

Tax & Legal Weekly Alert

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Amendments to Competition Law no. 21/1996

On 30 June 2015, the Emergency Ordinance no. 31/2015 came into force, bringing amendments to competition law no. 21/1996 as efficiency measures in the field of competition following the obligations undertaken by the Romanian Government towards the World Bank.

Among the most important changes we mention:

- Amendment of the definition of undertaking, by reference to the notion of economic entity, that may comprise one or more persons, who are under the same control structure;
- Exclusion of certain actions from the anti-competitive practices provided under art. 5 and art. 6 of Competition Law;
- Amendments of the procedure regarding investigations conducted by the Competition Council, in particular by regulating the trading procedure – introducing the possibility of acknowledgement of the anticompetitive practice anytime during the investigation, opposite to the previous legislation when such possibility only existed after the finalization of the investigation report. [Page 2](#)

Pilot project – EU AEOs recognition at Moldova – Romania border crossing point

As from 1 July 2015, the pilot project on the recognition of the European Authorized Economic Operators (AEO) is being implemented at the Moldova - Romania border crossing point Leușeni-Albița, to facilitate the trade between the EU and Moldova. [Page 4](#)

Increment of the national minim gross wage at 1,050 lei

Starting with 1 July 2015, the amount of national minim gross wage was increased to 1,050 lei for a full time employment. This amendment triggers a number of obligations incumbent upon employers, that are detailed below. [Page 5](#)



Amendments to Competition Law no. 21/1996

The Romanian Government enacted on 30.06.2015 the Emergency Ordinance no. 31/2015 ("Ordinance no. 31/2015") amending and supplementing the Competition Law no. 21/1996 ("Competition Law"). The amendment of the Competition Law has been undertaken by the Romanian Government towards the World Bank as a measure of reform with the view of developing the economic environment. The aim pursued with these changes is to bring efficiency measures in the field of competition.

Among the most important changes introduced by Ordinance no. 31/2015, we mention the following:

- a) Amending the definition of undertaking, by reference to the notion of **economic entity**, and not to the notion of **economic operator**. In the competition field, an economic unit may comprise one or more persons, who are under the same control structure.
- b) **Exclusion of certain actions from the anti-competitive practices provided under art. 5 and art. 6 of Competition Law:**

Exclusion of the following actions from the anticompetitive practices provided by Article 5	Exclusion of the following actions from the anticompetitive practices provided by Article 6 (abuse of dominance)
Participating, in a concerted manner, with rigged bids in auctions or any other forms of competitive tendering	Refusal to deal with certain suppliers or customers
Eliminating competitors from the market, limiting or preventing access to the market and the free exercise of competition by other undertakings, as well as agreements not to purchase from or to sell to certain parties without reasonable justification	<p>Charging excessive prices or predatory prices, with the aim of driving competitors out of the market or of selling on the export market below production costs, recovering differences by imposing increased prices to domestic consumers</p> <p>Taking advantage of the state of economic dependence of another undertaking towards such an undertaking or undertakings and which does not have an alternative solution under equivalent conditions, as well as breaking contract relations for the sole reason that the partner is refusing to submit to certain unjustified commercial conditions</p>

Although removed from the express listing, the aforementioned actions can be further classified as anticompetitive practices, as the enumeration provided in Article 5 and 6 of the Competition Law is illustrative and not exhaustive.

- a) The introduction of the Competition Council's power to modify the thresholds at which a concentration must be notified, through a decision of the Competition Council plenary.

b) Amendments of the procedure regarding the **investigations conducted by the Competition Council:**

- it is regulated the competition inspector's possibility to conduct unannounced inspections in any premises in which the undertakings operate, irrespective of whether the space is legally used or not;
- the access to confidential information from the investigation files of the Competition Council may be requested, usually, only once after communication of the report and, in the absence of new elements, no successive requests for access to those documents can be made;
- the introduction of a 120 day term, starting from the date of deliberation, within which the Competition Council's decisions should be motivated and communicated;
- in order to stimulate undertakings to acknowledge an anticompetitive practice prior to the finalization of the investigation, a **trading procedure** has been introduced. The mechanism of the trading procedure consists in acknowledgement of the anticompetitive practice during the investigation, opposite to the previous legislation when such possibility only existed after the finalization of the investigation report. Thus, it is established the possibility of an undertaking to benefit from the reduction of the fine by 10%-30%, in case it expressly acknowledges the commitment of an anticompetitive practice, subject to the following limitations:
 - in case the undertaking challenges the decision awarded by the Competition Council, **it will not benefit from the fine reduction** granted as a result of the acknowledgement and the Competition Council is free to use the acknowledgement;
 - in cases involving parties who benefited from leniency, **the reduction of the amount of the fine as a result of the acknowledgement will be added to the reduction applied following the leniency procedure and the added amount will not exceed 60%** from the determined level.

Ordinance no. 31/2015 was published in the Official Gazette of Romania no. 474/30.06.2015 and came into force on the same day.

For further questions regarding the aspects mentioned in this alert, please contact us.

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Pilot project - EU AEOs recognition at Moldova – Romania border crossing point

On 1st of July 2015, the Moldovan Customs Service with the support of the Romanian Customs Authority started the pilot project aiming to recognize European AEO at the customs border crossing between Moldova and Romania (Leușeni-Albița).

Benefits granted to the AEO certificates holders issued by EU Member States, crossing the Moldovan border are: fewer controls, consultations by dedicated customs officers, faster border crossing using dedicated AEO fast lane.

The preliminary duration of the project is 6 months.

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Source: Press release issued by the Romanian and Moldovan Customs Authorities

Increment of national minimum gross wage at 1,050 lei

Through the Government Decision no. 1091/2014 on establishing the national minimum gross wage was regulated the amount of the national minimum wage for 2015, ruling that as of 1 July 2015, the national minimum gross wage would increase with 75 lei, from 975 lei to 1,050 lei, for a full time employment of 168,667 hours per month.

The amendment of the national minimum gross wage triggers a number of obligations incumbent upon employers, as follows:

- **Conclusion of addenda to individual employment agreements** - even though pursuant to the Labor Code the conclusion of addenda is not mandatory in cases where the amendments are expressly provided by law, for the avoidance of any doubt regarding the employers' compliance with the obligation of not setting wages below the national minimum gross wage, it is advisable to conclude addendum to the individual employment agreements to regulate the new amount of the salary.
- **Registration of the amendment in REVISAL** - the amendment should have been registered in REVISAL as of the date it started to produce legal effects, respectively 1 July 2015.
- **Payment of additional social contributions.**

Pursuant to art. 260 of the Labor Code, failure to comply with the obligation of not setting wages below the national minimum gross wage constitutes contravention and shall be subject to a fine between 300 lei and 2,000 lei.

Furthermore, art. 264 of the Labor Code provides that repeatedly setting wages below the national minimum gross wage amount constitutes a criminal offense.

Government Decision no. 1091/2014 establishing the national minimum gross wage was published in the Official Gazette of Romanian no. 902 of 11.12.2014 and came into force as of 1 January 2015.

For further questions regarding the aspects mentioned in this alert, please contact us.

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