

Legal Bulletin

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March 2007

Legal Bulletin

Audiovisual

Name of the enactment

Decision no. 194/2007 of the National Audiovisual Council for the amendment of Decision no. 187/2006 of the National Audiovisual Council on the Code regulating the audiovisual content

Publication

Official Gazette of Romania, Part I, No. 152/02.03.2007

Entry into force

2 April 2007

Connections with other enactments

Audiovisual Law 504/2002

Main provisions

The main amendments related to the advertising and teleshopping activity are:

- it is prohibited to show advertising or teleshopping for staple products where endorsements or medical recommendations are invoked, except for hygiene products. However, in relation to the latter products, it is prohibited to show doctors or medical offices;
- it is added that advertising must not mislead the public as to special features untruly alleged to characterize the product.

Food advertising:

- for juice advertising, if it shows images of fruits/ vegetables, it needs to specify the percentage of fruit/vegetable contained in the juice;
- if the food product contains only fruit flavors, then the showing of the fruits through actual images thereof, drawings or other devices is prohibited;
- if only flavors are used, this will be mentioned in the advertising spot;
- it is added that foods must not be assigned features that they do not possess;
- it is added that, in the case of advertising foods for children, it is prohibited to use celebrities, VIPs, doctors or other popular characters, and it is prohibited to associate the food products to certain products for children;
- the amendments provide for the obligation that, every hour during

the 06:00 a.m. – 10:00 p.m., one of the ad breaks should contain a message warning the viewers that the excess of salt, sugar or fats needs to be voided.

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Labor Law

1 Employees' involvement in the activity of the European company

Name of the enactment

Government Decision No. 187/2007 on the informing, consulting procedures and other ways of involving the employees in the activity of the European company ("GD 187/2007")

Publication

Official Gazette of Romania, Part I, No. 161/07.03.2007

Entry into force

7 March 2007

Connections with other enactments

Law No. 467/2006 establishing the general framework for informing and consulting the employees

Connections with the Community legislation

Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE), published in the Official Journal of the European Communities no. L 294/1 of 10 November 2001 ("**Regulation 2157/2001**").

Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees, published in the Official Journal of the European Communities no. L 294/22 of 10 November 2001

Main provisions

GD 187/2007 applies to the employees of European companies headquartered in Romania and to employees who have an individual employment agreement concluded based on the Romanian law, of the participating companies, subsidiaries, branches or other secondary offices of a European company headquartered in another member state of the European Union or in an EEA state.

The following terms are defined under GD 187/2007 as follows:

- „**European company**” – a company set up as per Regulation 2157/2001;
- „**participating company**” – the company participating directly to the set-up of a European company.

Participating companies planning to set up a European company have the obligation to start negotiations with the representatives of their employees in respect of the ways in which they can be involved in the activity of the European

company.

To this effect, negotiation groups will be set up, as per the provisions of GD 187/2007. In Romania, the members of the special negotiation groups will be appointed by the trade unions duly set-up and if there are no trade union organizations, by the employees' representatives.

Special negotiation groups and the management bodies of the participating companies will conclude a written agreement in which they will establish the methods used for the informing and consulting procedures as well as the mechanisms for employees' involvement in the activity of the European company.

The content of the agreement and the duration of the negotiations are regulated by GD 187/2007.

2 Employees' involvement in the activity of the European cooperative society

Name of the enactment	Government Decision No. 188/2007 on the informing, consulting procedures and other ways of involving the employees in the activity of the European Cooperative Society (" GD 188/2007 ")
Publication	Official Gazette of Romania, Part I, No. 162/07.032007
Entry into force	7 March 2007
Connections with other enactments	Law No. 467/2006 establishing the general framework for employees' informing and consulting
Connections with the Community legislation	Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE), published in the Official Journal of the European Communities no. L207/1 of 18 March 2003 (" Regulation no. 1435/2003 ") Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees, published in the Official Journal of the European Communities no. L207/25 of 18 March 2003.
Main provisions	GD 188/2007 applies to the employees of the European Cooperative Societies headquartered in Romania, as well as to the employees who have signed an individual employment agreement pursuant to the Romanian law, and to the participating companies, subsidiaries, branches or other secondary offices of a European company headquartered in another member state of the European Union or a EEA state.

According to GD 188/2007, the following terms are defined as follows:

- **„European Cooperative Society”** – is a company established according to Regulation no. 1.435/2003.
- **„participating legal entities”** – are the companies, including cooperatives directly participating in the establishment of a European Cooperative Society.

Participating legal entities planning to establish a European Cooperative Society have the obligation to start negotiations with the representatives of their own employees with regard to their involvement in the activity of the European Cooperative Society.

Special negotiation groups will be established to this effect, according to the provisions of GD 188/2007. In Romania, the members of the special negotiation groups will be appointed by the representatives of the Romanian employees of the European Cooperative Society. If there are no such representatives, the members of the negotiation group will be appointed with the majority of votes cast by the Romanian employees of the European Cooperative Society.

Special negotiation groups and the management bodies of the participating legal entities will conclude a written agreement establishing the informing, consulting methods, as well as the mechanisms for employees’ involvement in the activity of the European Cooperative Society.

The content of the agreement, as well as the duration of the negotiations are regulated by GD 188/2007.

3 Changes of the legal regime of foreigners in Romania

Name of the enactment	Law No. 56/2007 on the amendment and completion of Government Emergency Ordinance No. 194/2002 on the legal regime of foreigners in Romania (“ Law 56/2007 ”)
Publication	Official Gazette of Romania, Part I, No. 201 din 26.03.2007
Entry into force	29 March 2007
Connections with other enactments	Government Emergency Ordinance No. 194/2002 on the foreigners’ regime in Romania, published in the Official Gazette of Romania, Part I, No. 201/8.03.2004 (“ GEO 194/2002 ”)
Connections with the Community Law	Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), published in the

	<p>Official Journal of the European Union no. L105 of 13 April 2006</p> <p>Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, published in the Official Journal of the European Communities No. L251 of 3 October 2003</p> <p>Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, published in the Official Journal of the European Communities No. L16 of 23 January 2004</p> <p>Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, published in the Official Journal of the European Communities No. L321 of 6 December 2003</p> <p>Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, published in the Official Journal of the European Communities No. L375 of 23 December 2004</p>
Main provisions	<p>Law 56/2007 was passed as a solution to the difficulties met in the application of the legal provisions in force, after Romania's accession to the EU.</p> <p>Law 56/2007 transposes in the Romanian legislation the European Directives listed under the Section "Connections with the Community laws".</p> <p>The amendments and completions brought by Law 56/2007 to GEO 194/2002 mainly refer to (i) the requirements for granting the right of permanent stay, (ii) the requirements for entering and staying for the purpose of family reunion, (iii) the measures for the elimination of foreigners, (v) the tolerance of foreigners in Romania, as well as (vi) the regulations issued by the Authority for Foreigners for the purpose of applying such new provisions.</p> <p>4 Employment of pupils and students</p>
Name of the enactment	Law No. 72/2007 on the incentive for employment of pupils and students ("Law 72/2007")
Publication	Official Gazette of Romania, Part I, No. 21/30.03.2007
Entry into force	30 April 2007
Main provisions	According to Law 72/2007, the employer which will employ pupils and students during vacations will benefit from a monthly financial incentive equal to 50% of the minimal gross salary at country level guaranteed to be paid for each pupil and student employed. The maximal period for granting the incentive is of 60

business days in a calendar year.

By the entry into force of Law 72/2007, the Ministry of Labor, Social Solidarity and Family together with the Ministry of Public Finance and the ministry of Education and Research will submit to the approval by the Government the methodological norms for the application of this law.

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Non-Refundable European Funds

Name of the enactment

Emergency Ordinance No. 11/2007 for the amendment and completion of Government Emergency Ordinance No. 63/1999 on the management of non-refundable funds allocated to Romania by the European Union, and of the co-financing funds related thereto ("**GEO 11/2007**")

Publication

Official Gazette of Romania, Part I, No. 156/05.03.2007

Entry into force

5 March 2007

Connections with other enactments

Government Emergency Ordinance 63/1999 („**GEO 63/1999**")

Main provisions

GEO 11/2007 brings certain amendments to GEO 63/1999, as a consequence of the fact that, as of Romania's accession to the EU, the deliveries of goods and provisions of services financed from pre-accession funds will no longer be VAT exempted.

Since this change of the fiscal regime would put the beneficiaries of the pre-accession funds in the public sector in a position to have to bear non-eligible expenses, GEO 11/2007 brings the following amendments to the rules for managing such funds, provided by GEO 63/1999.

- the scope of the amounts contained in the state budget for "Transfers related to the Pre-Accession National Fund" is broadened, by adding the amounts required for the payment of the VAT related to the deliveries of goods, provisions of services and performance of works fully or partially funded by the financial contribution of the European Union and/or the related co-funding, for the events in which the beneficiaries of such goods/ services are: the central or local public administration authorities or units governed thereby; non-governmental and non-profit bodies of public utility and with legal personality, operating in the field of regional development; non-governmental and non-profit bodies with legal personality; the

National Company for Highways and National Roads of Romania – S.A., The National Railway Company of Romania “C.F.R.” – S.A.;

- Article 7 of GEO 63/1999 is repealed, according whereto the deliveries of goods, provisions of services and performance of works realized in accordance with the agreements financed from the national public contribution funded by the European Community, as per the framework agreement, the financing memorandums, the Multinational financing agreement SAPARD and other documents agreed based whereon.

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Real Estate Law

Name of the enactment

Law No. 47/2007 for the completion of Article 5 of Real Estate Law 18/1991

Publication

Official Gazette of Romania, part I, No. 194/21.03.2007

Entry into force

24 March 2007

Connections with other enactments

Real Estate Law 18/1991, republished in the Official Gazette of Romania, Part I, No. 1/05.01.1998

Main provisions

Law 47/2007 supplements the provisions of the real estate law with regard to the legal regime applicable to public lands. It is expressly provided that the lands where road networks and public parks are located, lands for natural reservations and national parks, monuments, complexes as well as archeological and historical sites, natural monuments pertain, to the public field. Such lands pertaining to the public field cannot be transferred, inquired or extinguished, and they can be introduced in the civil circuit only if they are eliminated from the public field. Law 47/2007 provides that the foregoing lands can only be eliminated from the public field in cases of exceptions for works bearing a national interest.

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Legislative Techniques Normes

Name of the enactment

Law No. 49/2007 amending and completing Law No. 24/2000 on the legislative technique norms for the drafting of enactments

Publication

Official Gazette of Romania, Part I, No. 194/21.03.2007

Entry into force

24 March 2007

Main provisions

The main amendment brought by this enactment consists of the completion of

the instruments for presentation and grounding of draft enactments in an impact study. The provision of an impact study is mandatory for draft laws having a special importance and complexity, for draft laws for which the Government engaged its liability and draft laws for the approval of ordinances issued by the government based on an empowerment law and subject to the approval of the Parliament.

The purpose of the impact study is to estimate the costs and benefits resulting in the economic and social plan further to passing the draft law, as well as to show the difficulties related to the implementation of the proposed regulation.

Impact studies are made by the specialized bodies of the central public administration, upon the request of the Government, or by the relevant ministries upon the request of the Parliament commissions.

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Capital Market

Name of the enactment

NSC Order No. 29/2007 on the approval of Guidelines No. 1/2007 for the enforcement of art. 286¹ of Law No. 297/2004 on the capital market, as amended and completed by Law No. 208/2005 and Law No. 97/2006

Publication

Official Gazette, Part I No. 200 of 23 March 2007

Entry into force

23 March 2007

Main provisions

The main purpose of the Guidelines is to detail the provisions of art. 286¹ of Law No. 297/2004 on the capital market, as regards the shareholdings in financial investment companies (SIF), which increase above or decrease below 1% of the share capital thereof.

Briefly, the Guidelines focus on the following material issues:

- setting up reporting obligations in relation to the shareholdings in SIFs which increase above or decrease below 1% of the share capital thereof;
- setting up the calculation method for the suspended voting rights, related to the shares exceeding a threshold of 1% out of SIF's share capital;
- setting up the procedure for suspending the voting rights in case the 1% threshold out of SIF's share capital is exceeded;
- role of the various entities in relation to these holdings (SIF, SAI which

- manages SIF, the central depository etc.);
- providing for sanctions in case of infringement of reporting obligations and obligation to transfer the shares which exceed the 1% threshold of SIF's share capital within 3 months as of the date when this limit is exceeded.

The reporting obligations in relation to the increase of holdings above or the decrease thereof below 1% out of SIF's share capital are incumbent to (i) the persons acquiring, directly or together with the persons with whom they act jointly, these holdings – who must report this to SIF, NSC and the regulated market, within 3 business days as of the increase/decrease of their interest above/below the 1% threshold; (ii) Central Depository – which must immediately report to SIF any case of increase above the 1% threshold, resulting from market operations or direct transfers; and (iii) SIF – which must report to the public within 3 business days as of the receipt of the information.

The voting rights are calculated by taking into account the voting rights related to direct and indirect interests, as well as those related to the interests of a third party with which the respective shareholders acts jointly, and the third party interests held in possession by the shareholder or for which the shareholder has a general representation mandate, if the owners do not provide for any specific instructions in this sense.

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Civil Procedure

Name of the enactment	Law No. 44/2007 for the amendment and completion of Law 189/2003 on international legal assistance in civil and commercial matters ("Law 44/2007")
Publication	Official Gazette of Romania, part I, No. 174/13.03.2007
Entry into force	16 March 2007
Connections with other enactments	This enactment amends law No. 189/2003 on international legal assistance in civil and commercial matters ("Law 189/2003")
Connections with the Community Law	Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial

	matters
Main provisions	<p>This enactment regulates a new chapter, named “Provisions on the legal assistance between Romania and the Member States of the European Union”</p> <p>This chapter applies the provisions of the Council regulation (CE) No. 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, as well as those of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters.</p> <p>The procedure for communicating the judicial and extrajudicial documents established by Law 44/2007 consists of the following steps:</p> <ul style="list-style-type: none">• the Romanian courts communicate the judicial and extrajudicial documents to the receiving authorities in the Member States of the European Union;• the notaries, bailiffs and other authorities with competency for communicating documents abroad send the applications through the judges in the jurisdiction whereof their professional headquarters is located, the provisions of letter a) applying accordingly;• the Romanian authority receiving the application for communication of judicial and extrajudicial documents from the Member States of the European Union is the court of law in the jurisdiction whereof the addressee has his or her domicile. <p>The procedure applicable to the applications for obtaining the evidence through an international rogatory commission is performed as follows:</p> <ul style="list-style-type: none">• the Romanian courts send the applications directly to the competent courts in the Member States of the European Union;• by the court of law in the jurisdiction whereof the evidence requested from the Member States of the European Union will be obtained
Repealed enactments	This enactment repeals Article 5 para. (3), Article 9 para. (4), Article 17 para. (5) and Article 22 para. (4) of Law 189/2003
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	<h2>Consumers` Protection</h2>
Name of the enactment	Regulation No. 3/2007 of the National Bank of Romania on the limitation of the credit risk for loans granted to individuals (“NBRR 3/2007”)

Publication	Official Gazette of Romania, Part I, No. 177/14.03.2007
Entry into force	14 March 2007
Main provisions	<p>NBRR 3/2007 repeals the legal limitations imposed to credit institutions, to branches of credit institutions in third states acting in Romania and non-banking financial institutions (“Lenders”) upon granting, guaranteeing and progress of loans for individuals.</p> <p>Thus, all the maximal thresholds for the indebtedness of individuals required by the regulations of the National Bank have been eliminated, and their credit activity will be performed by each Lender as per its own rules validated by the central bank. NBRR 3/2007 is limited only to establishing, as a principle, the elements that the internal regulations of the Lenders need to contain, according to their profile and risk strategy:</p> <ul style="list-style-type: none">• the organization of the activity of granting and progress of loans meant for individuals and, as the case may be, the requirements for granting each type of loan;• the categories of eligible clients for each loan;• the procedure for classifying the target clients as per non-reimbursement risk categories, grounded on the general risk profile of the Lender;• the categories of revenues considered to be eligible by the Lender, as per categories of clients, as well as the related adjustment coefficients as per the degree of certainty and the permanence thereof;• the categories of expenses deductible from the eligible revenues for the purpose of determining the overall degree of indebtedness, including at least the subsistence expenses and the payment engagements other than those similar to the loan;• the maximal levels admitted for the overall degree of indebtedness, as per categories of clients, and the grounding of the levels established;• the methodology of reconsidering from time to time the coefficients for the adjustment of the maximal revenues and levels admitted for the degree of indebtedness, for the purpose of ensuring the continuous accuracy thereof.
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Personal Data Protection

Name of the enactment	Decision No. 28/2007 on the transfers of personal data to other states (“ Decision ”
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	28/2007”)
Publication	Official Gazette of Romania, Part I, No. 182/16.03.2007
Entry into force	16 March 2007
Connections with other enactments	Law No. 677/2001 for persons’ protection in relation to the processing of personal data and the free circulation thereof
Connections with the Community Law	Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data
Main provisions	<p>Decision 28/2007 provides for significant amendments in relation to the treatment of the personal data processing involving the transmission thereof in other states, from the perspective of their notification and acquisition, as follows:</p> <ul style="list-style-type: none">• the transmission of personal data to members of the European Union and the EEA states is notified to the National Supervision Authority for Personal Data Processing (the “Authority”), without requiring an authorization procedure, as is applicable until the accession, as well;• the same treatment shall be applicable if the transmission of personal data is made to other states, for which the European Commission admitted, by a decision, an adequate level of protection;• if the personal data are transferred to other states than those mentioned in the cases above, it is required to notify them to and have them authorized by the Authority.
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Environment Protection

Name of the enactment	Government Emergency Ordinance No. 12/2007 amending and completing certain enactments transposing the Community acquis in the field of environment protection (“ GEO 12/2007 ”)
Publication	Official Gazette of Romania, Part I, No. 153/2.03.2007
Entry into force	5 March 2007
Connections with other enactments	Government Emergency Ordinance No. 243/2000 on atmosphere protection (“ GEO 243/2000 ”) Water Law No. 107/1996 (“ Law 107/1996 ”) Government Emergency Ordinance No. 37/2002 for the protection of animals for

Main provisions

scientific or other experimental purposes (“**GEO 37/2002**”)

Law No. 191/2002 on public zoos and aquariums

As part of the effort to complete the harmonization of the national laws in the field of environment with the Community regulations, GEO 12/2007 imposes a number of amendments to some primary regulation enactments for fully transposing the relevant Community directives. Of major importance are the amendments brought to the following enactments:

GEO 243/2000

By amending this enactment, new obligations were imposed in principle to the central public authority for environment protection (the “**Authority**”).

The Authority has the obligation to inform the European Commission in respect of:

- the evaluation of the air’s quality;
- the methods used for the preliminary evaluation of the air’s quality;
- approval for the measurement systems;
- ensuring the accuracy of the measurements by measurement instruments through internal quality controls;
- analysis of the evaluation methods;
- coordinating the Community quality-ensuring programs, organized by the European Commission.

Special consideration is given to areas and conglomerates where the levels of one or more pollutants are higher than the approved threshold, and the Authority has the obligation (i) to inform the European Commission on such areas, (ii) to draft plans for the management of air’s quality and to send them to the European Commission, (iii) every three years, to provide to the European Commission information on the levels registered or evaluated in such areas and the reasons for exceeding the approved pollution values.

Law 107/1996

Amendments similar to those imposed in the field of atmosphere protection are brought in the field of managing and protecting the hydrophoric basin.

The Authority has the obligation to send to the European Commission copies of the management plans of hydrophoric basins. Moreover, the Authority has the obligation to send to the European Commission synthetic reports on the analysis of water quality that were performed and the monitoring programs performed

for the purpose of the first management plan of the hydrophoric basin.

Moreover, to the extent it identifies a problem in the management of waters which cannot be solved by the national courts, the Authority can report it to the European Commission and to another interested member state and can issue recommendations for solving it.

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Legal Regime Applicable to Immovables

Name of the enactment

Law No. 74/2007 for the amendment of Law 10/2001 on the legal regime of certain immovables expropriated abusively during 6 march 1945 – 22 December 1989

Publication

Official Gazette of Romania, part I, No. 215/29.03.2007

Entry into force

1 April 2007

Connections with other enactments

Law 247/2005 on the reform in the property and justice field, as well as some related measures

Main provisions

The main amendment is related to the immovables used solely and directly for activities of public interest, which can be recovered by their former owners only if the current use of the immovable is maintained for 3 or 5 more years. In this respect, the immovables occupied by financial administration authorities, treasuries, ministries and other central public administration authorities, prosecutor's offices, tribunals, courts of appeal, police, border police, military police, community public services for emergency cases, customs offices, national archives, county departments, health insurance offices, mayor's offices, prosecutor's offices, local and county councils, school inspectorates, can be recovered by their former owners or by the heirs thereof, provided they maintain the current use of such immovables for more than 3 years.

The following belong to the category of immovables which can be recovered by their former owners or the heirs thereof provided they maintain the current use of such immovables: (i) immovables occupied by state school institutions (kindergartens, elementary schools, high schools, professional schools, post-high school schools, higher education institutions); (ii) immovables occupied by public sanitary and medical-social assistance units (nurseries, homes-hospitals for old persons, hospitals, placement centers, children's homes) and (ii) immovables occupied by public culture institutions: theatres, opera theatres, libraries,

museums, philharmonic orchestras, culture centers.

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