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Legal Bulletin

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Legal Bulletin

Banking Law

1. Credits granted to individuals

Name of the enactment	Regulation of the National Bank of Romania (NBR) No. 24/2011 on credits to individuals ("**Regulation No. 24/2011**")
Publication	Official Gazette of Romania, Part I, No. 767 of 31 October 2011
Entry into force	31 October 2011
Connections with other enactments	Government Emergency Ordinance No. 99/2006 on credit institutions and credits adequacy
Main provisions	Regulation No. 24/2011 regulates the minimum requirements for granting credits to individuals and the development of such crediting relationship with a view to securing financial stability.

Consequently, Regulation No. 24/2011 provides that the Romanian legal entity credit institutions and branches of foreign legal entity credit institutions, non-banking financial institutions, as well as institutions issuing electronic currency ("**Lenders**") regulate their own minimum requirements for granting credits to individuals and the development of such crediting relationship, regulations that shall have to be approved by the NBR, Supervision Department ("**Internal regulations**").

The Lenders shall establish in the Internal Regulations:

- The method of organizing the activity of granting credits to individuals and the development of such crediting relationship;
- The categories of clients eligible for financing;
- The procedure of classifying the target clients by categories of risk of nonpayment;
- The categories of income considered eligible by the Lender, broken down by categories of clients;
- The related adjustment coefficients;
- The categories of expenses to be deducted from the eligible income

with a view to determining the aggregate indebtedness degree;

- The maximum permitted levels of the aggregate indebtedness degree;
- The methodology of periodically reconsidering the income readjustment coefficients and the maximum permitted levels for the indebtedness degree.

According to Regulation No. 24/2011, the clients' repayment capacity shall be reviewed based on a level of income considered eligible by the Lenders, which may not exceed the level of the previous year by more than 20%.

Consumer credits

Consumer credits may be granted for a maximum term of 5 years. This provision does not apply to the real estate consumer credits granted in RON, for which the debtor provided evidence attesting to holding a minimum advance of 40%.

As to consumer credits granted in foreign currency or indexed according to a foreign currency exchange rate, the applicant shall have to hold security interests or security interests in personal property of minimum 133% of the amount of the credit.

The credit facilities consisting of drawings from overdrafts, and credits granted by means of credit cards, whose value does not exceed 3 times the level of the net monthly income, without exceeding however a limit established by the Lender's Internal Regulations may be an exception to the guarantee obligation.

Credits for real estate investments

The amount of a credit for real estate investments may not exceed 85% of the amount of the mortgage guarantee in case of credits granted in RON.

In case of credits granted in foreign currency or indexed according to a foreign currency exchange rate, the amount of a credit for real estate investments may not exceed 80% of the amount of the mortgage guarantee, if the debtor obtains eligible income expressed in or indexed according to the credit's currency.

The amount of a credit for real estate investments granted to a debtor that does not obtain eligible income expressed in or indexed according to the credit's currency may not exceed 75% of the amount of the mortgage guarantee in the case of credits granted in EUR or indexed according to the EUR exchange rate, and 60% in case of credits granted in other foreign currencies or indexed according to other foreign currencies.

The provisions above do not apply to credits for real estate investments fully or partially guaranteed by the State.

Obligations to inform the clients on the foreign currency risk

Regulation No. 24/2011 improves the system of notifying and drawing attention of the client on the risks related to foreign currency loans and the consequences of the foreign currency and interest related risks materializing, by the following measures:

- Lenders shall have to provide the individuals, applying for a credit in foreign currency or indexed according to a foreign currency exchange rate, with printed brochures containing warnings on the possibility and consequences of the credit cost increasing in case the foreign currency risk materializes, and recommendations on the level of the indebtedness degree acceptable for different categories of clients;
- Lenders shall have to notify the clients by detailing in the repayment schedules related to the credit agreements, or, if no repayment schedules are prepared, by a distinct provision in the credit agreement related to the possibility of increasing the amounts due, in case the foreign currency and interest rate risks materialize.

Repealed enactments	NBR Regulation No. 3/2007 on limiting the credit risk in relation to credits granted to individuals
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2. Liquidities of credit institutions

Name of enactment	Regulation of the National Bank of Romania (NBR) No. 25/2011 on the liquidities of credit institutions ("**Regulation No. 25/2011**") and NBR Order No. 22/2011 on reporting situations concerning the liquidity indicator and the high liquidity risk ("**Order No. 22/2011**")
Publication	Official Gazette of Romania, Part I, No. 820 of 21 November 2011
Entry into force	1 January 2012
Main provisions	Upon coming into force, Regulation No. 25/2011 and Order No. 22/2011 shall represent the new framework regulation concerning, on an individual basis, the liquidity of credit institutions, and the form and content of the reporting forms to be submitted to NBR in relation to the liquidity of credit institutions. Such enactments shall apply to both Romanian legal entity credit institutions and

to the Romanian branches of foreign credit institutions.

Similarly to the former regulation, Regulation No. 25/2011 provides relevant rules concerning: (i) the supervision of the liquidity risk, (ii) calculation of actual liquidity, and required liquidity, (iii) supervision of the high liquidity risk, and (iv) sanctions to be applied in case the persons envisaged by such rules fail to observe the provisions of the regulation.

As to the liquidity indicator, such indicator shall be calculated as a ratio between the actual liquidity and required liquidity (calculated according to Regulation No. 25/2011, by maturity buckets) and must be maintained at a value of at least 1 (similarly to the previous regulation), but for each of the maturity buckets of up to 1 month, between 1 month and 3 months, between 3 months and 6 months, and between 6 months and 12 months, respectively. The liquidity indicator shall be distinctly calculated for RON operations and EUR operations, for all maturity buckets, and operations with RON equivalent, respectively for the maturity bucket of over 12 months.

According to Regulation No. 25/2011, the liquidity risk shall be considered high if the value thereof exceeds 10% of the value of the debts, other than loans, and off-balance sheet crediting commitment (similarly to the previous regulation). Should the high risk of liquidity exceed 15%, the credit institutions shall calculate the required liquidity related to such indicator by registering at the accounting value the debts they have towards such person or group of connected clients, debts arising out of the clients' on sight deposits, deposits repayable subject to notification and creditor's current credit accounts, and term deposits of the clients outside the sector of credit institutions.

In addition, Regulation No. 25/2011 regulates the credit institutions' reporting obligations concerning the liquidity indicator and high liquidity risk. Moreover, credit institutions shall have to report to NBR the strategy in the field of liquidity risk management and alternative financing plans, within 5 days as of the approval or review thereof.

As to Order No. 22/2011, such order regulates the form and content of the reporting forms (provided under the appendixes to the order), frequency and methods of submitting the liquidity indicator and high liquidity risk, as well as any data related thereto. As with the former regulation, in this case as well, the forms shall be sent to NBR, Supervision Department, on a monthly basis (within 17 calendar days as of the end of the month of the reporting), both on paper, and

	by means of the IT reporting system SIRBNR. In addition, credit institutions shall finalize the necessary steps with a view to conforming to the provisions of Regulation No. 25/2011 and Order No. 14/2011 by 31 March 2012.
Repealed enactments	NBR Regulation No. 24/2009 on the liquidity of credit institutions and NBR Order No. 13/2009 on reporting the situations regarding the liquidity indicator and high liquidity risk.
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Commercial Law

Name of enactment	Law No. 216/2011 prohibiting the usury activity (**"Law No. 216/2011"**)
Publication	Official Gazette of Romania, Part I, No. 827 of 22 November 2011
Entry into force	25 November 2011
Connections with other enactments	Law No. 216/2011 is to be enforced on a temporary basis, *i.e.* until the entry into force of Law No. 286/2009 on the Criminal Code Law No. 286/2009 on the Criminal Code
Main provisions	Giving money on interest, as an occupation, by an unauthorized person shall be deemed as criminal offense and shall be punished by imprisonment from 6 months to 5 years. The amounts obtained by committing the usury offense shall be seized.
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Employment

Name of enactment	Law No. 186/2011 amending and supplementing Law No. 217/2005 on the establishment, organization and operation of the European Works Council ("Law No. 186/2011")
Publication	Official Gazette of Romania, Part I, No. 763 of 28 October 2011
Entry into force	31 October 2011
Connections with other enactments	Law No. 217/2005 on the establishment, organization and operation of the European Works Council, republished as amended and supplemented (**"Law No. 217/2005"**)
Connections with European Union legislation	Directive 2009/38/EC o on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of

undertakings for the purposes of informing and consulting employees ("**Directive 2009/38/EC**")

Main provisions

Law No. 186/2011 was passed with a view to harmonizing Law No. 217/2005 with the amendments brought by Directive No. 2009/38/EC, due to a stringent need to update EU legislation in terms of informing and consulting employees at a transnational level, in order to secure actual compliance with the rights to information and consultation at a transnational level, to increase the percentage of European Works Councils established, allowing at the same time the development of agreements already in force.

The main amendments to Law No. 217/2005 brought by Law No. 186/2011 are as follows:

- The principle of efficiency in terms of defining and implementing the methods of informing and consulting employees is introduced;
- The principle of relevance of informing and consulting employees is introduced, both in terms of the management and representation of the parties concerned, and of the subject matter, which is limited to transnational aspects only;
- Upon establishing the nature of a certain aspect as transnational, the level of management and representation, and the extent of the potential effects on the European workforce or entailing activity transfers among Member States shall be taken into account;
- The competence of the European Works Council shall be established in accordance with the criteria considered upon establishing the transnational nature;
- It is inserted the principle of correlation between informing and consulting the European Works Council, and informing and consulting the national bodies representing the employees;
- The concept of "informing" is defined, and the concept of "consulting" is redefined;
- The method of computing the number of employees required to consider the undertaking or group of undertakings as Community (EU) scale, including the employees employed with an individual employment agreement on a part-time basis, 2 years prior to the initiation of the negotiations for the establishment of the European Works Council or for the establishment of the information and consultation procedure;

- Amendments are brought to the provisions on the structure of the European Works Council, special negotiating body and the reserve list, with a view to establishing the appointment or selection criteria in observance of the principle of proportionality with the number of employees in each Member State employed by the Community (EU) scale undertaking or group of undertakings;
- The central management located in Romania is given certain information duties with respect to the structure of the special negotiating body and the persons on the reserve list, as well as the initiation of the negotiations;
- The representatives of the trade unions may assist the special negotiating body, as experts;
- A new provision is inserted with respect to the initiation of the specific negotiation procedures by the central management, should significant changes in the structure of the Community (EU) scale undertaking or group of undertakings occur;
- Limited works council is provided as a mandatory requirement, and shall be formed of 5 members that must have suitable conditions to perform their activity on a regular basis;
- The main aspects to be particularly considered by the European Works Council throughout the annual information and consultation procedures are provided;
- The right of the European Works Council to information and consultation in exceptional situations is extended to reach certain decisions considerably affecting the employees' interests;
- The European Works Council is given the power to represent the employees' interests, on a collective basis, and the obligation to inform the employees' representatives on the contents and results of the information and consultation procedure implemented according to the law;
- The members of the special negotiating body and of the European Works Council are given the right to benefit from training sessions without salary losses, inasmuch as they shall be necessary for the exercise of their representation power in international meetings.

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Energy

Name of enactments	• Order of the Romanian Energy Regulatory Authority ("**ANRE**") No. 42/2011 approving the Regulation on accrediting producers of electricity from renewable energy sources with a view to implementing the system of promotion by green certificates ("**Accrediting Regulation**"); • ANRE Order No. 43/2011 approving the Green Certificate Issuance Regulation ("**GC Issuance Regulation**"); • ANRE Order No. 44/2011 approving the regulation for the Organization and Operation of the Green Certificate Market ("**GC Market Regulation**").
Publication	• Official Gazette of Romania, Part I, No. 770 of 1 November 2011; • Official Gazette of Romania, Part I, No. 768 of 1 November 2011; • Official Gazette of Romania, Part I, No. 784 of 4 November 2011.
Entry into force	Date of publication in the Official Gazette of Romania
Connections with other enactments	Law No. 220/2008 on establishing the system of promoting the generation of energy from renewable sources, as amended and supplemented ("**Law No. 220/2008**")
Main provisions	The Accrediting Regulation, GC Issuance Regulation and GC Market Regulation were passed as a result of the latest amendments brought to Law No. 220/2008, with a view to implementing the system of promoting the generation of electricity from renewable sources, regulated by this law. The main provisions regulated by these three regulations are as follows: • 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 Accrediting Regulation 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.e.* (a) preliminary accreditation, throughout the trial period (which, usually, may not exceed the validity term of the incorporation permit) and (b) final accreditation, which is granted subsequent to the commissioning of the project; • Operators developing power plant projects larger than 125 MW and having the obligation to notify the European Commission according to

Law No. 220/2008 may request accreditation only subsequent to the award of the individual authorization decision by the Commission;

- By way of exception, producers that, upon the entry into force of the Accreditation Regulation, operate plants generating electricity from renewable sources with installed capacity higher than 125 MW shall be temporarily accredited for a 24-month term, without the submission of the individual decision of the European Commission, on the condition that, within 3 months, the Commission has to be provided with the necessary documentation; failure to observe this term shall entail the suspension of the accreditation process;
- The producers holding power plants/units benefiting from additional State investment aids shall be granted a lower number of green certificates ("**GC**") as compared to the one provided under Law No. 220/2008, according to the calculation methodology regulated under the Accreditation Regulation;
- In order to be granted GCs, accredited economic undertakings shall have to become registered with the Transport and System Operator (*i.e.* Transelectrica S.A.) and to submit the documentation provided under the GC Issuance Regulation, on a monthly basis;
- Should it find further to a control at an accredited economic undertaking that it obtained undue GCs, ANRE shall request the Transport and System Operator, either to cancel the undue certificates, if the latter have not yet been traded, or the deduction of the undue GCs from the number of certificates due for the following month/months, if they have been traded;
- GCs shall 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 GC purchase quota, in which case such GC's shall be deemed used;
- GCs may be traded on the GC competitive market managed by OPCOM S.A., by economic undertakings which have became registered on such market, irrespective of the trade of electricity related thereto, as per the rules established by the GC Market Regulation;
- The GC Market includes two segments, *i.e.* (a) the bilateral contracts market, which deals with GC sale-purchase contracts between the

participants in the market, for negotiated prices and limited terms, and (b) centralized market, which is intended to secure a transparent trading framework, on a non-discriminatory basis and subject to increased liquidity, offering at the same time the participants a reference price for the conclusion of bilateral contracts;

- The GC trading value on each market segment shall be established by competitive mechanisms, in observance of the price scale provided under Law No. 220/2008;
- Throughout its validity, a GC may be subject to several successive transactions, and the transfer of a GC from the seller to the purchaser shall be performed only after the confirmation of the related payments; the GCs purchased in one year in addition to the mandatory quota, may be used with a view to fulfilling the obligations related to the following year, if they remain valid.

Repealed enactments

Upon the entry into force of the Accrediting Regulation, the following enactments shall be repealed:

- ANRE Order No. 29/2005 approving the framework contract for the sale-purchase of electricity generated in qualified configurations for uncontrollable generation with preference;
- ANRE Order No. 39/2006 approving the Regulation on qualifying the generation with preference of electricity from renewable energy sources; and
- ANRE Order No. 44/2007 on establishing the method of trading electricity generated from renewable energy sources.

Upon the entry into force of the GC Market Regulation, the following enactments shall be repealed:

- ANRE Order No. 22/2006 approving the Regulation for the organization and operation of the green certificate market; and
- ANRE Order No. 38/2006 approving the procedure for monitoring the green certificate market.

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Environmental Protection

Name of enactment	Law No. 211/2011 on the waste regime ("**Law No. 211/2011**")
Publication	Official Gazette of Romania, Part I, No. 837 of 25 November 2011
Entry into force	Law No. 211/2011 came into force on 28 November 2011, except for the provisions on misdemeanors which shall come into force on 25 December 2011
Connections with other enactments	• Government Emergency Ordinance No. 195/2005 on environmental protection ("**GEO No. 195/2005**"); • Government Decision No. 349/2005 on storing waste; • Government Decision No. 856/2002 on the records regarding the waste management and approving the list containing the waste, including hazardous waste ("**GD No. 856/2002**"); • Government Emergency Ordinance No. 152/2005 on the prevention and integrated control of pollution.
Connections with EU legislation	Directive 2008/98/EC on waste and repealing certain directives
Main provisions	Law No. 211/20011 repeals the former legal framework regulating the waste regime in Romania, *i.e.* Government Emergency Ordinance No. 78/2000 on the waste regime, and Government Emergency Ordinance No. 16/2001 on the management of recyclable industrial waste with a view to harmonizing domestic legislation with the European regulations in the field. Law No. 211/2011 provides a set of measures required for environmental protection and population health, by preventing and even mitigating adverse effects caused by the waste generation and management. To this effect, this legal framework establishes an order of priorities in terms of preventing waste generation and managing waste, as follows: • Prevention; • Preparation for reuse; • Recycling; • Other operations of turning to good account, such as energetic use; • Elimination. Such order is intended to encourage actions in terms of preventing generation and efficiently managing waste with a view to mitigating negative effects

thereof on environment.

Please find below a brief presentation of the main issues regulated under Law No. 211/2011.

List of hazardous waste

Both the legal entity producers and holders of waste shall have to draft and hold a description of the hazardous waste generated by their own activity and of the waste which may be deemed hazardous due to the origin or composition, with a view to determining the possibilities of combining waste treatment and elimination methods. In addition, a list (the "List") approved by the European Commission shall be implemented in the domestic legislation by means of a Government decision, establishing whether the waste is deemed to be hazardous.

Moreover, according to Law No. 211/2011, waste producers and generators that are public defense, public order and national safety authorities shall have to state in the codes provided under GD No. 856/2002 on the records kept with respect to waste and approving the list of waste, including hazardous waste, each type of waste generated by its activity, based on specific regulations for waste management.

The central public authority for environmental protection shall notify the European Commission on the waste considered to be hazardous and not listed in the waste List.

The category of hazardous waste includes: (i) substance residues used as solvents; (ii) mineral oils and oil substances; inks, dyes, pigments, paints, primers, lacquers; (iii) resins, latex, plasticizer, glues/adhesives; (iv) accumulators, batteries or other types of electric cells.

Producer's Extended Liability

With a view to preventing, reusing, recycling and other types of turning waste to good account, the central public authority for environmental protection may propose measures to extend the producer's liability, by promoting and proposing certain measures of a legislative or non-legislative nature.

Producer's extended liability shall be implemented as per the technical feasibility, economic viability, global effects on environment and population health, and social impact, in observance of the need to secure a proper operation of the domestic market.

Issues related to turning waste to good account

According to Law No. 211/2011, both the producers and holders of waste, and the economic operators securing the collection and transport thereof shall have to separately collect the following categories of waste: (a) paper, (b) metal, (c) plastic and (d) glass. The same obligation shall be incumbent upon the authorities of the local public administration starting with 2012. With a view to turning waste to good account, the waste producers and authorities of the local public administration shall have the following duties:

- To achieve, by 2020, a level of preparation for reuse and recycle of **minimum 50%** of the full amount of waste, such as paper, metal, plastic and glass coming from garbage and, as the case may be, other sources, inasmuch as such waste is similar to the waste coming from garbage;
- To achieve, by 2020, a level of preparation for reuse, recycle and other operations of turning to good account, including operations to fill and pack using waste to replace other materials of **minimum 70%** of the amount of non-hazardous waste coming from building and demolishing activities, except for natural geological materials.

It is kept the obligation provided by the former regulation on the waste record keeping by each type of waste and submission thereof to the county agency for environmental protection, on an annual basis.

With a view to achieving the targets laid down by the law, waste management plans are prepared at a national, regional and county level, including at the level of Bucharest. The national waste management plan shall be prepared by the central public authority for environmental protection and shall cover the entire geographical territory of Romania.

Such plan shall be approved by Government decision and shall be notified to the European Commission. Moreover, until 12 December 2013, the central public authority for environmental protection shall adopt programs to prevent the waste generation.

Rules on waste management

Waste management shall have to be performed without endangering human health and damaging the environment, particularly:

- Without causing risks to air, water, soil, fauna or flora;

- Without causing discomfort due to noise or smell;
- Without negatively affecting the landscape or areas of a special interest.

Costs of waste management

According to the "polluter pays" principle, the costs of the waste management operations shall be borne by the waste producer or, by the current or former holder of the waste, as the case may be. Upon proposal of the central public authority for environmental protection, the costs for waste management that are to be fully or partially borne by the producer of the product which generates such waste and a potential participation of the distributors to such costs are established.

In case of abandoned waste and, in case the producer / holder of waste is not known, the expenses related to cleaning and restoration of the environment, and costs for transporting, turning to good account, recovering / recycling, eliminating are to be borne by the local public administration authority.

After having identified the producer / holder of waste, the local public administration authority that has borne the expenses related to transporting, turning to good account, recovering / recycling, eliminating shall initiate legal proceedings against the former to recover the expenses.

Permits necessary to perform the waste management activities

All units or undertakings performing waste treatment activities shall have to obtain an environmental permit / integrated environmental permit issued by the relevant environment protection authorities.

At the same time, the territorial authority for environmental protection may grant reliefs for the procedure of authorizing the following types of operations:

- Elimination of own non-hazardous waste at the production site;
- Turning waste to good account.

The environmental permit / integrated environmental permit shall be issued and reviewed in accordance with Government Emergency Ordinance No. 195/2005.

Sanctions

Law No. 211/2011 provides a set of sanctions for both the individuals, and the legal entity producers and holders of waste. Civil fines that may be charged for breaching the obligations provided under Law No. 211/2011 range from RON 1,000

to RON 40,000.

Local public authorities shall not escape sanctions either, and they shall be sanctioned by fine ranging from RON 5,000 to RON 15,000 for the failure to meet the obligations and responsibilities to separately collect at least waste such as paper, metal, plastic and glass, starting with 2012.

Misdemeanors shall be established and fines shall be charged by the National Environmental Guard, and local authorities. In the case of misdemeanors committed on the premises and areas belonging to structures of the defense, public order and national safety systems, the jurisdiction over finding misdemeanors and charging fines shall belong to the National Environmental Guard together with the specialized structures attached to the Ministry of National Defense, Ministry of Administration and Interior, Romanian Intelligence Services, Foreign Intelligence Services, Protection and Guard Service and Special Telecommunications Service.

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Financial Law

Name of enactment	Government Emergency Ordinance No. 94/2011 on the organization and performance of the economic and financial inspection of economic undertakings (**"GEO No. 94/2011"**)
Publication	Official Gazette of Romania, Part I, No. 799 of 11 November 2011
Entry into force	11 November 2011
Connections with other enactments	• Law No. 30/1991 on the organization and performance of the Financial Guard's financial control (**"Law No. 30/1991"**) • Government Ordinance No. 119/1999 on the internal control and financial preventative control (**"GO No. 119/1999"**)
Main provisions	GEO No. 94/2011 is intended to regulate the economic and financial inspection performed by the Ministry of Public Finance at the following categories of economic undertakings: • *Regies autonomes;* • National companies; • Business companies where the State or a territorial-administrative unit is a sole or majority shareholder;

- Business companies and *regies autonomes* where the legal entities mentioned above directly or indirectly hold a majority interest;
- National research development institutes, other than those functioning as public institutions;
- Other economic undertakings, irrespective of the form of ownership, for reasons of substantiating and justifying the amounts granted from the general consolidated budget.

The economic undertakings to be subjected to the economic and financial inspection shall be selected by the relevant inspection body, based on the selection criteria to be established by methodological norms.

GEO No. 94/2011 regulates mainly the following aspects:

- **Objectives of the economic and financial inspection**
  - To increase the above mentioned economic undertakings' responsibility;
  - To strengthen the economic and financial discipline thereof.
- **Types of economic and financial inspections**
  - Ex-ante control – entails (i) a verification on how the economic undertakings' income and expense budgets are substantiated, (ii) a verification on how the amounts granted from the general consolidated budget in support of certain activities are substantiated, and (iii) verifications on the establishment and provision of sources of payment for the repayable financings secured or subleases by the State;
  - Operative control – entails a verification of certain activities or economic and financial operations conducted throughout the current financial year;
  - Ex-post control – entails the verification of the economic undertakings' activity pertaining to the closed financial years, upon request of the public authorities holding controlling powers over the way the State's and Public Sector's financial resources are constituted, managed and used.
- **Methods and procedures of control enforced by the financial guard**

The economic and financial inspection may be of a general or partial nature, as

per the verification of either all, or one or several operations of the objectives established for the period subject to control.

The control procedures which may be enforced by the economic and financial inspection according to GEO No. 94/2011 are as follows:

- General preliminary analysis;
- Financial analysis;
- Documentary accounting control;
- Random control;
- Electronic control.

- **Rules on performing the economic and financial inspection**

The inspection activity is organized and carried on based on annual, quarterly and monthly schedules approved according to the conditions laid down in the order of the minister of public finance.

The inspection shall have to be carried on within statutes of limitations of 5 years, and 10 years, respectively, as per the distinctions laid down under GEO No. 94/2011.

Inasmuch as an economic undertaking is subject to verification by the Court of Audit, the objectives considered by the public external auditor may no longer be subject to the economic and financial inspection.

The instrument whereby the inspection body notifies the economic undertaking on the action to be carried on is the **inspection notice**. The inspection notice shall be served, as the case may be:

- 30 days or 15 days prior to the commencement of the inspection, as per the type of control performed on the economic undertakings that have the capacity as major taxpayers, according to Government Ordinance No. 92/2003 on the Fiscal Procedure Code ("**Fiscal Procedure Code**") or the other economic undertakings;
- Upon commencement of the inspection, in the following cases: (i) the economic and financial inspection is performed on an economic undertaking undergoing insolvency proceedings, (ii) a documentary control requires the immediate commencement of the inspection, (iii) with a view to extending the inspection to

objectives and periods other than as provided under the inspection notice.

In certain cases, expressly regulated under GEO No. 94/2011, the inspection notice shall not be necessary.

The maximum term of the inspection shall be 6 or 3 months, as envisaged by the major taxpayer economic undertakings, according to the Fiscal Procedure Code, and the undertakings that have secondary headquarters or the other economic undertakings.

The inspection's result shall be registered in an **inspection report** that shall include all the findings in connection with the verified periods and objectives, from a factual and legal standpoint.

Based on the findings in the inspection reports, the relevant inspection body shall order measures by means of a **mandatory order.** As to the mandatory order including measures with respect to the amounts due to the general consolidated budget, GEO No. 94/2011 provides as follows:

- Such amounts shall be considered budgetary receivables;
- The mandatory order shall be deemed as loan note;
- Incidental charges shall be due for such budgetary receivables, and shall be computed according to the Fiscal Procedure Code, as of the collection thereof by the verified economic undertaking or as of the deadlines set for the payment of the debts.

A preliminary complaint may be filed against the mandatory order pursuant to Administrative Claims Law No. 554/2004; this preliminary complaint shall not stay the enforcement of the mandatory provision.

- **Other provisions**
  - The duties and competences of the economic and financial inspection;
  - The obligations of the verified economic undertakings;
  - Misdemeanors, sanctions and means of appeal.
- **Measures of enforcing GEO No. 94/2011**
  - Within 15 days as of the publication in Official Gazette of

Romania No. 94/2011, the Ministry of Public Finance shall prepare the methodological norms on the establishment, organization, operation, functioning and organizational structure of the economic and financial inspection;

- Within 60 days as of the publication of GEO No. 94/2011 in the Official Gazette of Romania, it is to be established the way the financial control of the administration at the level of economic undertakings shall be established by means of a Government decision.

Repealed enactments	Upon the entry into force of GEO No. 94/2011, Law No. 30/1991 is repealed.
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Real Estate

1 The issue of certificates attesting the ownership right over the land

Name of enactment	Law No. 190/2011 supplementing Article 12 of Law No. 137/2002 on certain measures for the acceleration of privatization (**"Law No. 190/2011"**)
Publication	Official Gazette of Romania, Part I, No. 764 of 31 October 2011
Entry into force	3 November 2011
Connections with other enactments	Law No. 137/2002 on certain measures for the acceleration of privatization
Main provisions	According to the former regulation, all business companies that have not been issued with the certificate attesting to the ownership over the land, irrespective of their shareholding, shall prepare and provide the institutions entitled to issue certificates attesting to the ownership right over the land with the documentation required for its issuance, within 60 days as of the entry into force of the law. Law No. 190/2011 lays down as novelty that the duty to issue the certificates attesting to the ownership right over the lands belongs to the Ministry of Regional Development and Tourism for those companies for which no institutions entitled to issue such certificates were found, in accordance with the assessment procedures provided upon the conclusion of the privatization conclusion.

2 Expropriation for public utility reasons

Name of enactment	Law No. 205/2011 amending and supplementing Law No. 255/2010 on expropriation for public utility reasons, with a view to building objectives

	of a national, county and local interest ("Law No. 205/2011")
Publication	Official Gazette of Romania, Part I, No. 813 of 17 November 2011
Entry into force	20 November 2011
Connections with other enactments	• Law No. 255/2010 on expropriation for public utility reasons, with a view to building objectives of a national, county and local interest (**"Law No. 255/2010"**); • Law No. 213/1998 on public property assets, as amended and supplemented (**"Law No. 213/1998"**).
Main provisions	One of the main amendments brought by Law No. 205/2011 addresses the amendment and supplementation of the list declared as being of public utility, regulated by Law No. 255/2010, as follows: • In terms of electricity, the production, development and generation of electricity classify as works of a national interest; • In terms of natural gas, only the transmission, distribution and extraction of natural gas classify as works of a national interest; • Two new categories of works declared to be of public utility are inserted, *i.e.* (i) works for the development, refurbishment and rehabilitation of the National System for the Transmission of Crude Oil, Gasoline, Ethane, Condensate and (ii) 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; • In terms of the national brown coal mining works, performed on the basis of a mining license, a new requirement is added to be classified as public utility works by law, *i.e.* such works have to be performed by undertakings under the authority of the Ministry of Economy, Commerce and Business Environment. In addition, Law No. 205/2011 brings certain amendments and supplementations relating to the representation of the State of Romania, as expropriator, by the Ministry of Economy, Commerce and Business Environment and the territorial administrative units. Also, the new regulation inserts an exception from the provisions according to which the expropriation intended to achieve the greening and rehabilitation

targets set for the shoreline of the Black Sea is performed based on the urbanism and land planning documentations or topographic and cadastral documentations. Consequently, Law No. 205/2011 provides that the maximum 300-meter wide strip of land measured on horizontal, from the farthest sea line heading towards the land or up to the sea-front which is in contact with the sea or the State public property, and up to 10 meters behind the top of the sea-front, respectively, the expropriation shall be performed according to the expropriation corridor established based on the topographic-cadastral documentations prepared in the 1970 National Stereographic Projection System, including the list of immovable assets to be expropriated, approved by Government decision.

As to the obligation of the owners of the immovable assets to be expropriated to appear at the headquarters of the expropriator with a view to establishing a fair compensation, Law No. 205/2011 reduces the 30-day term inside which the owners of the immovable assets to be expropriated have the obligation to appear at the headquarters of the expropriator with a view to establishing a fair compensation to 20 calendar days as of the notification of the expropriation intention, with a view to rendering the celerity principle effective in achieving the expropriation for treasons of public utility.

Another novelty brought by Law No. 205/2011 is the regulation of the obligation to establish, by means of the immovable asset expropriation notice, the term for vacating the immovable assets, which may not be less than 30 business days.

Law No. 205/2011 regulates a new exception from the rule provided under Law No. 213/1998, according to which an asset may be transferred, at the request of the Government, from the public property of a territorial administrative unit in the State public property by means of a county council decision, *i.e.* the Bucharest General Council or local council. Consequently, according to the provisions of Law No. 205/2011, upon the expiry of the 30-day term, the transfer in the State public property and management of the expropriators' representatives shall occur by operation of law.

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Taxation

Name of enactment	Order of the Ministry of Public Finance No. 2795/2011 establishing the criteria for conditioning the registration for VAT purposes ("**Order No. 2795/2011**")
Publication	Official Gazette of Romania, Part I, No. 824 of 22 November 2011

Entry into force	1 December 2011
Connections with other enactments	• Law No. 359/2004 on simplifying the formalities for the registration with the trade registry of the individuals, family associations and legal entities, fiscal registration thereof, and authorization of the operation of legal entities, as amended and supplemented ("**Law No. 359/2004**"); • Law No. 571/2003 on the Fiscal Code (the "**Fiscal Code**"); • Companies Law No. 31/1990 ("**Law No. 31/1990**").
Main provisions	Order No. 2795/2011 lays down the criteria underlying the conditioning of the registration for VAT purposes of the business companies established pursuant to Law No. 31/1990, which are subject to registration with the trade registry and request registration for VAT purposes, in accordance with Article 153 (1) letters a) and c) of the Fiscal Code. According to the abovementioned provisions of the Fiscal Code, the taxable person headquartered in Romania and performing or intending to perform a business activity entailing taxable and/or VAT exempted operations with the right of deduction shall have to request registration for VAT purposes with the relevant fiscal body: • Prior to performing such operations, in the following cases: - If they declare that they shall make a turnover of or exceeding the exemption threshold of EUR 35,000; - If they declare they shall make a turnover below the exemption threshold of EUR 35,000, but they choose for the application of the normal taxation system; • If the turnover made throughout a calendar year is below the exemption threshold, but they choose for the application of the normal taxation system. The scope of Order No. 2795/2011 does not include the Romanian branches of taxable persons, with the headquarters of the business activity outside Romania, which persons shall have to become registered for VAT purposes in Romania, according to the provisions of Article 153 (2) of the Fiscal Code. Taxable persons seeking registration for VAT purposes according to Article 153 (1) letter a) of the Fiscal Code, and subject to registration with the trade registry shall have to submit to the relevant fiscal bodies an application for registration for VAT

purposes (form 089), and the appendix to the application for registration, on the same day with the submission to the trade registry office for the incorporation with the trade registry.

Taxable persons requesting registration for VAT purposes pursuant to Article 153 (1) letter c) of the Fiscal Code, and which are subject to registration with the trade registry shall have to submit the statement of amendments accompanied by the appendix to such statement.

The above documents shall be filled in by using the support software provided by the National Agency for Fiscal Administration and which may be downloaded on the following Internet website www.anaf.ro.

The criteria conditioning the registration for VAT purposes are as follows:

- The taxable person is not in the situation provided under Article 15 (1) of Law No. 359/2004, *i.e.* in the situation of not performing business activities on the premises intended as registered headquarters and/or secondary headquarters and outside such premises either. To this effect, the taxable person shall have to submit an affidavit attesting to whether it performs business activities or not at the registered headquarters, secondary headquarters or outside such premises;
- Neither the directors and/or shareholders of the taxable person requesting registration for VAT purposes, nor the taxable person itself is registered in the fiscal records as having committed offenses or other acts;
- The existence of the premises intended for the registered headquarters/fiscal domicile, condition that is subject to factual verification;
- The assessment criteria provided under the appendix to Order No. 2795/2011 (for instance, the title under which the premises intended as registered headquarters is held; whether one of the directors or shareholders has held such capacity in a wounded up company or in a company which is faced with insolvency proceedings; the directors or shareholders are citizens of the European Union). For each such criterion, points ranging from 0 to 10 shall be awarded, as per the instructions provided under the same appendix. Should the score be equal to or higher than 45 points, the relevant tax authority shall issue

	the decision approving registration for VAT purposes.
Repealed enactments	Order of the Minister of Public Finance No. 1984/2011 establishing the criteria for conditioning the registration for VAT purposes.
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