

Legal Bulletin

May 2007

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Legal Bulletin

Capital Markets

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| Name of the enactment | NSC Order No. 59/2007 for approving Instruction No. 3/2007 on the performance of public offers through the trading system of a market/system operator |
| Publication | Official Gazette of Romania, Part I, No. 363/28.05.2007 |
| Entry into force | Upon publication in the Official Gazette of Romania, Part I, i.e. on 28 May 2007 |
| Connections with other enactments | It introduces the obligation to complete the BSE Code |
| Main provisions | <p>Instruction No. 3/2007 completes the legal framework in respect of public offers performed through regulated markets or trading systems, and it sets forth new rules, as follows:</p> <ul style="list-style-type: none">• the obligation to observe the provisions under the prospectus/ offer document approved by NSC in respect of the subscriptions within the offer, as well as with regard to the distribution related to the public offer;• the obligation to check the observance of such provisions by intermediaries, upon filling in the subscription applications, before introducing the orders in the system of the market/system operator;• the obligation to withdraw, by the intermediaries that introduced them, the orders introduced in breach of the provisions of the prospectus/ offer document approved by NSC and to notify the market/ system operator, the offer intermediary and the investor concerned;• if the obligation to withdraw the orders is not observed, the respective subscriptions are not taken into consideration upon allocating the offer and, after the third similar breach, the intermediary concerned can be sanctioned by the interdiction to participate in public offers on that market/system. The market/system operator can apply specific sanctions, according to its own regulations (in this respect, the BSE Code must be changed accordingly, within 30 days as of the entry into force of Instruction No. 3/2007). Also, NSC can sanction the same deed, according to the provisions under Capital Law and under Instruction |

No. 3/2007;

- the procedure of withdrawing the orders introduced in breach of the provisions under the prospectus/ offer document approved by NSC and the correction of allocating and of the transactions carried out in such circumstances;
- the intermediaries involved in the offer, offer intermediary, the bidder, the market/system operator, grant clear liability for completing the operations related to the public offer, considering each one's prerogatives;
- specifying the direct and full liability of the intermediaries who introduced orders in the system in breach of the provisions of the prospectus/ offer document approved by NSC, towards the clients whose orders were removed upon the performance of the distribution

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Forced Execution

Name of the enactment

Law No. 110/2007 for amending and completing Government Ordinance No. 22/2002 on the compliance with the payment liabilities of public institutions, established based on writs of execution ("Law 110/2007")

Publication

Official Gazette of Romania, Part I, No. 300/05.05.2007

Entry into force

8 May 2007

Connections with other enactments

This enactment amends Government Ordinance No. 22/2002 on the performance of the payment liabilities of public institutions, established based on writs of execution ("GO 22/2002")

Main provisions

This enactment enshrines certain regulations aimed at ensuring the forced execution of/ speedy compliance with the obligations established by writs of execution incumbent on public institutions.

In this respect, Article 2 provides for the obligation of the debtor institution to take the steps required for the purpose of paying the amount established by a writ of execution within 6 months as of receipt of the summons to execution, in the event there are insufficient funds, or the funds are not granted as specific expenses to the chapter whereby the writs of execution is rendered.

Another new element consists in granting the creditor with the faculty to enforce its claim subject to the conditions of the Civil Procedure Code, if the debtor does not pay the amounts established by a writ of execution within the deadline

provided under Article 2.

Article 5 provides for the possibility to settle, between the debtor and the creditor, a convention on the payment term and other conditions for complying with the obligations established in a writ of execution.

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Competition and State Aid

Name of the enactment

Law No. 137/2007 for approving Government Emergency Ordinance No. 117/2006 on the national procedures in the state aid field

Publication

Official Gazette of Romania, Part I, No. 354/24.05.2007

Entry into force

27 May 2007

Connections with other enactments

Government Emergency Ordinance No. 117/2006 on the national procedures in the state aid matters

Connections with the Community legislation

EC Treaty, Articles 87, 88, 89 regarding the state aid

The Community secondary legislation passed in accordance with Articles 87, 88, 89 of the EC Treaty

Main provisions

Law 137/2007 approves GEO 117/2006, as further amended and completed. The newly introduced issues refer to:

- clarifying several aspects of the national procedure in the state aid field in respect of the elements that must be mentioned in the documents issued by public authorities containing state aid plans or granting individual state aids;
- the participation of state aid suppliers to the process of stopping and recovering illegal state aids, the decisions of state aid suppliers serving as writs of execution;
- the clarification and consolidation of the competencies granted by the Competition Council within the framework of national procedures concerning state aids, in particular with regard to the supervision of the transparency of financial relations between public bodies and certain undertakings, the representation of Romania in consultative forums, sending – for informative purposes, not for approval purposes – the Report on state aid to the Government, the possibility to effect check-ups on site on order to obtain data on state aid, the content of the endorsement granted in certain cases;

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| Author | <ul style="list-style-type: none">eliminating the sanction of the warning concerning misdemeanors in the field of state aid provided by GEO 117/2006. <p>anca.jurcovan@tuca.ro</p> |
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Customs Law

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| Name of the enactment | Law No. 141/2007 for rejecting Government Emergency Ordinance No. 48/2006 on duty-free and duty-paid trading of goods |
| Publication | Official Gazette of Romania, Part I, No. 348/22.05.2007 |
| Entry into force | 25 May 2007 |
| Main provisions | This enactment rejects GEO No. 48/2006 on duty-free and duty-paid trading of goods, which was analyzed in one of the previous legislative enactments |
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Electronic Communications and Postal Services

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| Name of the enactment | Law No. 133/2007 for approving Government Emergency Ordinance No. 70/2006 on the amendment and completion of certain enactments in the field of electronic communications and postal services |
| Publication | Official Gazette of Romania, Part I, No. 355/24.05.2007 |
| Entry into force | 27 May 2007 |
| Connections with other enactments | <p>Government Emergency Ordinance No. 70/2006 on the amendment and completion of certain enactments in the field of electronic communications and postal services</p> <p>Government Ordinance No. 31/2002 on postal services, approved with amendments and completions by Law 642/2002, as further amended and completed</p> <p>Government Ordinance No. 34/2002 on the access to public networks of electronic communications and associated infrastructure, as well as their interconnection, approved with amendments and completions by Law 527/2002, as further amended and completed</p> <p>Government Emergency Ordinance No. 79/2002 on the general framework regulating communications, approved with amendments and completions by Law 591/2002, as further amended and completed</p> <p>Law No. 304/2003 for the universal service and users' rights in respect of networks</p> |

Connections with the
Community legislation

and services of electronic communications, as further amended and completed
Law No. 510/2004 on the reorganization of the General Inspectorate for
Communications and Information Technology

Directive 97/67/EC a Directive 97/67/EC of the European Parliament and of the
Council of 15 December 1997 on common rules for the development of the
internal market of Community postal services and the improvement of quality of
service

Directive 2002/39/EC of the European Parliament and of the Council of 10 June
2002 amending Directive 97/67/EC with regard to the further opening to
competition of Community postal services

Directive 2002/19/EC of the European Parliament and of the Council of 7 March
2002 on access to, and interconnection of, electronic communications networks
and associated facilities (Access Directive)

Directive 2002/20/EC of the European Parliament and of the Council of 7 March
2002 on the authorization of electronic communications networks and services
(Authorization Directive)

Directive 2002/21/EC of the European Parliament and of the Council of 7 March
2002 on a common regulatory framework for electronic communications
networks and services (Framework Directive)

Directive 2002/22/EC of the European Parliament and of the Council of 7 March
2002 on universal service and users' rights relating to electronic communications
networks and services (Universal Service Directive)

Main provisions

Law No. 133/2007 approves Government Emergency Ordinance 70/2006, as further
amended and completed. Among the most important amendments and
completions, we mention:

- in the field of postal services:
 - detailing the provisions on the setoff mechanism of the universal
service provider, administered by the National Authority Regulating
the Communications and Information Technology, in the sense of the
possibility to establish such a mechanism after the expiry of the
reserved rights granted to the universal service supplier, of
contributions incumbent on postal service providers or users and of the
methodological matters related to the administration thereof;
 - grating grace period for the compliance with the obligations of the

National Company „Poșta Română” – S.A. to provide separate financial statements and to draw up reports on the observance of service quality standards; thus, the first separate financial statements that need to be drawn up by the National Company „Poșta Română” – S.A. are those related to the year 2007, while the first report for assessment of the observance of quality standards will be that related to the year 2008;

- in the field of electronic communications:
 - the amendment of the provisions related to the administration and management of the scope of radio frequencies in the sense of establishing the cases and conditions for amending the license for using radio-electronic frequencies, establishing the obligation to pay a license fee in the case of granting the licenses for using radio-electric frequencies through competitive or comparative selection procedures and detailing the conditions under which the license for using radio-electric frequencies can be granted;
 - the amendment of the provisions related to the monitoring tariff due to the National Authority Regulating the Communications and Information Technology by suppliers of electronic communication networks and services in the sense of reducing the maximal percentage to 0.4% of the turnover (instead of 0.5%), as well as of exempting from the obligation to pay the tariff incumbent on suppliers of electronic communication networks and services with a turnover of less than EUR 100,000;
 - the complete removal of the need to obtain the prior approval by the National Authority Regulating the Communications and Information Technology for tariffs for the retail services provided by S.C. Romtelecom S.A. on the markets where it was determined as having a significant power.

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Labor Law

Name of the enactment

Government Decision No. 355/2007 on the supervision of workers' health (“**GD 355/2007**”)

Publication

Official Gazette of Romania, Part I, No. 332/17.05.2007

Entry into force

17 May 2007

Connections with other enactments

Main provisions

Law No. 319/2006 on security and health at work (“**Law 319/2006**”)

GD 355/2007 sets forth the minimal requirements for the supervision of workers’ health in respect of the risks to security and health, for the prevention of workers’ contracting professional sicknesses caused by noxious chemical, physical, physical-chemical or biological agents which are particular to the place of work, as well as of the overworking of various body organs or systems during work.

GD 355/2007 was passed for the application of chapter V of Law 319/2006.

According to the enactments listed above, employers in any field of activity, both in the public sector and in the private sector, have the following obligations:

- to check the risk at the places of work on workers’ health;
- to update the health risk evaluation if there are significant changes causing the initial evaluation to be outdated or when the results of health’s supervision require so;
- to ensure the funds and conditions for performing all the prophylactic medical services required for the supervision of workers’ health;
- to request the performance of the medical examination for their own workers in the cases provided by law:
 - upon recruitment
 - during the first month after recruitment (the medical examination for adjustment), upon the indication of the work medicine doctor;
 - after recruitment, periodically, according to the proposals by the work medicine doctor;
 - upon resuming work after a cease in activity of at least 90 days, for medical reasons, or of 6 months, for any other reasons, within 7 days after the resuming of work;
 - upon changing the place of work;
 - according to the planning performed by the work medicine doctor – medical supervision examinations.

Non-fulfillment of the employers’ obligations in relation to security and health at work, according to the seriousness of the consequences of such failure, will result in the criminal liability or a fine, as the case may be, according to Law 319/2006.

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This material is for reference only. It does not seek to provide final legal Advice, which may be requested according to each specific legal issue.

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