

Client Brief

COMPETITION | COMMERCIAL PRACTICES | ROMANIA

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RECENT REFORM OF THE ROMANIAN LAW ON UNFAIR COMPETITION

Government Ordinance no. 12/2014¹ has recently amended the main Romanian legal enactment on unfair competition – Law no. 11/1991.

The scope of these amendments covers the content of the prohibited unfair competition practices, as well as a more precise regulation of the Competition Council's role in sanctioning such practices.

Definition of “unfair competition”, “fair competition” and “fair usages”

As compared to the previous provisions, the concept of “unfair competition” witnessed certain changes. If unfair competition previously referred to any practice contrary to fair usages in the professional activity, Government Ordinance no. 12/2014 introduces two additional criteria: the violation of the general principle of good faith and the possibility that the practice may cause damage to market participants (undertakings and/or consumers).

The newly introduced notion of “fair competition” is defined as the situation of rivalry on the market, in which each undertaking aims to carry out sales and to obtain profit and/or market share at the same time, by offering the best practical combination of prices, quality and related services, in compliance with the fair usages and with the general principle of good faith.

Finally, a useful new addition is the definition of the concept of “fair usages”, namely the generally recognised rules or practices to be applied in the commercial relations between undertakings in order to prevent the violation of their legitimate rights.

Liability for unfair competition practices

The infringement by undertakings of the fair competition obligations may entail:

- a) their civil liability *and/or*
- b) their contraventional *or* criminal² liability.

¹ Government Ordinance no. 12/2014 amending Law no. 11/1991 on unfair competition and other legal enactments on competition, published in the Official Gazette of Romania, Part I, no. 586 of 6 August 2014.

² By way of example, Law no. 11/1991 qualifies as criminal offences: the use of a sign, logo or packaging likely to cause confusion with those legally used by another trader; the disclosure, purchase or use of a trade secret by third parties, as a result of a commercial or industrial espionage action, if the interests or the activity of a legal entity are thereby affected. We point out that Law no. 11/1991 also qualifies as criminal offences other unfair competition practices, which are not specified above.

The major changes brought by the new legal provisions are related to the contraventional liability. Thus, the scope of the unfair competition practices which can be sanctioned from a contraventional standpoint has been considerably reduced, being limited to the following:

- a) the denigration of a competitor or of its products/services, by communicating or disseminating false allegations regarding its activity or products, likely to prejudice that competitor's interests;
- b) the misappropriation of the customers of an undertaking, by a former or current employee/representative or by any other person, through use of trade secrets for which the undertaking had taken reasonable protection measures and the disclosure of which may prejudice the interests of that undertaking.

Likewise, the sanctions for the contraventional liability have been modified. The two abovementioned practices shall be penalised with fine between RON 5,000 and 50,000³ if committed by legal entities⁴.

The Competition Council's role regarding unfair competition practices

In its previous form, Law no. 11/1991 contained only concise provisions with respect to the Competition Council's role in finding and sanctioning the unfair competition practices.

According to the new provisions introduced by Government Ordinance no. 12/2014, the Competition Council may, as appropriate:

- a) order the cessation of the unfair competition practice during the probing of the complaint;
- b) forbid an unfair competition practice;
- c) impose fines in case the unfair competition practice constitutes a contravention.

Moreover, the new regulation sets forth procedural rules for probing the complaints submitted to the Competition Council, as well as for challenging and enforcing the decisions issued by the Council in relation to unfair competition practices.

The competition inspectors may require undertakings or public authorities to provide the information and documents which are necessary for probing the complaints. The competition inspectors may carry out dawn raids only if there are indications that information or documents necessary for the performance of their duties can be found or obtained.

Last but not least, contraventional sanctions were introduced for the cases in which the concerned undertakings do not cooperate with the Competition Council within its investigations. In such cases, fines of up to RON 10,000 (approximately EUR 2,200)⁵ may be applied to legal entities.

³ That is, between approximately EUR 1,100 and 11,100.

⁴ For individuals, fines are set between RON 1,000 and 5,000 (that is, between approximately EUR 220 and 1,100).

⁵ Individuals may be sanctioned with fines of up to RON 2,000 (approximately EUR 440).

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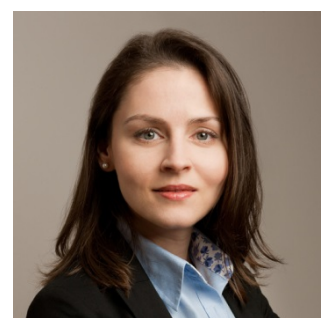
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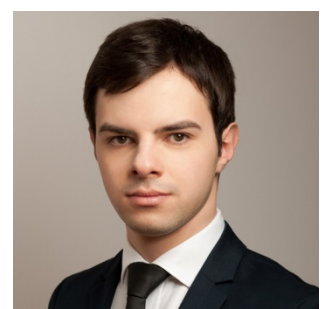
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