

## Cover article: "National Education Law Boosts Competition in the Area of Public Funds aimed at Financing Education"

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## Legislative Retrospective

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in the following areas:

- Competition
- Employment
- Real Estate

10 years

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Business Catalysts for 10 years: Voicu & Filipescu proudly announces that this is our ten years anniversary. Thank you all for being our partners throughout this remarkable journey.

## + VF News

- Voicu & Filipescu strengthens its insolvency practice, by attracting an experienced insolvency practitioner as head of the group's specialized insolvency company. Mariana Popa, an experienced insolvency practitioner and lawyer, who prior to joining our firm had coordinated the insolvency and restructuring team of a reputed top market player, became our Managing Associate and Head of Insolvency.
- Partner Raul Mihu was invited as speaker at the EFGCP Workshop on "Complex Cases for Research Ethics Committees", organized in Bucharest by the European Forum for Good Clinical Practice.

## **NATIONAL EDUCATION LAW BOOSTS COMPETITION IN THE AREA OF PUBLIC FUNDS AIMED AT FINANCING EDUCATION**

While other aspects introduced by Law no. 1/2011 on national education have been widely debated, a number of novelties have unfortunately been overlooked by the public opinion, namely those referring to the possibility of financing education from either state, private or church funds. Such novelties represent revolutionary changes for the entire Romanian educational system, which is currently not only predominantly state owned, but also in many cases old and uncompetitive. Said legal changes boost competition in the area of public funds assigned to education, namely those aimed at providing basic financing for pre-higher education, by allocating such amounts to education units by means of management agreements and depending on the number of students they each attract.

Grounded on the principle of "beneficiaries focused education" (Art. 3 letter p), the State ensures basic financing for all children in the preschool and mandatory education system, as well as for students in the professional and high school education system, with no limitation to the state owned education institutions, but also the privately and church owned ones. The only condition set forth is for said education units to be authorized (Art. 9, par. 2, corroborated with Art. 101).

Such financing is granted within the limits of standard cost per students or preschool attending child, under the specific methodology which is to be enacted by the Ministry of Education, Research, Youth and Sports. The mentioned Ministry will decide on a yearly basis on the standard cost on which the basic financing is grounded; the one to benefit from such standard cost will be the student/preschool attending child, and not the education unit, irrespective of its nature (financed by the state, privately or by church), according to the principle "financial resources follow the student" (Art. 9, par. 4). Thus, the financial allowance afferent to the student/preschool attending child shall be transferred to the education unit attended by the said, while students can freely transfer from one education unit to another, due to the open access to the pre-higher education system (Art. 21).

Basic financing, in relation to which the above mentioned competition is opened, is granted from the budget through the local budgets and is used in order to cover the current operational expenses of each education unit, including salaries, personnel training, students' assessment, materials and services, while being determined for each education unit by multiplying the standard cost per student/preschool attending child with the specific coefficient applicable to that school and the number of students thereof (Art. 104, par. 1-3).

In practice, the calculation base for establishing the funds allocated to the education unit by means of and from the local budgets in connection with their basic financing is represented by the standard cost per student/preschool attending child, which is established by the National Council for the Financing of the Pre-Higher Education System for each individual education level, profile, specialization/area, in compliance with the national education law and the methodological norms thereof to be designed by the Ministry of Education, Research, Youth and Sports and approved by Government Resolution. The

allocation of funds for the basic financing of the education unit shall be performed based on a financing formula approved by means of order of the Minister, considering the standard cost per student/preschool attending child, the number of students/preschool attending children in that particular education unit, as well as correction factors that depend on the density of students in the relevant area, on how severe the involved disadvantage are, on the teaching language and other factors (Art. 104, par. 4).

The basic financing granted to each individual education unit shall be approved on a yearly basis by means of Government Resolution and will be included in the state budget, further allocated by the general public finance divisions of each county and of Bucharest city upon assistance from school inspectorates, such allocation to be made by localities, cities, towns and Bucharest city districts (Art. 104, par. 2 and 4).

Besides the basic financing of the pre-higher education system, the state also grants incidental financing (affluent to capital expenses, social expenses and other type of expenses in connection with the education process), as well as additional financing (as a fixed global amount of the budget of the Ministry of Education, Research, Youth and Sports, aimed at rewarding the state owned pre-higher education units which have outstanding results), nonetheless such form of financing only refers to the state education and therefore is not subject to the above mentioned competition.

The basic financing and incidental financing shall be granted by means of management agreement concluded between the manager of the pre-higher education unit and the mayor of the locality/of the city district in the precinct of which the education unit is located, and in the case of the special schools with the chairman of the county council/district mayor (Art. 106).

As regards the private higher education, the law provides that the state may support such authorized education form (Art. 222, par. 7) by granting additional financing in order to stimulate the excellence of the institutions and study programs, both in state and privately owned universities, in a total amount on the national level of at least 30% of the amount allocated on the national level to the state universities in the form of basic financing, based on the quality criteria and standards set forth by the Council for the Financing of the Pre-Higher Education System and approved by the Ministry of Education, Research, Youth and Sports (Art. 223, par. 3, corroborated with Art. 197 letter a).

## competition - legislative retrospective

Competition Council order no. 688/2010 for implementing the instructions regarding statutory merger-related undertakings was published in the Official Gazette no. 1 of January 3, 2011 (the "**Order**").

The Instructions set out the general principles applicable to the undertakings deemed acceptable by the Competition Council, the main types of undertakings that may be accepted by the competition authority in the cases that are subject to the Law and the Regulation on statutory mergers, implemented by the Competition Council President's Order no. 385/2010, the specific requirements that must be met by the undertaking proposals in both phases of the procedure, as well as the main requirements for the implementing of the undertakings. Accordingly, the Competition Council shall take into consideration the particular circumstances of each statutory merger operation. On the date when the Order comes into force (the date of publication in the Official Gazette), exhibit no. 3 "Instructions regarding the corrective measures acceptable in the case of the contingent authorization of statutory mergers" to the Competition Council President's Order no. 63/2004 on the implementing of the regulations and instructions of the Competition Council, developed on the basis of Competition Law no. 21/1996, is rescinded.

## employment - legislative retrospective

The structure of the Romanian classification of occupations has been supplemented. The Romanian Official Gazette, Part I, no. 27 of January 12, 2011, published order no. 1759/2010 on the supplementing of the Romanian Classification of Occupations ("**Order 1759**").

By means of this normative act, **62 new businesses were introduced**, such as:

- human resources consultant
- human resources manager
- work relations specialist
- direct sales agent (financial – banking products)
- receivable / debt collector
- financial – banking anti-fraud officer
- legal text reviser
- car damage technical appraiser
- power auditor for buildings, professional personal assistant

Also, an occupation has been replaced, and 2 other occupations have been removed.

## real estate - legislative retrospective

On February 11, 2011 the Government Emergency Ordinance no. 7/2011 was published, for the amendment and supplementing of Law no. 350/2001 on spatial planning and urbanism. Said Ordinance sets forth significant amendments of the urbanism regime in Romania. The cover article of the next issue of our monthly newsletter will provide you with a detailed description of such amendments and of the impact they might have on the real estate market.

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