

Legal Bulletin

August and September 2007

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Legal Bulletin

Administrative Law

Name of the enactment

Government Decision No. 745/2007 for the approval of the Regulation on granting the licenses in the field of community public utility services (the "Regulation")

Publication

Official Gazette of Romania, Part I, No. 531/06.08.2007

Entry into force

9 August 2007

Main provisions

Based on the provisions of Government Decision No. 745/2007, the Regulation on granting the licenses in the field of community public utility services applies to Romanian legal entities, to legal entities incorporated in other Member States of the European Union or to non-Community legal entities which request the issuance of a license for a public utility service or for one or more activities pertaining to such service.

The competent body in the field is the National Authority for Regulation in the Community Public Utility Services.

The scope of the regulation concerns the following:

- the water supply and sewerage public service;
- the water supply public service;
- the sewerage public service;
- the town sanitation public service;
- the lighting public service;
- the heating supply public service, except for heating production in conglomerates.

The Regulation provides for:

- the general conditions for granting licenses;
- the procedure for requesting and granting licenses;
- the conditions for the amendment of licenses and of the conditions related thereto;
- the procedure for suspending and withdrawing the license as well as for withdrawing the permission to provide/supply the service/activity in

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- a territorial-administrative area;
- the tariffs related thereto.

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Banking

Name of the enactment

Norm No. 11/2007 of the National Bank of Romania on the reporting of statistic data and information regarding payments, payment systems and systems for the reimbursement of financial instruments operations ("**NBRN 11/2007**")

Publication

Official Gazette of Romania, Part I, No. 564/16.08.2007

Entry into force

16 August 2007

Main provisions

NBRN 11/2007 establishes the categories of entities under an obligation to report statistic data and information, as well as the methodology for reporting such data to the central bank. Thus, according to the provisions of the above-mentioned enactment, Romanian credit institutions (including savings banks and real estate credit banks, mortgage credit banks, co-operative credit institutions and issuers of electronic currency), Romanian branches of foreign credit institutions, Romanian non-banking financial institutions, Romanian branches of foreign non-banking financial institutions registered in the General Registry kept by NBR, payment system administrators, the State Treasury and C.N. „Poșta Română” S.A. all have the obligation to communicate to the National Bank of Romania – the Regulation and Authorization Department – the data requested in accordance with the structures provided under Appendix No. 1. The communication of the statistic information and data listed under Appendix No. 1 need to be performed on an annual basis, by the 10th of May every year for the previous year.

Similarly, the settlement systems administrators of financial instruments operations, respectively, the central depositories and the central counterparties have the obligation to communicate to the National Bank of Romania – the Regulation and Authorization Department – on an annual basis, by the 10th of February, of every year, at the latest, for the previous year, the data requested in accordance with the structures provided under Appendix No. 2 and No.3, as the case may be.

The failure to observe the provisions of NBRN 11/2007 can result in the application of sanctions under Article 57 of Law 312/2004 on NBR Statute.

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Citizenship

The amendment of the Romanian Citizenship Law

Name of the enactment	Government Emergency Ordinance No. 87/2007 for the amendment of the Romanian Citizenship Law No. 21/1991 (“ GEO 87/2007 ”)
Publication	Official Gazette of Romania, Part I, No. 634/14.06.2007
Entry into force	14 September 2007
Main provisions	<p>The amendments brought by GEO 87/2007 took into account the necessity to ensure celerity in processing the very high number of requests to grant, respectively, regain Romanian citizenship.</p> <p>Therefore, unlike the former regulation according to which the approval of the granting or regaining of the Romanian citizenship requests was made by Government decision, currently, the approval is made by order of the minister of justice.</p> <p>In this respect, the requests will be submitted to the Commission for citizenship, an entity within the Ministry of Justice, without legal personality.</p> <p>Furthermore, according to the new regulation, the taking of the oath, a moment when the Romanian citizenship is acquired, occurs within 3 months from the publication date of the order of the minister of justice, unlike the former regulation, according to which the taking of the oath occurred within 6 months from the publication of Government’s decision.</p>
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Community Financing

Name of the enactment	Ordinance No. 46/2007 on the allocation of non-reimbursable foreign funds and of the national contribution to the budget of the institutions involved in the management and use of such funds for the objective of “European Territorial Cooperation”
Publication	Official Gazette of Romania, Part I, No. 603/31.08.2007
Entry into force	3 September 2007
Main provisions	This enactment establishes the general financial framework for the management of the non-reimbursable financial support granted to Romania as a Member State of the European Union, as well as of the national contribution related to such

support, for the purpose of ensuring an effective financial management of the funds related to the objective "European Territorial Cooperation".

A number of programs are carried out as part of this objective during the financial period 2007-2013:

- The cross border cooperation operational program Romania-Bulgaria 2007-2013;
- The cross border cooperation operational program Hungary-Romania 2007-2013;
- The cross border cooperation program "South-Eastern Europe";
- The interregional cooperation program INTERREG IVC;
- The interregional cooperation program URBACT II;
- The interregional cooperation program INTERACT II;
- The interregional cooperation program ESPON 2013;
- The cross border cooperation program Romania-Serbia 2007-2013;
- The common operational program Romania-Ukraine-Moldova;
- The co-operation operational program in the Black Sea Basin;
- The common operational program Hungary-Slovakia-Romania-Ukraine

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Financial and Taxation

1 Amendment of important enactments in the financial sector

Name of the enactment	Government Ordinance No. 47/2007 regulating certain financial-fiscal measures
Publication	Official Gazette of Romania, Part I, No. 603/31.08.2007
Entry into force	3 September 2007
Main provisions	This enactment brings modifications and completions to the Code of Fiscal Procedure, to Government Emergency Ordinance No. 28/1999 on business entities' obligation to use electronic cash registers, as well as Government Ordinance No. 75/2001 on the organization and operation of the fiscal record.

The main amendments brought to the **Code of Fiscal Procedure** are:

- a new body is set up within the National Agency of Fiscal Administration ("ANAF"), namely the Commission for fiscal procedures, whose prerogatives consist in issuing decisions concerning the general application of the Code of fiscal procedure and of the legislation in the competence of ANAF. The decisions of the

Commission for fiscal procedures are published in the Official Gazette of Romania, Part I, and are applicable as of their publication date;

- it is provided that it is possible to submit the fiscal statement by electronic means as well, in which case the date of their submission is the registration date of the statement on the website of the fiscal authority, as results from the electronic confirmation message sent after receipt of the statement;
- it regulates the creation of a sole account for the payment of all the amounts payable to the consolidated general budget as payment of the duties and taxes set forth in the order of ANAF President. The distribution of the amounts in the sole account is made by the competent fiscal authority, on a distinctive basis for each budget or fund, pro rata with the due payables. This provision is applicable as of 1 January 2008;
- amendments were brought in relation to the settlement of contestations filed against enforcement decisions, of fiscal administrative deeds assimilated to enforcement decisions and of decisions for the settlement of the situation. The new provisions on competence apply to the contestations registered with the fiscal authority as of 1 October 2007;
- the amounts of the fines provided under the Code of Fiscal Procedure have been increased. The new amounts enter into force within 30 days as of publication of the Ordinance in the Official Gazette.

The main amendments brought to **Government Emergency Ordinance No. 28/1999 on the obligation of business entities to use electronic cash registers** are:

- slight amendments regarding the scope of persons who are not under an obligation to use cash registers;
- the amounts of the fines provided by Ordinance No. 28/1999 have been amended.

The main amendments brought to **Government Ordinance No. 75/2001 on the organization and operation of the fiscal record** are:

- the new enactment establishes the obligation to provide the fiscal record upon the appointment of new legal representatives during the life of a business entity, as well as upon attracting new partners or shareholders on the occasion of a share capital increase;
- the validity of the fiscal record certificate was extended from 15 to 30 days;

- the term for the release of the fiscal record certificate was materially reduced; the certificate could be theoretically issued on the spot;
- amendments have also been brought to the duties charged for the release of the fiscal record certificate.

Repealed enactments	Starting on the entry into force of this enactment, Article 2, letters j), r) and s), Article 4 para. (10) and Article 7 of Government Emergency Ordinance No. 28/1999 on the obligation of business entities to use electronic cash registers. Starting 1 January 2008, Article 114 para. (2) of Government Emergency No. 92/2003 on the Code of Fiscal Procedure, republished, is repealed.
Author	2 Regulation concerning the payment of fiscal debts in a sole account by the tax payers
Name of the enactment	Order No. 1294/2007 of the National Tax Administration Agency on taxes, charges and other amounts constituting fiscal debts, payable by tax-payers in a sole account (" O.A.N.A.F No. 1294/2007 ")
Publication	Official Gazette of Romania, Part I, No. 658/26.09.2007
Entry into force	26 September 2007
Connections with other enactments	Government Ordinance No. 92/2003 on the Code of Fiscal Procedure, republished, as further amended and completed
Main provisions	According to the provisions of O.A.N.A.F. No. 1294/2007, tax-payers have the obligation to pay their tax liabilities in a sole account, in consideration of the nature of the liabilities concerned, as identified in Appendix 1 or, as the case may be, in Appendix 2 of the above-mentioned order. Thus, the tax liabilities listed under Appendix 1 to O.A.N.A.F. No. 1294/2007 will be paid by tax-payers in account no. 20.47.01.01 " <i>State Budget Revenues – amounts cashed for the state budget in the sole account, undergoing distribution</i> " opened on the tax identification code for tax-payers with the State Treasury units of the tax body where they are registered as tax and duty payers. The tax liabilities listed under Appendix 2 to ONTAA 1294/2007 will be paid in account no. 55.02 " <i>Cash in hand of the social insurance and special funds budget, undergoing distribution</i> " opened on the tax identification code for tax-payers with the State Treasury units of the tax body where they are registered as tax and duty payers.

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Labour Law

1 The introduction of the modern systems of wages payment

Name of the enactment	Government Decision No. 1104/2007 for the introduction of the modern systems of wages payment (“ GD 1104/2007 ”)
Publication	Official Gazette of Romania, Part I, No. 651/24.09.2007
Entry into force	24 September 2007
Main provisions	The present normative act establishes the obligation for ministries and other special bodies of the central and local public administration, as well as the public institutions subordinated to the latter, to take all the necessary measures for the payment through cards of the employees’ wage rights.

The shift to the payment of the wage rights through cards for the public institutions headquartered in municipalities and cities will be made until 31 December 2007, and the employees in the rural environment have the right to benefit from the payment of the wage rights through cards, upon request.

2 New financial-tax measures in the field of social health insurance

Name of the enactment	Government Emergency Ordinance No. 90/2007 concerning some financial-tax measures in the field of social health insurance and regulations in the field of labor costs (“ GEO No.90/2007 ”)
Publication	Official Gazette of Romania, Part I, No. 659/26.09.2007
Entry into force	26 September 2007
Main provisions	GEO 90/2007 amends Law 95/2006 concerning the reform in the field of health. Hence, according to the new regulations, the contribution for pension incomes under the limit of the non-taxable sum provided by the Tax Code will become due and will be calculated starting with 1 January 2009. In accordance with Article 69 of the Tax Code, the limit of the non-taxable sum for the pension incomes is of RON 900.

Furthermore, GEO 90/2007 sets out the obligation for the central and local public institutions, regardless of the financing and subordination system, including the activities entirely financed through personal incomes, established in attachment to the public institutions, except for the institutions entirely financed through personal incomes, not to give food vouchers to their staff, in the year 2008.

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Public Procurement

Name of the enactment	This enactment introduces a new situation when a conflict of interests can be started, i.e., when there is a case of divergence in the mandatory annual negotiation on the salaries, duration of work, work schedule and work conditions.
Publication	Official Gazette of Romania, Part I, No. 609/04.09.2007
Entry into force	4 September 2007
Connections with other enactments	<p>Government Emergency Ordinance No. 74/2005 on the setup of the National Authority for Regulating and Monitoring Public Procurement, approved as amended by Law 111/2006</p> <p>Government Decision No. 525/2007 on the organization and operation of the National Authority for Regulating and Monitoring Public Procurement</p> <p>Government Ordinance No. 2/2001 on the legal status of misdemeanors and of Government Emergency Ordinance 34/2006</p>
Main provisions	<p>The object of the Regulation approved by Order 11/2007 is to regulate the methodology of the supervision by the ANRMAP of the manner of awarding the following types of agreements:</p> <ul style="list-style-type: none">• public procurement agreements;• public works concession agreements;• service concession agreements. <p>The most relevant provisions of the Regulation establish relevant details on the following aspects:</p> <ul style="list-style-type: none">• determining the activities carried out by ANRMAP in exercising the supervision of public procurement and the modalities whereby such activities are performed;• the regulation of the supervision procedure. This procedure consists in the following main stages:<ul style="list-style-type: none">- sending to the contracting authority the communication on the start of the supervision procedure;- performing the supervision of the award procedures applied by the contracting authority;- drafting the supervision note which will contain all the information related to the contracting authority, the supervision team, the public

procurement agreement and the procedure followed for the award thereof;

- drafting, if applicable, the protocol ascertaining and sanctioning the misdemeanors and/or using measures for the prevention, cease or remedy of such effects.

Moreover, according to the abovementioned activities, the Regulation approved by Order 11/2007 sets forth the rights and obligations of the ascertaining agents exercising the supervision position.

Repealed enactments

Order No. 26/2007 of the President of the National Authority for Regulating and Monitoring Public Procurement

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Transport Law

Name of the enactment

Government Emergency Ordinance No. 86/05.09.2007 for the modification and amendment of Government Ordinance No. 22/1999 concerning the administration of ports and navigable waterways, as well as the development of the ship transport activities in ports and on navigable waterways ("GEO 86/2007")

Publication

Official Gazette No. 638/18.09.2007, Part I

Entry into force

18 October 2007

Connections with other enactments

It modifies Government Ordinance 22/1999, providing, as well, for the obligation to republish it.

It introduces the obligation to modify the Order of the Ministry of Public Works, Transports and Housing No. 287/2003 concerning the authorization of the economic operators undertaking ship transport activities.

Connections with the Community legislation

It ensures the compatibility of the internal regime concerning the administration of internal ports and navigable waterways with a series of Community regulations in the field:

- Council Regulation No 3577/92/EEC of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime sabotage)
- Council Regulation (EC) No 1356/96 of 8 July 1996 on common rules applicable to the transport of goods or passengers by inland waterway between Member States with a view to establishing freedom to provide such transport services

- Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport

Main provisions

GEO 86/2007 modifies significantly the existing legislative framework in the field of port and navigable waterways. The new normative framework is announced right from the modification of the title of the ordinance that comprises as well „the use of ship transport infrastructures belonging to the public domain“. In this respect, a new chapter IV' is introduced that provides for concession, rental and grant in administration as manners of using port infrastructure. The newly introduced provisions detail the utilization manner, whether it concerns lands or ship transport infrastructure.

Careful concern is given to the use of **port lands** that belong to the public domain, the ordinance stating that in their case only the concession, subconcession and rent are available, subcontracting being forbidden to the user. Moreover, the ordinance details the minimum mandatory content of the (sub)concession specifications, the (sub)concession contract award criteria and the minimum mandatory content of the contract. As a novelty, it is provided that the duration of the contract cannot exceed 5 years if the winning offer does not provide for the making of some investments. As far as the rental of the port lands is concerned, the ordinance states that the procedure will be established by order of the transport minister.

In the field of **security services** in ports and on the inland navigation waterways, the ordinance revokes to a significant extent the previous regulation, including the article that stipulated the possibility of placing this national interest service under concession. As a consequence, it is mentioned in the procedural provisions that all the contracts for the concession of the security services existing at the moment of entry into force of the ordinance are maintained until the deadline.

A new regulation, namely **ship pilotage**, is introduced in the same chapter of security services.

Amendments are made also in the field of **ship agency**, an activity which will be undertaken as well by foreign operators, after the entry into force of the ordinance. Likewise, the obligation that any visit of the public authorities on the ship to be made in the presence of the operator, is no longer present.

We also signal a non-correlation of the amendments with the resulting consolidated text, meaning that although the ordinance has repealed the provision of Article 62 according to which the operators may use, for a limited

time, port workers supplied by the professional employment and training agencies for port workers, as well as of Article 63 which defined these agencies, it maintained in force Articles 64 and 65, thus introducing into the resulting text of the ordinance a concept that is not defined and whose utility is no longer clear.

At the end of the ordinance, it is stipulated that the public property port lands used by the economic operators in the basis of contracts other than those regulated herein (i.e., only concession, subconcession or rent) can be used further only if, 180 days from the entry into force of the ordinance, the operator concludes a regulated contract with the port administration

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