subsequent to the award of the individual authorization by the Commission;
- In order to be granted access to the promotion system, the producers of energy from renewable sources shall have to comply with the requirements provided under the Regulation on accrediting producers of electricity from renewable energy sources (as approved by the Order no. 42/2011) and be granted an accrediting decision by ANRE;
- Accreditation may be granted in, either one stage, starting from the time the applicant starts generating and delivering energy into the system, or in two stages (i) preliminary accreditation, throughout the trial period and (ii) final accreditation, which is granted subsequent to the commissioning of the project;
- In order to be granted green certificates, accredited entities shall have to register with the Transport and System Operator and to submit the documentation required by the Green Certificates Issuance Regulation as approved by the Order no. 43/2011 issued by ANRE;
- The green certificates will be issued in electronic format and shall be valid for a 16- month term as of issuance, after such term being cancelled if not used to prove the achievement of the mandatory green certificates quota, in which case such green certificates shall be deemed used;
- The green certificates market includes two segments: (i) the bilateral contracts market, which deals with green certificates sale –purchase contracts between the participants in the market for negotiated prices and limited terms and (ii) centralized market, which is intended to secure a transparent trading market, on a non-discriminatory basis and subject to increased liquidity, offering the participants a reference price for the conclusion of bilateral contracts;
- The green certificates may be traded on the green certificates competitive market managed by OPCOM S.A. by economic entities which have become registered on such market, irrespective of the trade of electricity related thereto, as per the rules established by the Regulation the Organization and Operation of the Green Certificates Market as approved by the ANRE Order nr. 44/2011;
- The green certificates trading value shall be established by competitive mechanisms, in observance with the price scale provided under Law no. 220/2008 as amended by Government Emergency Ordinance no. 88/2011.

Guarantees of origin for energy from renewable energy sources

The Government issued the Decision no. 1232/2011 approving the procedure regarding issuance and tracking of guarantees of origin for electricity produced from renewable energy sources (published in the Official Gazette no. 4 dated 04 January 2012)

The regulation above mentioned will be primarily applicable to producers and distributors of energy from renewable energy sources (E-RES producers and distributors), and secondarily to consumers. The state authority that will supervise the procedures relating to granting, transfer and withdrawal of guarantees of origin is the National Energy Regulatory Authority.

The regulation covers all the aspects relating to:

- The procedures and requirements related to granting of guarantees of origin assigned by the ANRE;
- The establishment of the Registry of Guarantees of Origin, in electronic format, which contains information regarding issued, transferred or withdrawn guarantees of origin;
- The value of a certificate and its limited period of validity;
- The conditions under which the producers and distributors of E-RES can transfer ownership of the certificates;
- The possibility of foreign certificates to be recognized as being valid in Romania;

The requirements set for energy producers in order to receive the certificates are thoroughly explained in order to prevent any misunderstandings.

The regulation states that guarantees of origin can be granted during a limited period of time, namely one, three or six months from the moment the E-RES has been produced and effectively delivered into the energy network and the validity of such a certificate is limited to one year only.

Furthermore, the regulation provides the coordinates under which the certificate transfers can be perfected and that the guarantees can be conveyed from one producer to another, from a producer to a distributor and also from one distributor to another all across the E.U.

Moreover, the regulation clearly issues the situations where certificate withdrawal will occur, more precisely for certificate expiry of validity, use before the expiry of validity or fraud.

Lastly, under ANRE supervision, the Registry of Guarantees of Origin is to be established, which will store all the information regarding issuance, transfer and withdrawal of E-RES certificates.

Labour

New law for social security

[Law no. 292/2011 on social security \(published in the Official Gazette no. 905 dated 20 December 2011\)](#)

Law no. 292/2011 establishes the general principles and rules for granting social assistance measures and the criteria for system`s organization and function in order to ensure appropriate conditions for the development of the social security. Law no. 282/2011 abolishes Law no. 118/2006 regarding the national system of social security and the Government Ordinance no. 118/1999 regarding the National Fund of Solidarity.

The most important improvements brought by this piece of legislation are briefly listed below:

the national social security system comprises social benefits system and social services system;

the amounts of the social benefits are set in relation to the social indicator of reference ("SIR") by applying the social indicator of insertion ("SII"). SIR is a unit expressed in lei upon which the social benefits are estab-

lished. SII is determined in relation to the family type and to the effect of the social benefit;

in order to develop the social services, local authorities may contract public-private partnership under Law no. 178/2010 amended and supplemented;

volunteers may attend in the process of providing social services in exchange of granting facilities. Social services providers which use volunteers can benefit from the facilities used to access funds from the state budget, local budget or international funds;

the private providers of social services, the local authorities or any other natural persons or legal entities who finance social services may request an independent evaluation of the financing contracts for providing the social through social audit procedures;

New value of the minimum guaranteed gross salary as of 1 January 2012

[Government Decision no. 1.225/2011 for establishing the minimum guaranteed wage \(published in the Official Gazette no. 922 dated 27 December, 2011\)](#)

The national minimum gross guaranteed wage has been set at the value of 700 lei/month for an average full-time working schedule of 169.333 hours per month, representing 4.13 lei per hour, starting with 1 January 2012.

Establishing salaries below this level constitutes a contravention and it is sanctioned with a fine of 1,000 to 2,000 lei.

Labour permits for foreigners

Government Decision no. 1261/2011 regarding the number of labour permits that may be issued to foreigners during 2012 (published in the Official Gazette no. 935 dated 29 December 2011)

Government Decision no. 1261/2011 provides that the aggregate number of labour permits which may be issued in 2012 to foreigners is limited to 5,000, broken down as follows:

- labour permits for permanent workers: 3,000;
- labour permits for seconded workers: 700;
- labour permits for high qualified workers: 1,000;
- labour permits for seasonal workers: 100;
- nominal labour permits: 100;
- labour permits for trainee workers: 200;
- labour permits for athletes: 300;
- labour permits for cross-border workers: 100.

Environment Law on waste regime – important amendments

Law no. 211/2011 on waste regime (published in the Official Gazette no. 837 dated 25 November 2011)

Law no 211/2011 repeals the Government Emergency Ordinance no 78/2000 on waste regime and also the Government Emergency Ordinance no 16/2001 on the management of recyclable industrial waste and it transposes into the national legislation the provisions of Directive 2008/98/CE of the European Parliament and of the Council.

The most important provisions refer to:

- the waste hierarchy applicable as a priority order in waste prevention and management legislation and policy shall be the following: (a) prevention; (b) preparing for re-use; (c) recycling; (d) other recovery, e.g. energy recovery; and (e) disposal;
- a list of waste approved by the European Commission shall be accordingly adopted in the national legislation by means of a Government decision;
- a substance or an object is considered waste if the holder discards it or intends or is required to discard it;
- waste producers and waste holders should draft a characterization of each type of hazardous waste generated by their own activity and of the waste considered hazardous due to their origin and composition, in order to determine the possibilities of combining waste treatment and the elimination methods;
- it has been extended the producer's responsibility in order to encourage the producing and trade of products which are suitable for multiple use, the design of products with a minimum impact on the environment and the acceptance of returned products and of the waste that remains after those products have been used;
- in accordance with the "polluter-pays" principle, the costs of disposing of waste must be borne by the producers, by the holder of waste or by previous holders;
- any establishment or undertaking carrying out waste treatment activities must obtain an environmental permit from the competent environment authorities;
- in case of hazardous waste, the obligation for producers and holders of waste to preserve records for at least three years except in the case of establishments and undertakings transporting hazardous waste which must keep such records for at least 12 months.

Order on the approval of the state aid scheme for the development of the support structures for business of national and international interest

Order of the Minister of Economy, Trade and Business Environment no 2669/2011 for the approval of the state aid Scheme on the „Development of the support structures for business of national and international interest – Competitiveness Poles related to the Operation 1.3.1 “Development of the support structures for the business of national and international interest” Major intervention field 1.3 “Lasting development of the entrepreneurship” Priority Axis 1 “An innovative and eco-efficient production system”, within the Sector Operational Programme “Increase of the Economic Competitiveness” (published in the Official Gazette no.781 dated 3 November 2011)

The objective of the Scheme approved through Order no 2669/2011 is to support the creation and development of competitiveness poles of national interest and international visibility in Romania. Through the existing and potential competitiveness poles it is aimed the increasing interaction between companies, academic and scientific institutions and other entities involved in supporting business and private sector orientation towards innovation and technology transfer. Through this, the productivity will be increased and the medium inequality of the European Union will be reduced.

The following types of aid may be granted within the scheme: (1) regional aids for investment and employment, (2) aid for consultancy in favour of Small and Medium Enterprises (hereinafter referred to as “SME”), (3) aid for SME participation in fairs, (4) aid for research and development activities, (5) aid for technical feasibility studies, (6) aid for covering the costs related to the SME’s industrial property, (7) aid for newly established innovative enterprises, (8) aid for consultancy in the field of innovation and innovation support services, (9) aid for renting highly qualified personnel and (10) training aid.

Within the present State aid Scheme three types of projects may be submitted for fi-

nancing: (i) investment projects in the competitiveness poles’ infrastructure, (ii) research – development – innovation projects and (iii) soft projects (consultancy, SME participation to fairs, technical feasibility studies, SME’s industrial property, renting highly qualified personnel and training).

The aid granted through this Scheme comes from structural funds (European Fund for Regional Development), is non-reimbursable, and is echeloned per implementation periods of projects.

The beneficiaries of the state aid scheme are enterprises within the competitiveness poles than are legally organised as one of the follows: (a) undertakings in accordance with Law no 31/1990, (b) accredited private higher education institutions which fall under the definition of “research body/ organization” and (c) legal entities having as main activity research – development, regardless their organizing form, which do not fall under the definition of “research body/ organization”.

The Scheme approved through Order no. 2669/2011 (published in the Official Gazette no. 781 dated 3 November 2011) is applicable from 3 November until 13 December 2013, in the limits of the allocated budget.

Data Protection

Conditions for the processing of the personal identification number and other personal data with a general identification function

Decision no. 132/2011 of the President of the National Authority for Personal Data Protection regarding the conditions for processing of the personal identification number and other personal data with a general identification function (published in the Official Gazette no. 929 dated 28 December 2011)

The Decision of the National Authority for Personal Data Protection was necessary in order to clarify the modality of processing of the personal identification code because in practice the processing of such data was often made without a valid justification.

Thereby, the decision stipulates that personal data with general identification function are those numbers which identify a natural person in certain evidence systems that have general applicability, such as:

- Personal identification number;
- Series and number of the identity card,
- Passport number, driving license number, social security or health insurance number.

These categories of personal data are special personal data, subject to specific rules of personal data processing.

The processing of the above mentioned data as well as, the disclosure of such data to third parties is made with the strict observance of Law no. 677/2001 on the protection of individuals with regard to the processing of the personal data and the free movement of such data, namely:

- The data subject has given his/her express consent; or
- The processing is expressly provided by the law; or

- In other cases, with the approval of the National Authority for Personal Data Protection and if an adequate safeguard was provided for the protection of the rights of the data subject.

Consent

According to Decision no. 132/2011, the consent must be given expressly, in a manner that allows the operator to prove it.

Prior to obtaining of the consent, the operator has the obligation to inform the data subject. Cases when the information of the data subject proves impossible or would involve a disproportionate effort towards the legitimate interest that could be harmed must be duly justified and documented by the operator.

In case of processing of the above mentioned data, the operator must observe the principle of adequacy, pertinence, non-excessively as well as the confidentiality and security measures, by establishing appropriate safeguards, mentioned in detail in the decision.

Collection and processing of personal data, including the disclosure of the latter, by copying and retaining of copies of the identity card or of other documents that contain such data is strictly prohibited, excepting the above mentioned situations.

The decision enters into force in 30 days as of the publication in the Official Gazette.

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