

Legal Alert

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Lending conditions – The amendments made by the National Bank of Romania through Regulation no. 6/2018

The main amendments concern especially an extended scope of the Regulation 17/2012, new rules for determining the “total indebtedness level” of debtors (individuals) and new reporting obligations towards the National Bank of Romania (NBR). The new amendments will apply starting with 1 January 2019.

We summarized in this legal alert some of the key amendments.

The environmental authorization and integrated environmental authorization: what are the provisions of the procedure for the issuance of the annual endorsement

The procedure which regulates the conditions for the request, issuance or denial of the annual endorsement of the environmental authorization and integrated environmental authorization was recently approved by an order of the Ministry of Environment. The annual endorsement is a condition for the validity of the authorizations.

The main provisions of the procedure, as well as a series of essential aspects that are not clarified, which have significant consequences for the holders of the authorizations, are summarized below.

The Green Public Procurement Guide: minimum environmental protection requirements for certain product groups and services that are required within tender documentations

The Guide provides contracting authorities/entities with information on the minimum environmental protection requirements to be considered when preparing, in accordance with the law, the documentation for the award of contracts/green procurement framework agreements for product categories and/or existing services. The purpose of the guide is to support a potential bidder in preparing the technical and financial bid in an appropriate manner, in consideration of environmental protection conditions.

Lending conditions – The amendments made by the National Bank of Romania through Regulation no. 6/2018

Scope

- Regulation 17/2012 will also apply to the following categories of lenders:
 - non-banking financial institutions Romanian legal entities, and the branches of foreign non-banking financial institutions, registered with the General Register, and
 - payment institutions and e-money institutions Romanian legal entities, irrespective of their lending activity.

The notion of “total indebtedness level”

Starting with January 2019, the “total indebtedness level” will represent an indicator reflecting the total indebtedness of a debtor (individual) and will be determined as a percentage of the total monthly payment obligations deriving from loans or other reimbursable financings in the monthly net income taken into consideration, respectively the income out of which the tax obligations have been deducted.

In case of payment obligations deriving from a revolving loan facility, the amount taken into consideration by the lender cannot be lower than 3% of the limit of the loan facility granted by the respective lender and shall be established by the lender through its internal regulations.

When granting a loan, the maximum level of the “total indebtedness level” cannot exceed 40%.

This rule is subject to the following exceptions, in brief:

- in case of the persons who do not own and have never owned a residential property, when granting the first loan for the purposes of acquiring such real estate for the borrower to live in (First Real Estate Loan), the “total indebtedness level” shall not exceed 45%;
- when granting a loan in a foreign currency or indexed to the rate of a foreign currency to a person who is not normally covered by foreign exchange risk, the lenders shall ensure that the percentage of the monthly payment obligations deriving from loans or other reimbursable financings in foreign currency or indexed to the rate of a foreign currency, in the monthly net income taken into consideration by lenders, respectively the income out of which the tax obligations have been deducted, shall not exceed 20%, except for the case when granting the First Real Estate Loan, when the percentage referred to above shall not exceed 25%.
- the maximum threshold of the “total indebtedness level” may be exceeded in case of consumer or new real estate investment loans granted during each quarter, within the limit of maximum 15% of the volume of consumer loans or real estate investment loans granted by the lender during the previous quarter, but only in relation with debtors for which the lenders may prove, on the basis of historical data in their own lending portfolio, that the necessary level of income of such debtors ensures the premises for an adequate administration of the non-payment risk at the level of the consumer or real estate investment loans portfolio. This exception is not applicable in case of the loans whose amount exceeds the RON equivalent of EUR 250,000;
- the maximum “total indebtedness level” shall not apply to loans granted exclusively for the purposes of reimbursing the debts related to loans granted before the date of 9 November 2018.

New reporting and compliance obligations for lenders

- The lenders shall have the obligation report to the NBR, within 25 days as of the end of each quarter, the volume of the newly granted consumer and real estate investments loans, based on a standard application form provided in the annex attached to the Regulation 17/2012, signed by the heads of the institutions. In case the NBR, based on the information reported by the lenders, shall determine that exceeding the "total indebtedness level" affects the adequate administration of the non- reimbursement risk, the authority may impose to the concerned lender to cease such conduit.
- The lenders that are subject to Regulation 17/2012 shall provide to the NBR their internal regulations amended according to the new provisions by 1 January 2019, except for the: (i) non-banking financial institutions Romanian legal entities, and the branches of foreign non-banking financial institutions, registered with the General Register, and (ii) payment institutions and e-money institutions Romanian legal entities.

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



Andrei Burz-Pînzaru
Partner
+40 728 328 928
aburzpinzaru@reff-associates.ro



Alina Tihan
Senior Managing Associate
+40 744 311 419
atihan@reff-associates.ro



Andreea Serban
Managing Associate
+40 726 310 463
andserban@reff-associates.ro

The environmental authorization and integrated environmental authorization: what are the provisions of the procedure for the issuance of the annual endorsement

The Ministry of Environment issued the Order for the approval of the procedure for the issuance of the annual endorsement of the environmental authorization and integrated environmental authorization, in accordance with article 16 para (2¹) of EGO No. 195/2005 on environmental protection, as further amended by EGO 75/2018.

The main provisions are the following:

- The endorsement must be requested, annually, within minimum 60 days prior to the day and month in which the environmental authorization / integrated environmental authorization was issued.
- The environmental authorization / integrated environmental authorization is valid for the entire period for which the holders obtain the annual endorsement.
- In the procedure for the issuance of the annual endorsement, the competent authority performs a site visit to verify the correlation of the site with the environmental authorization / integrated environmental authorization, and, in case there are inconsistencies, grants a deadline (maximum 30 days) to correlate the information.
- Non-compliance with the obligation to correlate the data on site with the environmental authorization / integrated environmental authorization within the imposed term, triggers the refusal of the annual endorsement of the environmental authorization / integrated environmental authorization.
- The refusal of or the failure to obtain the annual endorsement triggers the end of the validity of the environmental authorization / integrated environmental authorization and the application of the other sanctions for operation in absence of an environmental authorization / integrated environmental authorization.

The procedure does not clarify a series of essential aspects, with significant consequences for the holders of the authorizations, as follows:

- The moment from which becomes applicable the obligation to request the annual endorsement for the authorizations for which the initial validity period has not yet expired, especially the ones issued in November – December 2017.
- What happens if, after the request, the endorsement is neither issued nor denied, for instance, as result of certain delays which are not caused by the holder?
- From which level the differences in the activity as compared to the data included in the authorization represent inconsistencies which can justify the refusal of the annual endorsement and the imposing of a term for correlation?

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



Ovidiu Bălăceanu
Managing Associate
+40 723 190 064
obalaceanu@reff-associates.ro



Oana Varian
Senior Associate
+40 730 585 692
oavarian@reff-associates.ro

The Green Public Procurement Guide: minimum environmental protection requirements for certain product groups and services that are required within tender documentations

The Guide was published by the National Agency for Public Procurement and the Ministry of the Environment. The requirements indicated under the Guide are deemed as minimal environmental protection requirements, the contracting authority/entity being able to also use other requirements, depending on the specificity and complexity of the green public procurement.

Categories of products and/or service include:

1. Copying and graphic paper;
2. New interior and exterior furniture, furniture refurbishment/refurbishment services and end-of-life furniture inventory collection and reuse services;
3. Food and catering services;
4. Transport vehicles;
5. Cleaning products and services;
6. Office IT equipment.

Where the contracting authority/entity establishes the most economically advantageous bid on the basis of the best value for money/best value for money ratio for the award criterion, in accordance with the provisions of Law no. 98/2016 on public procurement or, as the case may be, of Law no. 99/2016 on sectoral acquisitions, this criterion is determined on the basis of **assessment factors that may include** environmental issues related to the subject matter of the public procurement/framework agreement under the guidelines. When determining the relative weightings/specific calculation algorithm, the benefits resulting from the technical and financial proposals submitted by the bidders will be considered.

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Georgiana Singurel
Partner
0730 077 936
gsingurel@reff-associates.ro



Adrian Coman
Managing Associate
0747 333 150
acoman@reff-associates.ro

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