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### **Government Emergency Ordinance no. 84/2022 on combating speculative actions and amending and supplementing certain normative acts**

The Emergency Ordinance, published in the Official Gazette of June 20, 2022, aims to protect both consumers, as well as the internal market during periods of partial or total mobilization of the armed forces, state of war, state of siege, and state of emergency, state of alert or other crisis situations explicitly established by normative acts issued by the Parliament or the Government of Romania.

### **New changes with respect to the removal of lands located outside the city limits from the agricultural circuit for the purposes of developing renewable energy projects**

The new legislative changes brought to the **Land Law no. 18/1991, implemented through Law no. 254/2022**, aim at simplifying the procedure for removal of a plot of land located outside city limits from the agricultural circuit in order to build projects for generating energy from renewable sources. In principle, the new legal provisions allow for the plots of land having the category of use of arable land, vineyards, orchards or affected by land improvement works to be removed from agricultural circuit without undergoing the procedure of including such lands into the city limits via the preparation and approval of relevant urbanism documentation.

## I. Government Emergency Ordinance no. 84/2022 on combating speculative actions and amending and supplementing certain normative acts

Government Emergency Ordinance no. 84/2022 on combating speculative actions and for amending and supplementing certain normative acts ("GEO 84/2022") was enacted by Romanian Government and published in the Official Gazette, Part I no. 601, as of June 20, 2022. Most of its provisions entered into force as of July 20, 2022.

### 1. Scope

Considering the negative consequences on the economic environment generated by the current context existing at national and international level, as well as the imminence of the speculative actions, likely to destabilize the proper functioning of the national economy, the Romanian Government amended the existing legal framework, both at B2B and B2C level, in order to give to the public authorities the opportunity to intervene in the economy and combat the speculative actions of the companies.

GEO 84/2022 aims to protect both consumers, as well as the internal market during periods of partial or total mobilization of the armed forces, state of war, state of siege, and state of emergency, state of alert or other crisis situations explicitly established by normative acts issued by the Parliament or the Government of Romania. Consequently **GEO 84/2022 allows the authorities, in certain situations, to intervene and correct in real time the prohibited behaviours of traders, wholesalers or service providers.** If, with regards to the state of mobilization of the armed forces, the state of emergency or alert, there are specific regulations regarding the moment when they can be declared, with regards to crisis situations, there are no express definitions provided by the law, giving public authorities significant discretion when analysing the existence of such a situation.

### 2. What are speculative actions?

Speculative risk targets those situations in which there might be **unjustified price increase or there may be a major imbalance between supply and demand on the market.** These situations are identified either by the National Agency for Fiscal Administration or by other public authorities or institutions depending on the area of competence, following the evaluations that are made based on the controls they carried out, ex officio or upon notification of the representative associative structures of the business environment or consumers.

**Speculative actions** may consist in any of the following actions:

- (i) setting unreasonably high prices;
- (ii) unreasonably limiting production or sales;
- (iii) the accumulation of goods on the foreign or domestic market with the purpose of creating a deficit on the Romanian market and to resell them later at an unjustifiably increased price.

Among **criteria for assessing speculative actions** are mentioned the following:

- (i) the profit margins or the mark-ups for the products or services in question, in order to analyse a disproportionate increase in prices compared to expenses;
- (ii) the level of the selling price compared to the prices charged in the last 12 months or, as the case may be, for seasonal products/services, in the similar periods of the last 3 years, without the differences being objectively justified;
- (iii) artificial increase in production costs, including wage costs, to hide an unjustified increase in the price of the final product/service;
- (iv) the distribution of the products through a chain comprising more intermediaries than usual, without undergoing any transformation, with the aim of increasing the price;
- (v) unjustified limitation of production or sales, which had the effect of stopping/significantly reducing the supply of the internal market in the absence of economic or other factors justifying such a limitation/cessation;
- (vi) the increase of stocks, in a certain period, compared to the average level of stocks existing in the last 12 months or for seasonal products / services, in the similar periods of the last 3 years, without the differences being objectively justified.

The **products, product categories or services** considered essential in relation to the specifics of the situation and which are considered in a situation of speculative risk, will be established by the means of a Government Decision.

The **competent** authorities that can investigate and apply the appropriate sanctions in case of committing the acts that constitute speculative actions according to the provisions of GEO 84/2022 are as follows:

- (i) **the Competition Council**<sup>1</sup> – where speculative actions are committed against other undertakings;
- (ii) **the National Authority for Consumer Protection**<sup>2</sup> (“NACP”) - where the speculative actions are directly targeted at the consumer, the natural person.

### 3. Amendments to Law no. 11/1991 on combating unfair competition

Law no. 11/1991 on combating unfair competition was also amended to align with the principles of combating speculative actions introduced by GEO 84/2022.

The most important amendment consists in regulating as unfair competition practice the **exploitation of the superior negotiating position**<sup>3</sup> by one undertaking against another undertaking with which it has been or is in a commercial relationship such as to cause significant injury to the latter and that affects the competition on the market, achieved by actions or inactions such as:

- o unjustified refusal to supply or purchase goods or services;
- o failure to comply with contractual terms regarding payment, supply or purchase;
- o the imposition of unreasonably onerous or discriminatory conditions in relation to the object of the contract;
- o unjustified modification or termination of commercial relations with the partner enterprise.

Also, the following actions of an undertaking against another undertaking, if they are committed during the period of a state of partial or total mobilization of the armed forces and a state of war, a state of siege and a state of emergency, a state of alert or other crisis situations explicitly established by normative acts, are considered unfair competition practices:

- o setting unreasonably high prices;
- o unreasonably limiting production or sales;
- o the accumulation of goods on the foreign or domestic market in order to create a deficit on the Romanian market and to resell them later at an unjustifiably increased price.

The **sanctions** for the acts of unfair competition introduced by GEO 84/2022 are:

- a fine **from RON 50,000 to RON 500,000** for contraventions committed by **legal persons**;
- a fine **from RON 5,500 to RON 11,000** for contraventions committed by **individuals**.

Where natural or legal persons **expressly acknowledge committing acts of unfair competition**, the Competition Council may apply a **reduction of the fine between 10% and 20%** of the amount of the fine.

### 4. Amendment of Government Ordinance no. 21/1992 on the consumer protection

Amendments to Government Ordinance no. 21/1992 on the consumer protection are as follows:

- (i) **speculative actions** committed by businesses against consumers during the time limits mentioned above are **expressly prohibited**;

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<sup>1</sup> Under Law no. 11/1991 on combating unfair competition, with subsequent amendments;

<sup>2</sup> According to the provisions of Government Ordinance no. 21/1992 on consumer protection, republished, with subsequent amendments;

<sup>3</sup> A **superior negotiating position** is the situation in which an undertaking that, although not in a dominant position, is in a situation determined by market characteristics, which fosters the emergence of significant imbalances arising from factors such as the specific structure of the production or distribution chain, vulnerability to external factors, perishability or seasonality, and the specific relationship between them and other undertakings operating in different markets.

- (ii) the penalty for the non-compliance with those provisions is a **fine between RON 50,000 to RON 500,000**, and the authority empowered by law to establish that this offence has been committed is the **NACP**;
- (iii) in order to limit the harm to consumers, **NACP may impose companies to return to the selling price charged on the online platform / at the controlled working point, prior to the speculative action within a maximum term of 24 hours or to stop selling altogether.**

## II. **New changes with respect to the procedure for the removal of the agricultural lands located outside the city limits from the agricultural circuit, meant to simplify this procedure**

On 27 July 2022, the changes regarding the removal of the agricultural lands located outside the city limits from the agricultural circuit have entered into force through the publication into the Official Gazette no. 736 of the Law no. 254/2022 for amending and supplementing Law no. 18/1991 (hereinafter referred to as the "**Law 254/2022**").

Mainly, the new changes establish a new exception from the interdiction to erect new constructions on plots of land located outside the city limits. Namely, the new provisions set forth the possibility to build projects specific to the activity of obtaining/generating energy from renewable sources on plots of land located outside the city limits after their temporary or definitive removal from the agricultural circuit.

Thus, with the exception of permanent pastures for which a different regulation was in place at the date of entry into force of Law 254/2022, it is no longer necessary for the plots of land located outside city limits to be included within the city limits in view of developing projects specific to the generation of energy from renewable sources.

According to the amendments enacted to the Land Law 18/1991, in accordance with the provisions included by the Law 254/2022, the following changes shall be brought to the relevant legal framework:

- (i) the extra-muros agricultural plots of land classified with the quality class III, IV and V, including arable lands, pastures, vineyards, orchards and lands affected by land improvement works, may be removed from the agricultural circuit based on the building permit and with the approval for the removal for definitive or temporary removal from agricultural circuit.
- (ii) The above-mentioned removal from agricultural circuit may be performed for the purposes of developing projects specific to the activity of generating energy from renewable sources, namely for capacities of generating solar, wind, biomass, bioliquid and biogas energy;
- (iii) Thus, the construction of this type of projects shall represent a general exemption included in the Land Law 18/1991, for arable, pastures, vineyards, orchards and lands affected by land improvement works, as opposed to the current legal exemption provided solely for pastures in Government Emergency Ordinance no. 34/2013 on the organization, management and exploitation of permanent pastures and for amending and supplementing the Land Law no. 18/1991 ("**GEO 34/2013**");
- (iv) The area of the respective lands to be removed may not exceed a total area of 50 ha;
- (v) Except for arable lands (in Romanian: "terenuri cu destinatie arabila"), the plots of land may be used in a dual system, namely part of the land will be affected by buildings pertaining to the projects for generating energy from renewable sources, while the rest of the land (unaffected by constructions) will be used as agricultural land. In such a case, the definitive or temporary removal shall be performed partially, namely solely for the area to be used by the developed constructions.
- (vi) Similarly, GEO 34/2013 regarding the removal of pastures from the agricultural circuit is also amended in order to allow the use of the permanent pasture land in a dual system.
- (vii) In case of using the land in a dual system, the developers of renewable energy projects are exempted from paying the fee for the removal of land from the agricultural circuit for the part of the land which remained in agricultural circuit

The new form of Law 18/1991 indicates that the removal of land from agricultural circuit, for the purposes indicated above, shall be performed through the decision of the County Department for Agriculture with the approval of the specialized structure of the Ministry of Agriculture and Rural Development for lands exceeding a total area of 1 (one) hectare. Such decision shall be issued within a maximum term of 45 calendar days as of the registration of the request. We note that in case the

relevant decision and approval will not be issued within the legal term, it shall be deemed that the authorities have given their tacit consent with respect to the removal of land.

We also note that Law 254/2022 indicates expressly that the implemented changes shall be applicable for a limited period of time, namely until 31 December 2026.

For further questions regarding the aspects mentioned in this alert, please contact us.



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