

# Legal Bulletin

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### Competition Law

Name of the enactment	<ul style="list-style-type: none"><li>• Competition Council Order No. 385/2010 enforcing the Regulation on Concentrations ("<b>Order No. 385/2010</b>");</li><li>• Competition Council Order No. 386/2010 enforcing the Instructions on concepts of concentrations, involved undertaking, full operation and turnover ("<b>Order No. 386/2010</b>");</li><li>• Competition Council Order No. 387/2010 enforcing the Instructions on restrictions directly connected to and required for the enforcement of concentrations ("<b>Order No. 387/2010</b>");</li><li>• Competition Council Order No. 388/2010 enforcing the Instructions on defining the relevant market ("<b>Order No. 388/2010</b>").</li></ul>
Publication	<p>Official Gazette of Romania, Part I, No. 553 of 5 August 2010 and Official Gazette of Romania, Part I, No. 553 bis of 5 August 2010</p> <p><i>Note: The Regulation on concentrations (appendix to Order No. 385/2010) and the Instructions on the concepts of concentrations, involved undertaking, full operation and turnover (appendix to Order No. 386/2010) were published in Official Gazette of Romania, Part I, No. 553 bis/5 August 2010</i></p>
Entry into force	5 August 2010
Connections with other enactments	Competition Law No. 21/1996 (" <b>Competition Law</b> ")
Purpose	The new regulations and instructions issued by the Competition Council and published in Official Gazette No. 553/2010, and in Official Gazette No. 553bis/2010 are an integral part of the process of amending the competition regulations applicable in Romania for the purpose of harmonizing them with the corresponding Community provisions currently in force. The harmonization process mentioned above was initiated by amending Competition Law through Emergency Ordinance No. 75/2010 amending and supplementing Competition Law No. 21/1996 (published in Official Gazette, Part I, No. 459 of 6 July 2010).
Main provisions	<p><b>1 Regulation on concentrations (approved by Order No. 385/2010)</b></p> <p>Although the new regulation on concentrations inserts no major amendments as compared to the regulation authorizing concentrations issued by Competition</p>

Council in 2004, as a result of the experience acquired throughout 2004 – 2010 and by reference to the applicable Community Regulations, at this time, amendments on the structure of the regulation on concentrations are implemented, while certain sections of the former regulation (for example, restrictions auxiliary to concentration operations, establishment of the concentration concept, involved undertaking, full operation) are regulated by separate enactments since August 2010. Among the main amendments implemented by the new regulation on concentrations:

- Amendments were brought to the standard form for notifying concentration operations. The new form is included in Appendix No. I to the regulation;
- A simplified notification form was adopted. It is included in Appendix No. II to the regulation;
- Specific rules were adopted with respect to the posting of informative notes/press releases on the received concentrations notices on the website of the competition authority;
- It is inserted a separate section on the notification of the intention to start a concentration and consultations prior to submitting the notice;
- A new 5-day term is inserted for the submission of a notice on the performance of a concentration available to the competition authority to confirm in writing to the parties whether the conditions required for the notice to be deemed validly submitted to the competition authority were met;
- The new regulation details the procedure of commitment undertaking by the parties involved in a concentration operation, in case the notified operation presents major doubts with respect to compatibility with a normal competition environment;
- It is detailed the procedure of granting derogations from the principle of suspending the implementation of concentration operations until the issuance of the decision by the competition authority, and the procedure on imposing temporary measures and the decisions regarding the restoration of the previous situation existing on the market prior to the occurrence of the concentration

and the investigation procedure.

## **2 Instructions on concentration concepts, involved undertaking, full operation and turnover (approved by Order No. 386/2010)**

According to the template established by the European Commission through Consolidated Jurisdictional Notice of the Commission by virtue of (EC) Regulation No. 139/2004 of the Council on the control of concentrations between undertakings, the Instructions on concentration concepts, involved undertaking, full operation and turnover transposed at a national level are aimed at providing guidelines on the jurisdictional issues provided under the Competition Law to enable undertakings to assess, prior to the conclusion of the agreements with the competition authority, to what extent the concentration operations performed by them are subject to the control by the Competition Council.

Under such circumstances, the Instructions detail issues (most of them regulated in advance under the regulation on authorizing concentrations from 2004), such as:

- The concept of concentration;
- The concept of control, taking control over an undertaking, means of control, long-term control change;
- Analysis of interdependent transactions;
- Analysis of companies jointly with full operation;
- Establishment of the turnover required for the analysis of the notification thresholds.

## **3 Instructions on restrictions directly connected to and required for the enforcement of concentrations (approved by Order No. 387/2010)**

Starting from 5 August, restrictions directly connected to and required for the enforcement of concentrations, referred to as *auxiliary restrictions*, are regulated separately from the general regulation on concentrations through the instructions issued by the Competition Council.

The Instructions follow the guidelines established by the Commission's Notice on the restrictions directly connected to and required for the enforcement of concentrations. They provide the undertakings involved in a concentration operation with guidelines on the notion of auxiliary restrictions in order to clearly distinguish between restrictions which may be authorized given the

concentration operation and the ones which require a separate analysis by virtue of Arts. 5 and 6 of the Competition Law, and Arts. 101 and 102 of the Treaty on the Functioning of the European Union, respectively, which regulate the agreements between undertakings and the abuse of dominant position.

At the same time, the instructions detail the conditions for the interpretation and enforcement of the most common categories of auxiliary restrictions in the case of concentrations, *i.e.* (i) the non-competition clauses; (ii) license agreements and (iii) sale and supply obligations.

#### **4 Instructions on defining the relevant market (approved by Order No. 388/2010)**

The instructions on defining the relevant market supersede the Instructions from 2004 on defining the relevant market, for the purpose of establishing the major share of the market. They implement at a national level the Commission's Notice on defining the relevant market in the sense of Community Competition Law.

The principles of defining the product's relevant market from a geographical standpoint are not amended, however the Instructions on defining the relevant market include additional details as compared to the previous regulation regarding the fundamental principles of defining the relevant market as per the product interchangeability, existence of potential competition, and of factual elements which may be considered upon defining the relevant market (for example, consumers' preferences, clients' and competitors' standpoints, geographical extent of clients' purchase conduct, commercial flows).

Repealed enactments

Order No. 389/2010 repealed the former regulations and instructions issued by the Competition Council with regard to the matters treated above.

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## **Consumer Protection**

Name of the enactment

Government Ordinance No. 20/2010 establishing certain measures for the unitary enforcement of the legislation of the European Union harmonizing the product marketing conditions ("**GO No. 20/2010**")

Publication

Official Gazette of Romania, Part I, No. 606 of 26 August 2010

Entry into force

29 August 2010

Connections with other enactments

- Government Ordinance No. 39/1998 on the national standardization activity, approved as amended and supplemented by Law No. 355/2002,

as amended;

- Government Decision No. 1016/2004 on the measures for the organization and performance of the information exchange in the field of technical standards and regulations, and of rules regarding the information company services between Romania and European Union Member States, and the European Commission, as amended;
- Government Ordinance No. 2/2001 on the legal regime of misdemeanors, approved as amended and supplemented by Law No. 180/2002, as amended and supplemented (“**GO No. 2/2001**”).

Connections with the  
Community legislation

(EC) Regulation No. 765/2008 of the European Parliament and Council dated 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and Repealing (EEC) Regulation No. 339/93 ((**EC Regulation No. 765/2008**”)

Main provisions

GO No. 20/2010 regulates the general framework for the unitary enforcement of the European Union legislation harmonizing the conditions for product marketing, in connection with the assessment of products’ conformity and market surveillance. (EC) Regulation No. 765/2008 regulates, at the level of the European Union, the rules and measures for the market surveillance in connection with the products to make sure that such products comply with certain requirements which provide a high level of protection for the public interests such as health and safety in general, health and safety at the place of work, consumer protection, environment protection and security.

At the same time, the standards of assessing conformity and market surveillance fashion at the level of the European Union undergo constant development. The main provisions of GO No. 20/2010 aim at the following:

#### **1 Conformity assessment**

GO No. 20/2010 regulates the conformity assessment fashion by referring to the harmonization standards required at the level of the European Union. This target is achieved by making sure that harmonized standards or other technical specifications, guidelines or good practice codes adopted at the level of the European Union are adopted as reference Romanian documents and by assessing conformity according to the above standards by the assessment authorities.

The enactment sets out that the conformity assessment may be performed by:

- The relevant authority itself;

- A national accreditation body, according to the definition provided in (EC) Regulation No. 765/2008;
- A legal entity body not representing a governmental entity, which complies with the following conditions: lack of conflicts of interest with the assessment authorities; objectivity and impartiality is secured; no activities provided by the conformity assessment authorities are performed, nor consultancy services under commercial or competition conditions; secures the confidentiality of information obtained; has enough personnel to properly perform its tasks; concluded agreements/understandings covering all responsibilities arising from its activities.

Should the relevant authority decide that the conformity assessment is to be performed by an assessment body meeting the conditions above, the former shall undertake full liability for the performance of the tasks by the assessment body.

GO No. 20/2010 establishes the obligation to notify the European Commission and the other Member States on the assessment authorities appointed to assess the conformity of European standards. Should a notified conformity assessment body fail to cumulatively comply with the requirements underlying the decision on its notification, or should the same fail to comply with its obligations arising from its capacity as notified body, the relevant authority shall restrict, suspend or withdraw its appointment, as per the seriousness of its acts. At the same time, GO No. 20/2010 establishes the obligation for a continuous provision of the conformity assessment service in case the appointment of the notified body is restricted, suspended or withdrawn, either by having another notified body process the assessment files, or by providing the relevant authority or a market surveillance authority with such files.

## **2 Market surveillance**

According to the provisions of GO No. 20/2010, the market surveillance activity shall be the responsibility of the relevant authorities. The relevant authorities shall appoint the surveillance authorities by the acts enforcing the provisions of the relevant legislation of the European Union. When enforcing the legislation of the European Union, the relevant authorities shall establish the applicable sanctions, and the enforcement thereof shall fall under the responsibility of the surveillance authorities. The way in which sanctions shall be enforced, carried out and challenged shall fall under the scope of the provisions of GO No. 2/2001.

Within 3 months from the entry into force of this ordinance, the Government shall issue a decision approving certain measures on the surveillance of market for the products regulated under the European Union legislation harmonizing their marketing conditions.

Repealed enactments

GO No. 20/2010 repealed a series of enactments, which formerly regulated the aspects related to the assessment of product conformity, including the accreditation bodies competent in this area.

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## Employment and Social Security Law

Name of the enactment

Government Decision No. 955/2010 amending and supplementing the Methodological Norms for the enforcement of Law No. 319/2006 on employment safety and health approved by Government Decision No. 1425/2006 (“**GD No. 955/2010**”)

Publication

Official Gazette of Romania, Part I, No. 661 of 27 September 2010

Entry into force

27 September 2010

Connections with other enactments

- Law No. 319/2006 on employment safety and health (“**Law No. 319/2006**”);
- Government Decision No. 1425/2006 approving the Methodological Norms for the enforcement of Law No. 319/2006 on employment safety and health (“**GD No. 1425/2006**”).

Main provisions

GD No. 955/2010 brought a series of amendments to the Methodological Norms for the enforcement of Law No. 319/2006, further to implementing, in Romanian legislation, Directive No. 2006/123/EC on services in the internal market by Government Emergency Ordinance No. 49/2009 on service providers’ freedom to establish and provide services in Romania.

Some of the most significant provisions of GD No. 955/2010 are presented below:

### **1 Amendments related to the organization of prevention and protection activities**

As regards the organization of prevention and protection activities in the undertakings, the requirements to be met by employers carrying out these activities were amended. Thus, employers are under the obligation to undergo, among others, at least one training program on employment safety and health, with a minimum duration of 40 hours, attested by a graduation document.



Employers' possibility to carry out activities in employment safety and health is only provided for the undertakings having a maximum number of 49 employees.

The employers having 50 – 249 employees shall appoint one or several employees or set up one or several internal services for prevention and protection, which services shall operate in the field of employment safety and health.

As regards undertakings with more than 250 employees, the employer shall organize one or several internal services for prevention and protection. If internal services for prevention and protection do not have the required capabilities and skills to perform all prevention and protection activities, the employer shall resort to one or several external services which shall carry out the activities that the latter cannot perform with its own staff.

According to the new provisions, as of 1 July 2011, the internal service for prevention and protection shall consist of full-time workers who concluded an individual employment agreement with the employer.

## **2 Amendments regarding external services for prevention and protection**

GD No. 955/2010 inserted a series of amendments to the provisions regarding external services of prevention and protection. Thus, further to simplified procedures, the nationals who obtained the right to organize prevention and protection services in an EU member state or in the European Economic Area, may provide such services in Romania, as well, without requiring the authorization provided under GD No. 1425/2006.

Also, other requirements regarding the procedure authorizing external services for prevention and protection were amended; among these, the limitation imposed on an individual who may act as manager of a sole external service for prevention and protection, as of 1 July 2011.

In addition to the provisions on external services for prevention and protection, the provisions on the representatives of workers with specific responsibilities in the field of employment safety and protection were modified, too. Thus, the minimum training level established for workers carrying out prevention and protection activities in the employment safety and health field was improved.

As regards the minimum number of workers' representatives, this shall be established as follows: (i) one representative for employers having 10 - 49 employees inclusive; (ii) two representatives for employers having 50 - 100 de

employees inclusive; (iii) three representatives for employers having 101 - 500 employees; (iv) four representatives for employers having 501 – 1,000 employees; (v) five representatives for employers having 1,001 – 2,000 employees; (vi) six representatives for employers having 2,001 – 3,000 employees; (vii) seven representatives for employers having 3,001 – 4,000 employees; (viii) eight representatives for employers having over 4,000 employees.

The new enactment further establishes that the following occupations are specific to employment safety and health, being required for the performance of prevention and protection activities:

- Employment safety and health technician;
- Employment safety and health expert.

### **3 Amendments to the employment safety and health committee**

As regards the employment safety and health committee, to be established in the case of employers having over 50 employees, the new provisions of GD No. 955/2010 brought a series of changes regarding, *inter alia*, the members thereof. Thus, the committee consists of the following members:

- Employer or its legal representative;
- Employer's representatives with employment safety and health powers;
- Representatives of workers with specific responsibilities in the field of workers' safety and health;
- Occupational doctor.

The enactment also amended the range of investigations into the events causing work accidents. Thus the investigation into the events leading to workers' demise and/or invalidity and into dangerous incidents which do not occur in the county where the employer has its registered office, shall be made by the territorial employment inspectorate operating on the territory where the event took place.

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## **Energy**

Name of the enactment

Government Ordinance No. 29/2010 amending and supplementing Law No. 220/2008 establishing the system of promoting energy from renewable sources ("GO No. 29/2010")

Publication	Official Gazette of Romania, Part I, No. 616 of 31 August 2010
Entry into force	3 September 2010
Connections with other enactments	Law No. 220/2008 establishing the system of promoting energy from renewable sources (" <b>Law No. 220/2008</b> ")
Main provisions	<p>GO No. 29/2010 amends and supplements Law No. 220/2008, which enactment creates the legal framework required to extend the use of renewable energy sources.</p> <p>Therefore, GO No. 29/2010 provides as a novelty, Romania's possibility of cooperating by means of joint agreements to the achievement of certain projects regarding the electricity generation from renewable energy sources, with third countries and by means of private operators, inclusively.</p> <p>The Ministry of Economy, Trade and Business Environment shall prepare once every 2 years, starting from October 2010, a report establishing the level of achievement of national targets and the measures taken with a view to facilitating the access to the grid of electricity generated from renewable sources. GO No. 29/2010 inserted multiple amendments to the contents of such report requiring its supplementation with the issues detailed below:</p> <ul style="list-style-type: none"><li>- Segment operating shares, electricity, heating and cooling and transmission and, global operating shares of energy from renewable sources of at least 2 previous calendar years and steps taken or proposed at a national level for the promotion of energy from renewable sources development taking into account the guidelines provided under Appendix I part B of Directive No. 2009/28/EC;</li><li>- Insertion and operation of promotion systems and other measures to promote energy from renewable sources and any developments of the measures taken with respect to the provisions of the Member State's National Action Plan in the field of renewable energy and information on the fashion in which electricity benefiting from support is allocated to the end consumers, according to the provisions of Art. 3 para. (6) of Directive No. 2003/54/EC;</li><li>- The fashions in which the promotion systems have been structured to consider the applications using renewable energy and offering additional advantages as compared to other similar applications, but have higher costs, including biofuels produced from waste,</li></ul>

- residues, cellulosic material of a non-food origin, and lignocellulosic material;
- Details on how the system of origin warranties for electricity, heating and cooling from renewable sources operates and steps taken to secure reliability and protection of the system against frauds;
  - Progress registered upon assessing and improving the administrative procedures for removing certain barriers of a regulatory and other nature standing against development of energy from renewable sources;
  - Measures taken to secure transmission and distribution of electricity generated from renewable energy sources and to improve the framework or norms for a separate or joint payment of the costs provided under Art. 16 para. (3) of Directive No. 2009/28/EC;
  - Development of biomass resources availability and use for energetic purposes;
  - The sale price and changes related to the use of lands connected to an intensification in the use of biomass and other forms of energy from renewable sources;
  - Joint development and use of biofuels produced from waste, residues, cellulosic material of a non-food origin and lignocellulosic material;
  - The forecasted impact of biofuels and bioliquids production on biodiversity, water resources, water and land quality in Romania;
  - The net forecasted decrease in the greenhouse gas emissions due to the use of energy from renewable sources;
  - The forecasted generation of energy from renewable sources in excess as compared to the estimated path, which could be transferred to other Member States, and the estimated potential for other joint projects, until 2020;
  - The forecasted demand of energy from renewable sources which has to be satisfied otherwise than by the domestic production, until 2020;

- Information on the fashion of forecasting the share of biodegradable waste coming from waste used for energy generation and the steps taken to improve and check such forecasts.

Also, the same enactment provides that data from the previous reports may be corrected in each report. The Ministry of Economy, Trade and Business Environment shall prepare and provide the European Commission with a temporary document indicating its forecasted production of energy from renewable sources in excess as compared to the estimated targets established as per Appendix I Part B of Directive No. 2009/28/EC, which could be transferred to other Member States, and its estimated potential for joint projects, until 2020.

GO No. 29/2010 supplements Law No. 220/2008 providing that public authorities competent in granting permits, licenses, endorsements or certificates for the power plants, electricity transmission and distribution grids or heating/cooling networks using renewable sources of energy, and with respect to biomass to biofuels transformation processes or other power products, shall have to issue such documents on the basis of certain specific procedures prepared in compliance with the proportionality principle and in consideration of the specific structure of the segment of the energy generated from renewable sources.

It is expressly provided that the above regulations must also be objective, transparent, proportional, without discriminating between applicants and must take into account the particular features of each technology using renewable sources of energy. A newly inserted issue is the provision that simplified procedures are established for plants with an installed power below 1 MW and for the plants with a distributed generation of energy from renewable sources.

An appendix concerning the criteria relating to certification schemes for installers of heat and biomass pump, geothermal plants, thermal solar plants and photovoltaic solar plants, by means of an accredited program or accredited training body was inserted at the end of GO No. 29/2010.

Such training requires that certain stages of practice and theory be completed and is concluded with a certification or qualification of the installer.

Installer certification should be limited in time, and recommendations shall be made so as to attend a training seminar or course for certification continuity purposes.

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## Fiscal Law

### 1 Amendments to the Fiscal Code

Name of the enactment	Government Emergency Ordinance No. 87/2010 amending and supplementing Law No. 571/2003 on the Fiscal Code (“ <b>GEO No. 87/2010</b> ”)
Publication	Official Gazette of Romania, Part I No. 669 of 30 September 2010
Entry into force	1 October 2010
Connections with other enactments	Law No. 571/2003 on the Fiscal Code (“ <b>Fiscal Code</b> ”)
Main provisions	<p>The main legislative novelty inserted by GEO No. 87/2010 concerns the elimination of the minimum taxation system. Thus, taxpayers whose profit tax was lower than the minimum tax for the corresponding total income tranche (as per the classification set forth in the Fiscal Code) and which had to pay a minimum tax at the level of such amounts, are no longer bound by such obligation.</p> <p>Nevertheless, the provisions of GEO No. 87/2010 shall not apply to the taxpayers performing activities such as night bars, nightclubs, discotheques, casinos or sports betting, including legal entities making such income based on a partnership agreement, which shall continue to owe a 5% minimum tax applied to their income.</p> <p>In addition, further to repealing the provisions regarding the minimum tax, a series of provisions regulating the computation rules and the payment terms for the tax profit have been amended as well.</p>

### 2 Amendments to the Fiscal Procedure Code

Name of the enactment	Government Emergency Ordinance No. 88/2010 amending and supplementing Government Ordinance No. 92/2003 on the Fiscal Procedure Code (“ <b>GEO No. 88/2010</b> ”)
Publication	Official Gazette of Romania, Part I, No. 669 of 30 September 2010
Entry into force	1 October 2010, except for Art. I items 1 and 3, which shall come into force on 1 November 2010
Connections with other enactments	Government Ordinance No. 92/2003 on the Fiscal Procedure Code (“ <b>Fiscal Procedure Code</b> ”)
Main provisions	The adoption of GEO No. 88/2010 aimed at reducing the fiscal burden borne by taxpayers and regulating the legal framework on the computation of tax receivables related payments so as to obtain a decrease in the level of the interest

due for the late payment of the debts, and a decrease in the cases in which related tax receivables are due and computed.

Thus, the most important amendments brought to the Fiscal Procedure Code concern, first of all, the **offset**. In connection thereto, GEO No. 88/2010 provides as follows:

- By this offset, the receivables of the public authorities shall be set off against the debtor's receivables (in compliance with all legal conditions), provided that such receivables **be managed by the same public authority**;
- The debtor's fiscal receivables shall be set off against debts due to the same budget, and the remaining balance shall pro rata set off the debts due to other budgets;
- The offset shall *de jure* operate on the date when the receivables exist altogether, being at the same time certain, liquid and payable, if not otherwise provided by an express legal provision;
- There are provided situations in which receivables are payable with respect to the offset's operation (e.g. in the case of the excise duty or value added tax restitution claim, receivables shall become due upon the issuance of a decision settling the claim);
- The offset shall be established by the relevant tax authority, at the request of the debtor or *ex officio*.

Another amendment concerns **the late interest level**, which has been decreased from 0.05% to **0.04%** per each day of delay.

As to the situation when **the debtor willingly fails to pay its due fiscal debts**, GEO No. 88/2010 provides that, for the purpose of extinguishing such debts, the relevant tax authorities shall proceed to enforcements, except for the case when it is involved a pending restitution/reimbursement claim, and the amount requested is equal to or exceeds the tax receivable due by the debtor.

Furthermore, if the enforcement procedure is pending, such shall be **suspended** if a restitution/reimbursement claims is filed, and the amount requested is equal to or higher than the tax receivable for which the enforcement was initiated.

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## Trade Registry

Name of enactment	Government Emergency Ordinance No. 85/2010 amending Art. 1 of Government Emergency Ordinance No. 116/2009 establishing certain measures regarding the activity of registration with the trade registry (“ <b>GEO No. 85/2010</b> ”)
Publication	Official Gazette of Romania, Part I No. 654 of 22 September 2010
Entry into force	22 September 2010
Connections with other enactments	Emergency Ordinance No. 116/2009 establishing certain measures regarding the activity of registration with the trade registry
Main provisions	<p>According to GEO No. 85/2010, the jurisdiction over the settlement of applications for registration with the trade registry and, as the case may be, of other applications in the jurisdiction of the delegated judge shall belong to the director of the office of the trade registry attached to the tribunal and/or to the person or persons appointed by the general director of the National Office of the Trade Registry <u>until the activity of registration with the trade registry performed by commercial registrars is regulated.</u></p> <p>The delegation of competence has been prolonged due to the extension of the process of debating and adopting the law on the organization and performance of the commercial registrar profession in Parliament.</p>
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