

Legal Bulletin

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Civil Law

Name of the enactment	Law No. 60/2012 approving Government Emergency Ordinance No. 79/2011 regulating the measures required for the entry into force of Law No. 287/2009 on the Civil Code ("Law no. 60/2012")
Publication	Official Gazette of Romania, Part I, No. 255 of 17 April 2012
Entry into force	20 April 2012
Connections with other enactments	<ul style="list-style-type: none">• Government Emergency Ordinance No. 79/2011 regulating the measures required for the entry into force of Law No. 287/2009 on the Civil Code ("GEO No. 79/2011");• Law No. 71/2011 for the implementation of Law No. 287/2009 on the Civil Code ("Civil Code Implementation Law");• Law No. 287/2009 on the Civil Code ("Civil Code").
Main provisions	<p>Law No. 60/2012 brings a set of amendments to the Civil Code, the Civil Code Implementation Law and to other enactments related to the entry into force of such enactments, the most significant of which shall be further mentioned.</p> <p>First, Article 658 of the Civil Code was amended with respect to the cessation of joint use of the joint areas of multi-floor or multi-apartment buildings, based on the consent of all owners (not two thirds, as formerly regulated). Furthermore, the share of real estate resulting from this operation shall be appropriately registered with the land book.</p> <p>The amendments brought to the Implementation Law fall under three categories:</p> <ul style="list-style-type: none">• Amendments and clarifications related to the <u>temporal application</u> of the Civil Code provisions:<ul style="list-style-type: none">- Effects of accession or <i>usucapio</i>;- Establishment and effects of security interests in personal property;- Application of the provisions on the formal notice only in the case of obligations established subsequent to the entry into

force of the Civil Code;

- Application of Article 2324 para. (4) of the Civil Code with respect to the receivables arising in connection to a certain division of the assets, only by reference to the rights and obligations established after the entry into force of the Civil Code.
- Clarifications related to the interpretation given to various provisions of the Civil Code:
 - Article 627 of the Civil Code on the inference of the inalienability clause in promissory agreements concerning the transfer of the ownership right over a movable or immovable property, with effects for the future, by execution of agreements;
 - Substitution of the concept "trader" with "professional" in the laws on protection of consumer rights;
 - Possibility to fulfill the registration formalities in connection to, among other, an ongoing dispute or the registration thereof with the public registries provided under the law;
 - The liability for the loss due to the nullity of the agreement concluded in authenticated form shall only cover the loss that is not remedied by annulling or finding the nullity of the agreement, as set forth under a final court order;
 - The clause of liability exemption provided under Article 1363 of the Civil Code with respect to the disclosure of trade secrets or professional secrets the professionals are bound to shall apply to tort liability for one's own conduct and to contractual liability alike (although it is only provided under Section 3 Liability for one's own conduct);
 - The acts of disposal concerning the mortgaged property, concluded in accordance with the requirements of Article 2393 of the Civil Code (namely, by an undertaking in its ordinary course of business), may be annulled at the mortgagee's request, only when the proceeds of such property may not be seized by a mortgagee having a mortgage of the same rank as the previous one. Nevertheless, the mortgagee cannot obtain the annulment

of these acts, insofar as they have been expressly or implicitly approved by the latter;

- Within the meaning of Article 2428 para. (2) let. f) of the Civil Code, the mortgage may also be de-registered from the land book based on the mortgagee's written statement. If multiple creditors are beneficiaries of a mortgage established over the property in question, the de-registration statement shall not infringe the rights of other mortgagees. The statement may be de-registered by an authenticated notary deed;
- The provisions of the second thesis of para. (2), Article 2539 of the Civil Code (regarding the interruption of the prescription course due to submission of a statement of claim or an arbitration request 6 months as of the date the decision providing the dismissal or annulment became final) also apply when the waiver to trial or the obsolescence of the claim was acknowledged by a final decision;
- As to Article 2566 of the Civil Code on the presumption of the performance of the acts in due time, this presumption also applies when the writs were delivered, by means of registered letter, to a postal or telegraphic office or to a fast courier service or a service specialized in communication illegally established.
- Further clarifications are brought with respect to the courts of law having jurisdiction to try certain matters, such as the foreclosure of mortgages or the measures for the placement or appointment of a special curator.

Also, the endorsements concerning the registrations with the Electronic Archive of Security Interests in Personal Property were renamed and, respectively, the registration procedure and the powers of the Archive Supervisory Authority were modified. In this context it is worth mentioning the clarifications brought to the registration of the mortgage established on the accounts through the control of same, as per the Civil Code, Article 2410 and 2426. Thus, the control over the account meets the requirement of registration of the mortgage over movable property only by registration thereof with the aforementioned Archive. In the case of mortgages over movable property for which the registration is made through the control exercised over the account, the priority set forth under Article 2426 of the Civil Code is conferred only to that mortgage over movable

property which has also fulfilled the publicity formalities with the Archive.

Article 54 of Cadastre and Real Estate Registration Law No.7/1996 was amended so as to regulate the possibility to cease the validity of the authentication excerpt requested by the notary public on drawing up a deed by which a real immovable right is transferred, changed, established or extinguished, if: (i) the notary public's request precedes the fulfillment of the ten-day validity term thereof; (ii) the notary public announced the execution of the act for which the excerpt had been requested; or (iii) the act was executed. In addition, the term in which the issuance of a new land book excerpt for authentication purposes is prohibited was decreased from 5 to 3 business days from the expiry of the validity term of the previous excerpt.

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Civil Procedure

Name of the decision

Decision of the High Court of Cassation and Justice No. 5 of 12 March 2012 on the settlement of final appeals in the interest of law concerning:

- The interpretation and implementation of the provisions of Article 404² para. (3) of the Civil Procedure Code regarding the court having jurisdiction over settling the claim for the overturn of enforcement;
- The means of appeal that may be exercised against judgments passed upon the settlement of claims seeking to overturn enforcement, filed by virtue of Article 404² para. (3) of the Civil Procedure Code ("**Decision No. 5/2012**").

Publication

Official Gazette of Romania, Part I, No. 251 of 13 April 2012.

Main provisions

The High Court of Cassation and Justice was vested with the settlement of Case No. 4/2012 addressing the final appeals in the interest of law filed by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice and by the Managing Council of Galați Court of Appeal with respect to the non-unitary practice of the courts upon interpreting and implementing the provisions of Article 404² para. (3) of the Civil Procedure Code concerning the court having jurisdiction over settling the overturn of the enforcement and the means of appeal that may be exercised against judgments issued in the settlement of such claims.

Consequently, an inquiry into the domestic case law revealed the lack of a unitary practice with respect to the court having jurisdiction over settling the claim for

overturning the enforcement, and three different case law approaches:

- According to the first opinion, the court having jurisdiction over settling the claim for overturning the enforcement would be the court that settled the merits of the dispute in which the judgments whose annulment justify the overturn of enforcement were passed, established in accordance with the provisions of Arts. 1 through 19 of the Civil Procedure Code or appointed by means of a special law, by reference to the legal particularity of the dispute, and to the elements of the civil action (object, parties, motive), respectively;
- According to the second opinion, the court having jurisdiction over settling the claim for overturning the enforcement should be established solely by reference to the amount of the dispute;
- According to the third opinion, the court having jurisdiction over settling the claim for overturning the enforcement would be the district court, as enforcement court.

As to the means of appeal that may be exercised against judgments passed upon settling the claims seeking to overturn the enforcement, filed by virtue of Article 404² para. (3) of the Civil Procedure Code, an inquiry into the domestic case law revealed two case law approaches:

- According to the first approach, judgments passed in cases seeking to overturn the enforcement, subject to the conditions provided under Article 404² para. (3) of the Civil Procedure Code, would be subject to the same means of appeal provided for the judgments that settle the merits of the case;
- According to the second approach, only final appeals may be filed against judgments passed in cases seeking to overturn enforcement, in accordance with the provisions of Article 402 para. (2) of the Civil Procedure Code, with the exceptions provided by this rule.

The opinion of the general prosecutor was that the court having jurisdiction over settling the claims for overturning the enforcement shall be the enforcement court, *i.e.* the district court, and the means of appeal that may be exercised against judgments passed in settling such claims shall be the final appeal. The report on final appeals in the interest of law prepared in accordance with Article 330⁶ of the Civil Procedure Code found the same interpretation to be correct.

The High Court of Cassation and Justice sustained the final appeals in the interest of law filed by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice and by the Managing Council of Galați Court of Appeal and maintained that:

- Having construed and implemented the provisions of Article 404² para. (3) of the Civil Procedure Code, the court having jurisdiction, according to law, to settle the claim for overturning enforcement by reinstatement of the situation prior to enforcement shall be the enforcement court, *i.e.* the district court;
- This judgment shall be subject to final appeal.

According to the provisions of Article 3307 para. (4) of the Civil Procedure Code, „(t)he solution given to the legal issues shall be mandatory to the courts as of the publication of the decision in the Official Gazette of Romania, Part I”.

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Maritime Law

Name of enactment

Government Emergency Ordinance No. 9/2012 on the insurance of ship-owners for maritime claims (“**GEO No. 9/2012**”)

Publication

Official Gazette of Romania, Part I, No. 231/6 April 2012

Entry into force

6 April 2012

Connections with other enactments

Government Decision No. 811/2010 on harbor State control (“**GD No. 811/2010**”)

Connections with Community legislation

- Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of ship-owners for maritime claims (“**Directive 2009/20/EC**”);
- Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (“**Directive 2009/16/CE**”).

Main provisions

Scope and area of application

GEO No. 9/2012 translates into domestic law the provisions of Directive 2009/20/EC and regulates the obligation of the owners of ships of 300 gross tonnage or more that *(i)* fly a Romanian flag, *(ii)* fly the flag of another State when entering a Romanian port or *(iii)* that sail in waters under Romanian jurisdiction, without entering a Romanian port, to conclude insurance contracts for maritime claims.

GEO No. 9/2012 shall not apply to warships, military naval auxiliaries or other ships

owned or operated by a State and used for non-commercial public purposes.

Evidence attesting to the existence of the insurance

Evidence attesting to the insurance provided under GEO No. 9/2012 shall be produced by means of one or several certificates issued by the provider thereof that have to include at least the following items:

- Ship name, IMO identification number and registration port;
- Name and head office of the ship-owner;
- Sort and term of insurance;
- Name and head office of the insurance provider and office where the insurance was concluded, if applicable.

Together with translating the provisions of Directive 2009/20/EC by means of GEO No. 9/2012, the inspection of the ships calling in a Romanian port or operating in waters under the jurisdiction of Romania without entering a Romanian port, performed in accordance with Directive 2009/16/EC translated by means of GD No. 811/2010 shall also include the verification onboard the ships into the existence of the insurance certificates or validity thereof.

Consequences of the absence of insurance certificates or of holding insurance certificates that are no longer valid

Should the insurance certificates not be onboard or no longer be valid, the Romanian Naval Authority (“RNA”) shall be authorized to proceed as follows: (a) expel the ship, (b) refuse access into ports, (c) charge a fine ranging from RON 10,000 to RON 50,000 to the ship captain.

Ship expelling

RNA shall decide to expel the ship if, by the expiry of a 72-hour term given to remedy the situation, or by the ship departure, if this occurs prior to the expiry of the above term, the ship-owner fails to present the requested insurance certificates. The decision to expel the ship shall usually be carried out immediately after the captain of such ship is informed on this topic. Nevertheless, should the deficiencies found at the ship during the control thereof by the port state be evidently hazardous for navigation safety, health or environment, RNA may decide to defer making the decision to expel the ship until it decides that the ship may sail without any major risks to the safety and health of the passengers and crew, for the safety of other ships and marine environment.

According to GEO No. 9/2012, RNA shall immediately communicate the decision to expel the ship, together with the inspection report, as follows:

- To the flag State of such ship;
- To the Ministry of Transports and Infrastructure, for purposes of notifying the European Commission;
- To all the other Member States of the European Economic Area.

Refuse of access into ports

Refusal of access into any port and operation in any place within the waters under the jurisdiction of Romania shall apply to the following two categories of ships: (i) for which RNA issued decisions to expel the ships or (ii) with respect to which RNA received notices from the relevant authorities of other Member States of the European Economic Area concerning the issuance of certain decisions to expel ships.

Refusal of access shall be kept until the date RNA receives notice from the ship-owner that he obtained the relevant insurance certificates.

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Personal Data Protection

1 Amendments brought to the main enactment in the processing of personal data and the protection of privacy in the electronic communications sector

Name of enactment	Government Emergency Ordinance No. 13/2012 amending and supplementing Law No. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector (“ GEO No. 13/2012 ”)
Publication	Official Gazette of Romania, Part I, No. 277 of 26 April 2012
Entry into force	26 April 2012
Connections with other enactments	<ul style="list-style-type: none">• Law No. 506/2004 on the processing of personal data and the protection of privacy in the electronic communication sector (“Law No. 506/2004”);• Law No. 677/2004 on the persons’ protection regarding the processing of personal data and the free circulation thereof.
Connection with Community legislation	<ul style="list-style-type: none">• Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service

and users' rights relating to electronic communications networks and services ("**Directive 2009/136/EC**");

- Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector;
- (EC) Regulation No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

Main provisions

In the recitals to GEO No. 13/2012, mention is made that such regulation became necessary due to the fact that, by the official notice of default dated 18 July 2011 (Case No. 2011/0939), the European Commission calls the attention on the failure by the Romanian authorities to translate the provisions of European directives on the protection of personal data in the domestic law, though such data is being processed by electronic communication networks and services.

Hence, the amendments brought to Law No. 506/2004 by GEO No. 13/2012 are designed to achieve such harmonization with the European regulations and prevent an action for the establishment of the breach by Romania of its obligations under Articles 258 and 260 of the Treaty on the Functioning of the European Union being filed with the Court of Justice of the European Union ("**CJEU**").

Without going into the details of all the amendments brought to GEO No. 13/2012, be advised that they are an almost faithful translation of the provisions of Directive 2009/136/EC. The most important new elements inserted by GEO No. 13/2012 are as follows:

- **Provisions on security measures**

GEO No. 13/2012 sets out the minimum standards to be observed upon implementation of the technical protection measures by the public communication service providers.

Also, the communication service providers are required to comply with a set of obligations to notify the individuals in question and the control authority (*i.e.* NSAPD) of any personal data breach. The enactment provides for the minimum content of the notifications to be sent to the individual in question and to the control authority. To this effect, the notification to the person in question shall

contain at least one description of the nature of the personal data breach and the provider's contact points where additional information can be obtained, as well as a recommendation concerning the measures to mitigate possible adverse effects of the breach. The notification to the control authority will also contain, in addition to the aforesaid elements, a description of the consequences of the personal data breach, and the measures proposed or adopted by the provider to remedy such consequences.

The providers are under the obligation to keep a record of all personal data breaches, which shall include a description of the circumstances in which the breach occurred, the effects thereof and the proposed remedy measures.

- **Provisions on the adequate briefing and consent of the individuals in question as to the processing of their personal**

GEO No. 13/2012 sets out that the briefing of the individuals in question for the purpose of obtaining their consent shall be made in a clear, comprehensive manner and shall be easily accessible by the subscriber or user and shall include specifications concerning the purpose of their processing.

Also, the enactment establishes that, if the provider allows the storage by or access of third parties to the information stored in the terminal equipment of the subscriber or user, it will include the general purpose of such information being processed by third parties and the manner in which the subscriber or the user may use the internet navigation settings or other similar technologies to erase stored information or to deny third party access to such information.

GEO No. 13/2012 expressly introduces the possibility to consent to the personal data processing also by using the internet navigation settings or other similar technologies by means of which the subscriber or user may be deemed to have consented (though such consent was implicitly accepted even prior to such regulation).

This enactment also contains a series of nuances concerning the personal data included in the directories. Thus, there are express provisions on the subscribers' right that their personal data be included in all public directories, in hard copy or electronic form.

Also, the individuals in question are entitled to oppose to their personal data being included in such directories, and the enactment provides for term within which the individual in question may exercise such right of opposition.

- **Monitoring the compliance with the legal provisions and the applicable sanctions**

The main duties concerning the monitoring and sanctioning of the breaches of the provisions of Law No. 504/2006 were transferred from the National Authority for Management and Regulation in Communications (“**NAMRC**”) to the National Supervisory Authority for Personal Data (“**NSAPD**”), as authority with general competence in protection of personal data.

In respect of the sanctions, GEO No. 13/2012 inserts the possibility for NSAPD to charge penalty fines per day of delay, amounting up to RON 5,000, to force the providers to comply with the measures ordered by NSAPD concerning the notification of the individuals in question as to the personal data breach.

The penalty fines per day of delay shall be applied subject to a protocol executed by NSAPD personnel duly authorized for such purpose. Such protocol is deemed as writs of enforcement.

2. **Decision of the supervising authority establishing the cases in which personal data processing is not necessary**

Name of enactment			Decision No. 23/2012 issued by the President of the National Supervisory Authority for Personal Data Processing (“ NSAPDP ”) on establishing the cases in which personal data processing is not necessary (“ NSAPDP Decision No. 23/2012 ”)
Publication			Official Gazette of Romania, Part I, No. 216/02.04.2012
Entry into force			2 April 2012
Connections with other enactments	with	other	Law No. 677/2001 on the persons’ protection regarding the processing of personal data and the free circulation thereof (“ Law No. 677/2001 ”)
Main provisions			<p>NSAPDP Decision No. 23/2012 sets out nine cases in which it is not required to notify the processing of personal data, as follows:</p> <ul style="list-style-type: none"> • If personal data are processed by individuals or private entities performing freelance activities, authorized under a special law, for the purpose of fulfilling their legal duties; • If personal data are processed with a view to managing the database held by the National Archives; • If personal data are processed for rental of books, movies, other audiovisual works and reproductions thereof by public and private entities;

- If personal data are processed by a judicial authority for the purpose of fulfilling its legal duties, other than those provided at Article 2 para. (5) of Law No. 677/2001; Article 2 para. (5) of Law No. 677/2001 refers to the processing and transfer of personal data, performed in relation to prevention, research and suppression of crime and maintaining public order, as well as activities carried out in criminal law;
- When personal data are processed by the authorities of public local administration, at county level and at the level of Bucharest municipality, for the purpose of carrying out their legal duties;
- When personal data are processed for the purpose of mediating real estate transactions;
- When personal data are processed by political parties in relation to their own members, provided that such data are not disclosed to third parties without the consent of said persons.

Repealed enactments

Various provisions of NSAPDP President's Decision No. 91/2006 concerning cases where the simplified notification of personal data processing is allowed, published in the Official Gazette of Romania, Part I, No. 654/28.07.2006.

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