

Legal Bulletin

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Legal Bulletin

Competition Law

Name of the enactment	Order of the Competition Council No. 40/2011 for the implementation of the Guidelines on the requirements, terms and procedure to follow for the adoption of interim measures, according to the provisions of Article 47 of Competition Law No. 21/1996 (the “ Guidelines ”)
Publication	Official Gazette of Romania, Part I, No. 91 of 4 February 2011
Entry into force	4 February 2011
Connections with other enactments	Competition Law No. 21/1996 (the “ Competition Law ”);
Main provisions	<p>The Guidelines detail the provisions of Article 47 of the Competition Law on the implementation by the competition authority of interim measures until the completion of the procedures enforced (<i>i.e.</i> investigations on agreements/concerted practices between undertakings, abuse of dominant position, and in certain cases of economic concentrations).</p> <p>The Competition Council may order the implementation of interim measures should the following <u>cumulative requirements</u> be met: (i) the <i>prima facie</i> assessment should reveal certain acts of anticompetitive nature, expressly prohibited by the Competition Law, which must be urgently removed; and (ii) the emergency triggered by the risk of a serious and irreversible damage to competition.</p> <p>The interim measures which the competition authority may take (i) have to be <u>proportional</u> to the suspected act and purpose aimed by its adoption; (ii) are of a <u>provisional</u> nature; and (iii) are of a <u>standstill</u> nature, intended to preserve the situation existing prior to the occurrence of the anticompetitive acts. They may, for instance, secure access to an essential facility or terminate the practice of dumping prices.</p> <p>As to the <u>applicable procedure</u>, should it deem that it has to take interim measures; the Competition Council shall inform the parties involved on the authority’s preliminary analysis.</p> <p>The parties shall be given 15 days to submit written comments on the authority’s intention. The term shall start running upon communication of such intention. In addition, they may expressly request to present their standpoint before the</p>

Plenum of the Competition Council during the hearing procedure. According to the Guidelines, failure to submit the written standpoint and/or failure to request hearings before the Plenum of the Competition Council shall not be deemed as an impediment against continuing the procedure.

The decision of the Competition Council may be appealed before the Bucharest Court of Appeal, administrative disputes division within 30 days from communication.

Failure to comply with the decision laying down interim measures shall be sanctioned by fine ranging from 0.5% to 10% of the full turnover obtained in the year before the enforcement of the sanction. In addition, the authority may compel the parties to pay certain fines of up to 5% of the average daily turnover obtained in the year before the enforcement of the sanction.

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Consumer Protection Law

Name of the enactment

Government Emergency Ordinance No. 14/2011 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts (“**GEO No. 14/2011**”)

Publication

Official Gazette of Romania, Part I, No. 134 of 22 February 2011

Entry into force

23 February 2011

Connections with other enactments

- Government Emergency Ordinance No. 50/2010 on consumer loan contracts, approved as amended and supplemented by Law No. 288/2010;
- Government Ordinance No. 21/1992 on consumer protection, republished as amended and supplemented;
- Law No. 193/2000 on abusive clauses in contracts concluded between traders and consumers, republished as amended;
- Law No. 363/2007 on fighting against incorrect practices of the traders in their relations with consumers and harmonizing the regulations with the European legislation on consumer protection, as amended.

Connections with Community legislation

Restates Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, published in the Official Journal of the European Union, Series L, No. 33 dated 3 February

Main provisions

2009 (“**Directive 2008/122/EC**”).

The provisions of GEO No. 14/2011 apply to the following transactions between consumers and traders, but only to those to be concluded subsequent to the entry into force of the ordinance:

- **Timeshare contract** (for a term exceeding one year);
- **Long-term holiday product contract** (mainly, discounts and other benefits regarding the accommodation, with or without excluding transport or other services);
- **Resale contract** (the contract under which a trader, for valuable consideration, assists a consumer to sell or buy the rights listed above under letters a) and b));
- **Exchange contract** (the contract under which a consumer, for valuable consideration, joins an exchange system which allows that consumer access to overnight accommodation or other services, in exchange for granting to other persons temporary access to the benefits of the rights deriving from that consumer’s timeshare contract).

Traders may perform the transaction herein regulated based on the tourism license issued in accordance with the provisions of Government Decision No. 1267/2010 on the issuance of classification certificates, tourism licenses and certificates.

GEO No. 14/2011 includes provisions on consumer protection consisting of informing the consumer properly and in advance, form and contents of the contract concluded by the consumer and trader, consumer’s right to withdraw from the contract and prohibition of advance payments or establishment of securities upon the conclusion of one of the above contracts, which provision have to be complied with, the non-observance triggering the misdemeanor liability.

The consumer has to be informed both during the advertising formalities and prior to the conclusion of the contract, *i.e.* at least 15 calendar days prior to the conclusion of the contract or acceptance of the offer by the consumer.

The consumer has to be provided with certain pieces of information for each type of contract, and the trader has to fill in a standard informative form, as per the examples provided under the Appendixes to GEO No. 14/2011, with sufficient and accurate information so as not to mislead the consumer and to allow him to

make a decision in full awareness of the facts.

The contract has to be in writing and in Romanian, and, upon request of the foreign or nonresident citizen, in one of the European Union's official languages, in the language or in one of the languages of the Member State on whose territory he is residing or whose citizen he is. In addition, the contract shall include clauses expressly provided by law (information, data and place of conclusion, notification methods, etc.). Upon conclusion of the contract, the consumer shall be given at least one counterpart thereof.

Prior to the conclusion of the contract, the trader shall explicitly notify the consumer on: the right to withdraw from the contract, period in which he may exercise the right to withdraw and prohibition of advance payments in this period.

The consumer shall be entitled to withdraw from the above contracts within 14 calendar days, without giving any reason. The 14-day term shall start running differently: upon the conclusion of the contract, upon taking possession thereof (it this occurs at a previous time), upon receiving the standard form on the right to withdraw, upon receiving the information in the standard form. Withdrawal from the contract shall have to be notified in writing to the trader prior to the expiry of the term for withdrawal from the contract, by means securing its transmission. The right to withdraw shall become effective upon serving the notice.

Any advance payments, giving of securities, reservation of amounts from accounts, explicit acknowledgment of amounts due and any other payments or considerations made by consumer to the trader or any other third party prior to the resale contract becoming effective or prior to the expiry of the withdrawal term, in the case of the other contracts, shall be prohibited.

As to long-term holiday product contracts, the payment shall be made as per a fixed payment schedule, any other payment being prohibited, and after receiving a notice from the consumer 14 calendar days prior to the due date. The consumer shall be entitled to terminate the contract without payment of penalties, at any time after the payment of the second installment provided under the fixed payment schedule, subject to notifying the trader within 14 calendar days from receipt of the payment request related to each installment. This right shall not affect the consumer's right to terminate the contract based on general law provisions.

Should the consumer exercise his right to withdraw from the contracts listed under letters a) and b) above, any exchange contract which is dependent thereupon or any accessory contract shall be automatically terminated, without the consumer incurring any expense whatsoever. In addition, in case of a withdrawal from any contract provided under GEO No. 14/2011, in which the price is covered, in full or in part by a loan given to the consumer by the trader or any third party, based on a contract concluded between such third party and a trader, the loan contract shall be terminated without the consumer incurring any expense whatsoever.

When the legislation applicable to the contract is the legislation of a Member State, the consumer may not waive his rights granted by the national legislation of such Member State which transposes the provisions of Directive 2008/122/EC.

Consumer protection in this field shall also be kept, even if the law applicable to the contract is the law of a Third Party State in both the cases when any of the real estates in question is located on the territory of a Member State, and for the contracts which are not directly connected to real estates, if the trader carries out his trading or professional activities in a Member State or, by any means, directs such activities to a Member State, and the contract falls under the scope of such activities.

Repealed enactments

Law No. 282/2004 on protecting acquirers with respect to certain issues of the contracts regarding the acquiring of a right to use certain real estates for a limited term

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Exercise of Legal Profession

Name of the enactment

Government Emergency Ordinance No. 10/2011 repealing para. (8) of Article 39 of Law No. 51/1995 on organizing and exercising the legal profession ("GEO No. 10/2011")

Publication

Official Gazette of Romania, Part I, No. 113 of 14 February 2011

Entry into force

14 February 2011

Connections with other enactments

Law No. 51/1995 on organizing and exercising the legal profession

Main provisions

GEO No. 10/2011 repeals para. (8) of Article 39 of Law No. 51/1995 on organizing and exercising the legal profession, which provided that the lawyer was not held liable from a criminal standpoint for his professional advice and opinions given to

his client or for the legal acts proposed to his client, which resulted in the client committing a deed provided under the criminal law (except for offenses of a serious nature).

The repealed legal provision was the only one of its kind in the Romanian legislation, stipulating a cause of impunity for a certain category of active qualified subjects – participating as instigators or accessories in the perpetration by the client of a deed provided under the criminal law, circumstantiated by the exercise of a liberal profession, significantly impacting legal activity.

The presentation of grounds of GEO No. 10/2011 reveals that if this cause of impunity were maintained, the very legal profession would likely be affected, questioning the probity of the profession's members which are, at the same time, factors involved in establishing the state of facts and solving the case.

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Notarial Rates

Name of enactment

Order of the Minister of Justice No. 46/2011 approving the Norms regarding the rates for services rendered by notaries public (“**Order No. 46/2011**”)

Publication

Official Gazette of Romania, Part I, No. 133 of 22 February 2011

Entry into force

22 February 2011

Main provisions

Notarial fees are divided in two categories: fees in fixed amounts and gradual fees – by tranches and percentages – as per the fixed or fixable value of the deed's object. Gradual fees are established for procedures of succession and authentic deeds. Appendixes No. 1 and 2 to the Order No. 46/2011 list the notarial deeds and procedures for which the fees are established in a fixed amount, and gradual amount, respectively.

Order No. 46/2011 provides a set of situations to which exemptions from or discounts to notarial fees apply. To this end, it is noteworthy that, unlike the former regulation, the 15% discount to the fees for notarial deeds prepared by lawyers no longer applies. Order No. 46/2011 inserts a discount of maximum 15% to apply to the fee for authenticating deeds in which lawyers or legal advisors have the capacity of acquirers of the rights, and the obligation to pay the fee, implicitly, as well as to successions, if they have the capacity as heirs.

Repealed enactments

Order of the Minister of Justice No. 943/2005 approving the Norms regarding the rates for services rendered by notaries public

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Real Estate

Name of enactment	Emergency Ordinance No. 7/2011 of 2 February 2011 amending and supplementing Law No. 350/2001 on land development and town planning (“ GEO No. 7/2011 ”)
Publication	Official Gazette of Romania, Part I, No. 111 of 11 February 2011
Entry into force	11 February 2011
Connections with other enactments	Law No. 350/2001 on land development and town planning (“ Law No. 350/2001 ”)
Main provisions	GEO No. 7/2001 enacts a set of amendments to Law No. 350/2001 in an attempt to correlate the shortcomings in the field of town planning by measures aimed at limiting derogations from the General Town Planning Certificate (“ PUG ”) and abusive use of lands.

One of the most important amendments brought by GEO No. 7/2011 consists of reducing the possibilities of changing the approved town planning documentations. Consequently, according to GEO No. 7/2011, the initiative of preparing the land development and town planning documentations shall exclusively belong to the public administration authorities, except for local town planning certificates (“**PUZ**”) and detail town planning certificates (“**PUD**”) which may be initiated also by interested individuals or legal entities, only if the *intra-muros* area is extended to reach larger areas and certain types of areas generating development and jobs: industrial parks, shopping centers, technological parks, new residential neighborhoods, transport infrastructure. Consequently, should the application for the issuance of the town planning certificate request an amendment of the town planning documentations approved for such area, or should the specific conditions of the location or nature of the investment objectives require it, the local public authority shall be entitled, under the town planning certificate, to condition the authorization of the investment to the preparation of a local town planning certificate, by care of the private investor under the conditions of law, and to the approval thereof by the local public authority, only if the *intra-muros* area is extended by at least 10,000 sqm for residential objectives or by at least 5,000 sqm for services or production objectives (industrial parks).

In this case, the local town planning certificate may be initiated only after having obtained an advisability endorsement prepared by the head architect and approved by the chairman of the county committee with the prior endorsement of the mayor, by the mayor, or general mayor of Bucharest, respectively, as the

case may be.

Whereas, according to the legal regulations, the PUG, the main operational planning instrument, is updated at a 10-year rate, at the most, GEO No. 7/2011 provides that, based on the specialty report of the head architect, the mayor shall have the obligation to initiate the procedure for procurement of PUG updating services and extension of the in-force PUG's validity term, with at least 18 months prior to the expiry of the PUG's validity term.

At the same time, GEO No. 7/2011 entitles the Local Committees/General Council of Bucharest Municipality to extend by means of a decision the validity term of the PUG until the entry into force of the new PUG, however without exceeding two years from the expiry of the validity term.

As to communes or towns with less than 10,000 inhabitants if, since the approval of the PUG no changes occurred in the development of the territorial administrative unit requiring an updated version thereof, the mayor shall initiate the procedure of extending the validity by decision of the local committee with at least 18 months prior to the expiry date thereof, with the prior endorsement of the head architect of the county, obtained based on reviewing the available statistic information on economic, social and territorial dynamics, and the approved strategies and programs for development at a county and/or national level. Should a favorable endorsement be obtained, the mayor shall propose the extension of the PUG's validity to the local council for a period of maximum 3 years from the expiry thereof. Otherwise, the mayor shall propose the initiation of the procedure for procurement of the services for updating the town planning documentation to the local council.

The PUZ establishes regulations with respect to the construction regime, function of the area, maximum permitted height, land use coefficient ("CUT"), land occupancy ratio ("POT"), buildings alignment receding planes and distances to lateral and backside limits of the plot, architectural features of the buildings, permitted materials.

The PUD shall have the exclusive nature of a specific regulation of a plot in relation to the neighboring plots. This cannot change the higher plans, but only detail the specific construction fashion considering the function of the area and the architectural identity thereof.

Land development and town planning documentations prepared according to the laws in force, which are endorsed and approved according to law and

requested under the town planning certificate shall be proposed by the mayor for approval by decision of the local/general council, based on the specialty report of the head architect within maximum 30 days as of the registration of the documentation with the city hall's records department.

Within maximum 30 days as of the completion of the public debate and submission of the presentation of grounds prepared by the mayor/chairman of the county council and of the specialty report prepared by the head architect, the county or local council shall have the obligation to make a decision approving or dismissing the land development or town planning documentation.

Starting from 1 January 2012, no town planning documentations intended to make legal certain constructions built without a building permit or failing to comply with the provisions of the building permit may be initiated and approved. The annulment of the decisions approving town planning certificates issued in breach of the legal provisions shall be requested by the prefect under the conditions of law, after verifying the lawfulness, or upon a notification from the general inspector of the State Inspectorate in Constructions, county head architect or central specialty authorities, within the terms provided by law.

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Regime of Explosives

Name of enactment

Government Emergency Ordinance No. 9/2011 amending and supplementing Law No. 126/1995 on the regime of explosives ("**GEO No. 9/2011**")

Publication

Official Gazette of Romania, Part I, No. 107 of 10 February 2011

Entry into force

10 February 2011

Connections with other enactments

Law No. 126/1995 on the regime of explosives ("**Law No. 126/1995**")

Main provisions

The adoption of GEO No. 14/2011 is part of an attempt of harmonizing the national sectorial legislation with the requirements of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market

The main requirements of marketing civil explosives are regulated by the European legislation, such as:

- (EC) Regulation No. 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH), establishing a European Chemicals

Agency;

- (EC) Regulation No. 1272/2008 of the European Parliament and of the Council on classification, labeling and packaging of substances and mixtures.

Individuals shall not be entitled to hold, use, transport, store, experiment with or handle civil explosives or pyrotechnical items if they fail to produce evidence attesting to their capacity as **authorized pyrotechnicians**, respectively, and to represent a legal entity authorized and registered according to legal provisions. Conditions and requirements for becoming authorized as pyrotechnician shall be established by the technical norms on holding, preparing, experimenting with, destroying, transporting, storing, handling and using explosives used in any other operations which are specific to the holders, and on authorizing pyrotechnicians, approved by Government decision.

The manufacture, holding, trading, import, use or any other operation involving explosives by unauthorized individuals or legal entities shall be prohibited. Moreover, authorized persons shall have to comply with the manufacturer's technical regulations and instructions, should one of the above operations be performed.

The premises for selling pyrotechnical items shall be developed outside residential buildings. The sale of explosives shall be performed only after the registration thereof with the register of accurate incoming, outgoing and consumption of explosives.

As to the use of pyrotechnical items for entertainment purposes, certain conditions have to be observed for the protection of persons, goods, animals and environment. The use of pyrotechnical items for entertainment purposes shall be prohibited in the following situations:

- Between 12:00 a.m. to 6:00 a.m., except for authorized periods, and events of a local, national or international interest, based on the approval of local authorities;
- At a distance below 50 m from residential buildings with up to 4 levels, and 100 m from those with more than 4 levels;
- At a distance below 500 m from high voltage equipment, liquid or solid fuel storing and delivering capacities, gas equipment;
- At a distance below the one provided under the regulations in force

for chemical and petrochemical sites or for other fire or explosion-hazardous sites;

- In sites with risks of landslides, avalanches or rock falling;
- On public roads opened to traffic, pedestrian alleys and opened crowded areas;
- At a distance below 500 m from forests.

The organization of games with pyrotechnical items for entertainment purposes falling under categories 3 and 4 shall be permitted only with the approval of the city hall, county inspectorate for emergency situations or Bucharest Municipality, as the case may be, and the endorsement of the county police inspectorate, or of the General Directorate of Bucharest Police, respectively, depending on where such events are organized.

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Telecommunications

Name of the enactment

Government Emergency Ordinance No. 19/2011 on certain measures for the amendment of certain enactments in the field of electronic communication ("**GEO No. 19/2011**")

Publication

Official Gazette of Romania, Part I, No. 146 of 28 February 2011

Entry into force

28 February 2011

Connections with other enactments

- Government Emergency Ordinance No. 22/2009 on the establishment of the National Authority for Management and Regulation in Communications approved by Law No. 113/2010 ("**GEO No. 22/2009**");
- Government Emergency Ordinance No. 79/2002 on the general communications regulatory framework, approved as amended and supplemented by Law No. 591/2002, as amended and supplemented ("**GEO No. 79/2002**");
- Audiovisual Law No. 504/2002, as amended and supplemented ("**Audiovisual Law No. 504/2002**").

Connections with Community legislation

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 ("**Directive 2002/21/EC**")

Main provisions

GEO No. 19/2011 amends and supplements the national legislation in the field of

telecommunications, as amended and supplemented, in consideration of the fact that in November 2010, Romania was served by the European Commission an official request in the form of a reasoned opinion within the infringement procedure, requesting the former to comply with the provisions of Directive 2002/21/EC within two months, otherwise the Court of Justice of the European Union shall be notified.

The main provisions of GEO No. 19/2011 concern the following issues:

- Amendments brought to GEO No. 79/2002

According to GEO No. 19/2011, the National Authority for Management and Regulation in Communications (“**ANCOM**”) adopts the National Radiofrequency Allocation Table, by decision of the chairman with the endorsement of the Radio-Communication Interdepartmental Committee, for allocations including frequency bands of a governmental use or under governmental/non-governmental sharing, instead of the Ministry of Communications and Information Technology.

ANCOM shall be in charge of prohibiting the full or partial use of a frequency band or certain frequencies on a limited time, instead of the Ministry of Communications and Information Technology.

The fashion of offsetting the costs generated by the change in destination or reorganization of the use of certain radiofrequencies shall be established for each of them by Government Decision, upon ANCOM’s proposal initiated by the General Secretariat of the Government.

In addition, the General Inspectorate for Communications and Information Technology shall be replaced by ANCOM in the management and coordination of the radiofrequency spectrum, where it shall be assisted by the Radio-Communication Interdepartmental Committee intended to provide consultancy, and having no legal status.

According to the amendment brought by GEO No. 19/2011, in the case of the radiofrequencies necessary for the own needs of the institutions within the National Defense System, the use thereof shall be made directly according to the allocation made under the National Radiofrequency Allocation Table.

GEO No. 19/2011 inserts the regulation establishing the amount required for the award of licenses to use radiofrequencies, by Government Decision, upon ANCOM’s proposal and upon the initiative of the General Secretariat of the

Government. The applied selection procedure for granting the right to use the radio spectrum shall also be carried out at the proposal and initiative of the above authorities, by Government Decision, and the detailed regulation of the fashion of holding the competitive or comparative selection procedures shall be adopted by decision of ANCOM's Chairman.

- Amendments brought to GEO No. 22/2009

According to the amendments brought by GEO No. 19/2011, ANCOM may propose bills amending and supplementing the legislative framework regarding the exercise of certain regulatory positions and duties in the field of electronic communications, audiovisual communications, radio equipment and telecommunication terminals.

According to the amendments brought by GEO No. 19/2011, prior to the National Numbering Plan, ANCOM shall have to notify Ministry of Communications and Information Society on the amendments brought to the National Numbering Plan. Moreover, ANCOM shall adopt the National Radiofrequency Allocation Table and any amendments and/or supplementations thereto, shall grant licenses to use radio frequencies for the provision of electronic communication networks and services using the radio spectrum, as well as the broadcasting licenses and shall establish the rate for using the spectrum; on the other hand, ANCOM stopped giving technical approvals.

- Amendments brought to Audiovisual Law No. 504/2002

A joint consultative committee formed of 3 members proposed by the Council, 3 members proposed by ANCOM and one member proposed by the Ministry of Communications and Information Society, as observer shall be created in order to establish the strategy in the field of radio frequency use, the National Radiofrequency Plan allocated to the audiovisual media services and to analyze the issues concerning the use of the radio spectrum intended for audiovisual media services, and those concerning the recent technological developments impacting audiovisual media services.

The fashion in which procedures are carried out and the conditions of granting licenses to use radio frequencies in digital terrestrial system, and the amount of the license fee shall be established by Government Decision and, according to the amendments brought, the decision shall be initiated by the General Secretariat of the Government solely upon proposal of ANCOM.

According to GEO No. 19/2011, the broadcasting license may be revoked or

suspended, as the case may be, by ANCOM, by decision of the chairman, as opposed to the former regulation where the broadcasting license could only be withdrawn. The same applies to the license to use the radio frequencies in digital terrestrial system.

According to the legislative amendments that were brought, the use of terrestrial radio and television broadcasting stations under jurisdiction of Romania for the provision of any program service, and on the territory of Romania, respectively, may be performed only subsequent to obtaining the technical permit from ANCOM, according to the procedure established by the latter.

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