

GOVERNMENT EMERGENCY ORDINANCE No 131/2010
amending and supplementing Government Ordinance No 39/1996 regarding the setting up and the operation of the Deposit Guarantee Fund in the banking system

*Published in Monitorul Oficial, Part I No 893 of 30 December 2010

Having regard to the necessity to implement into domestic legislation, by 31 December 2010, the provisions of Article 1 (3) (a) of the Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay,

considering the obligations assumed through the Stand-by Arrangement between Romania and the International Monetary Fund, agreed upon through the Letter of Intent sent by Romanian authorities, signed in Bucharest, on 24 April 2009, and through the Decision of the Executive Board of the International Monetary Fund of 4 May 2009, as well as through the Supplementary Letter of Intent, signed by the Romanian authorities in Bucharest on 5 February 2010 and approved through the Decision of the Executive Board of the International Monetary Fund of 19 February 2010, as supplemented and amended by the Letter of June 2010 and by the Supplementary Letter of Intent of June 2010 and their annexes, following the 4th assessment, ratified by Government Emergency Ordinance No 99/2009 ratifying the Stand-by Arrangement between Romania and the International Monetary Fund, respectively by Government Emergency Ordinance No 10/2010 ratifying the Letter of Intent, signed by the Romanian authorities in Bucharest on 5 February 2010 and approved through the Decision of the Executive Board of the International Monetary Fund of 19 February 2010, and for the amendment of Government Emergency Ordinance No 99/2009, in the context of the necessity to maintain a financial stability through a progressive strengthening of the financing system for the Medium-term Deposit Guarantee Fund and the supplementing of eligibility criteria imposed to the members of its Board, as well as the commitment assumed through the Supplementary Memorandum of Understanding (the First Amendment to the Memorandum of Understanding) between the European Union and Romania, signed in Bucharest on 18 February 2010 and in Brussels on 22 February 2010, to the Memorandum of Understanding between the European Community and Romania, signed in Bucharest and in Brussels on 23 June 2009, ratified by Government Emergency Ordinance No 82/2009, as supplemented and amended following the 4th assessment,

after considering the provisions of Article 240²¹ (3) of Government Emergency Ordinance No 99/2006 on credit institutions and capital adequacy, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented, the immediate completion of the legal framework concerning the functioning of the Deposit Guarantee Fund in the banking system is necessary, in order to immediately set up a mechanism to ensure the applicability of the provisions concerning payouts to persons affected by the measures disposed and implemented during the special administration of credit institutions.

It is necessary to take these emergency measures considering the need to meet the delays assumed according to the settlements reached with the European Commission and the

International Monetary Fund, and failing to expeditiously adopt the considered legal amendments would influence upon the commitments approved and the implementation of the agreements, with potential negative effects at macroeconomic level.

When considering that these elements concern the general public level of understanding and constitute emergency and extraordinary situations, whose regulation cannot be deferred,

under the provisions of Article 115 (4) of the Romanian Constitution, republished,

The Government of Romania hereby adopts this Emergency Ordinance.

Sole Article. - Government Ordinance No 39/1996 regarding the setting up and the operation of the Deposit Guarantee Fund in the banking system, republished in Monitorul Oficial al României, Part I, No 587 of 19 August 2010, shall be amended and supplemented as follows:

1. The name of Title I shall be inserted immediately below the title of the regulatory act, as follows:

“TITLE I
Deposit coverage”

2. In Article 2, immediately after paragraph (2), a new paragraph (2¹) shall be inserted, as follows:

“(2¹) The Fund can become, through laws and regulations, the administrator of different funds created for purposes related to ensuring financial stability.”

3. Article 6 (3) shall be amended as follows:

“(3) The coverage level shall be set at an amount representing the lei equivalent of 100,000 EUR.”

4. Article 9 (3) shall be amended as follows:

“(3) The financial resources provided for in paragraph (1) (e) shall be used to cover the current expenditure of the Fund with deposit coverage and compensation payouts activities.”

5. Article 9 (5) shall be repealed.

6. In article 30 (1), after item a) a new item a¹) shall be inserted as follows:

“a¹) should not be an employee or director, member of the Administrative Board, the Supervisory Board or Board of Directors, where appropriate, of a credit institution;”.

7. Article 30 (2) shall be amended as follows:

“(2) Members of the Fund’s Administrative Board cannot participate in the decision-making process regarding a credit institution where a person with whom they have one of the relations set out in paragraph (1) (a) holds one of the qualities mentioned in Article 108 (1) of Government Emergency Ordinance No 99/2006, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented.”

8. Article 33 (a) (6) shall be amended as follows:

“6. the Fund’s loans, as well as securities issuance by the Fund;”.

9. Article 35 (f) shall be amended as follows:

“f) shall ensure that all the necessary payout procedures provided for by law are fulfilled;”.

10. **The name of Title II shall be inserted immediately below Article 56, as follows:**

“TITLE II
The Special Compensation Fund”

11. **The following Chapter XIV “The establishment, administration and use of the Special Compensation Fund” shall be inserted immediately below the Title II name, including Articles 56-67, as follows:**

“Article 57. - The provisions of this title shall regulate the conditions referring to the establishment, administration and use of the special fund for reimbursing persons affected by the measures ordered and implemented during the special administration, hereinafter called the *Special Compensation Fund*.

Article 58. - (1) The Special Compensation Fund shall be established in view of ensuring the necessary financial resources for reimbursing persons affected by the measures ordered and implemented during the special administration, in compliance with the provisions of Article 240²¹ of Government Emergency Ordinance No 99/2006, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented.

(2) The Special Compensation Fund shall be administered by the Deposit Guarantee Fund in the banking system.

Article 59. - Within the meaning of this title, the following terms and expressions have the following meanings:

a) *injured person* – any person who, in accordance with the provisions of Article 240²¹ (2) of Government Emergency Ordinance No 99/2006, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented, obtained an enforceable judgment for the recognition of his/her right to receive compensation for the damage suffered following the measures ordered and implemented during the special administration of a credit institution;

b) *compensation* – the amount established in accordance with the provisions of Article 240²¹ (2) of Government Emergency Ordinance No 99/2006, approved with amendments and supplements by Law No 227/2007, as further amended and supplemented, that has to be paid from the Special Compensation Fund to the injured person;

c) *contribution* – non-refundable amount due to the Fund by each credit institution, Romanian legal person, under the circumstances referred to in this title;

d) *uncovered liability* – the lei equivalent of the liabilities balance sheet items recorded in the annual accounts of the credit institution, out of which we deduct the guaranteed deposits balance, established according to the credit institution’s records on 31 December of the year preceding the contribution payment year.

Article 60. - (1) The Special Compensation Fund is established and replenished out of the following financial resources:

a) annual contributions of the credit institutions to the Special Compensation Fund;

b) additional contributions of the credit institutions to the Special Compensation Fund;

c) revenue from investing the amounts that have built up to the Special Compensation Fund;

d) borrowings from credit institutions, financial companies and other institutions, except for the National Bank of Romania, as well as debenture loans through Fund securities issue.

(2) The investment of the amounts that have built up to the Special Compensation Fund shall be done through financial instruments from the categories referred to in Article 16 (2), as well as through debt securities issued by multilateral development banks and international organisations, according to an annual strategy aiming at minimizing the risks and ensuring the efficiency of those investments.

(3) The amounts necessary to cover the expenditure incurred with the management of the Special Compensation Fund and to reimburse depositors shall be taken from the revenue referred to under paragraph (1) (c), and, in so far as it is necessary, the amounts from the resources referred to under paragraph (1) (a), (b) and (d) can be used in the following priority order.

Article 61. - (1) The annual contribution shall be determined by applying a percentage to the value of the uncovered liability of each credit institution, Romanian legal person.

(2) The percentage used for determining the annual contribution shall consider the optimum necessary amount of financial resources of the Special Compensation Fund, as well as the appropriate level to be reached for every year and cannot exceed the level of 0.1%.

(3) For determining the annual percentage, each credit institution, Romanian legal person, shall report to the Fund, within the time limit established by the regulations issued by the National Bank of Romania for submitting the annual financial statements, the value of the uncovered liability, according to the model referred to in the Fund's regulations.

(4) The Fund shall notify the percentage to the credit institutions no later than 20 days from the expiry of the deadline referred to in paragraph (3).

(5) Each credit institution shall pay to the Fund, no later than 30 June of each year, the annual contribution, according to the percentage notified by the Fund.

Article 62. - (1) Where the National Bank of Romania, based on the Fund's substantiation, considers the optimum amount of financial resources built up to the Special Compensation Fund to be reached, it can decide to suspend the payment of annual contributions.

(2) Where the resources of the Special Compensation Fund fall below the level referred to in paragraph (1), the payment of annual contributions is resumed.

Article 63. - Where the financial resources built up to the Special Compensation Fund cannot ensure compensation payments, each credit institution, Romanian legal person, shall pay, within the time limit communicated by the Fund, a supplementary contribution that cannot exceed the level of the contribution resulting by applying the maximum percentage referred to in Article 61 (2) to the value of the uncovered liability of each credit institution, Romanian legal person.

Article 64. - The contributions made by credit institutions are acknowledged as fiscally deductible expenditure.

Article 65. - Where a credit institution does not fulfil the obligations arising from this title, the provisions of Article 10 (4), Article 46 (1), (2) and (4) and of Article 47 shall apply accordingly.

Article 66. - (1) For supplementing the duties established in Title I, with the approval of the National Bank of Romania's Board, the Fund's Administrative Board shall adopt the necessary decisions for the implementation of the provisions of Article 60 (3), Article 61 (2), Articles 62 and 63.

(2) The provisions referring to the duties of the Fund's Director, as established in Title I, shall apply accordingly and for situations arising from the implementation of this title.

Article 67. - The Fund shall ensure a distinct accounting highlighting of the operations related to the establishment, investment and use of the financial resources of the Special Compensation Fund.”

12. Point 8 of the “List of non-guaranteed deposits” annex shall be amended as follows:

“8. Deposits pertaining, as the case may be, to administrators, directors, members of the Supervisory Board, auditors, important shareholders, of the respective credit institution.”

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This Emergency Ordinance implements the provisions of Article 1 (3) (a) of the Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay, published in the Official Journal of the European Union L68 of 13 March 2009.

**PRIME MINISTER
EMIL BOC**

Countersigned by:
Ministry of Public Finances,
Gheorghe Ialomițianu

Bucharest, 28 December 2010.

No 131.