

# Combatting late payment in Romanian commercial transactions

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46

**Transposing into the Romanian legislation of the Directive 2000/35/CE of the European Parliament and Council – positive aspects and important omissions.**

**T**he transposing into the Romanian legislation of the Directive 2000/35/CE of the European Parliament and Council (hereinafter ‘the Directive’) by the Government Emergency Ordinance no. 119/2007 (hereinafter ‘GEO 119/2007’) regarding the measures for combating late payment in commercial contracts is part of the ample and on-going process of the harmonization of the Romanian legislation with the European legislation.

First of all, it is important to mention that at the date GEO 119/2007 was adopted, there were some laws in Romania which aimed to discourage the temptation of late payment in the commercial contracts:

- Government Ordinance no. 9/2000, which stipulates that in case the value of the interest is not stipulated in the contract, the legal interest shall be applicable, calculated on the basis of the National Bank of Romania Reference Rate;
- Government Ordinance no. 5/2001 which created a flexible, efficient and cost-effective debt recovery procedure for debts arisen from some categories of civil and commercial contracts.

So, what does GEO 119/2007 bring new to the Romanian legislation regarding the combating of late payment and debt recovery?

First of all, GEO 119/2007 includes in the category of commercial contracts for which its provisions are applicable the contracts concluded between undertakings and the public authorities having as object the supply of goods or the providing of services for a price.

This is an important step ahead in consolidating the position of the undertakings in relation to the public authorities, considering that the number of contracts concluded with public authorities is quite important and the commercial effort in such a contract is equal to the effort made in any other commercial contract. Moreover, due to the complicated and bureaucratic decision mechanism of the public authorities, sometimes delays in payment of the amounts due on the basis of commercial contracts may occur.

GEO 119/2007 also sets a fast debt recovery procedure, which brings as novelty comparing to the previously existing debt recovery procedures:

- a maximum term for the first court procedure, which shall not surpass 90 days and at the end of which the judgment delivered by the court can be executed;

- the obligation for the debtor to file a statement of defense, under the sanction of losing the right to contest the claim and of giving the court the possibility to consider the debtor’s passivity as a recognition of the creditor’s claim;
- the possibility for the parties to produce in court any evidence, not only documents, unlike the Government Ordinance no. 5/2001.

All the above reviewed issues are positive aspects related to the transposing into the Romanian

applies to ‘commercial contracts’, which are defined as ‘contracts concluded between traders or between traders and a public authority, having as object supply of goods or providing of services for a price’. Moreover, the term ‘trader’ is not defined by GEO 119/2007, which means that the general provisions of the Romanian commercial code apply in order to determine what category of persons performing economic activities can be qualified as ‘traders’. Or, according to these provisions, as well as

There are some important omissions in the transposition of Directive 2000/35/CE into Romanian law – such as contracts concluded by the liberal professions

legislation of the Directive.

Still, in the transposing process some important omissions occurred also.

The most important such omission is, in our opinion, the exclusion from the applicability of GEO 119/2007 of the contracts concluded by the liberal professions. Thus, even if the Directive applies to ‘undertakings’, defined as being ‘any organization acting in the course of its independent economic or professional activity’, GEO 119/2007 expressly stipulates that it only

according to an unanimous doctrine and to the laws regulating the statute of the lawyer’s profession, the lawyers, for example, cannot be considered ‘traders’ in the meaning of the Romanian commercial code, which means that the provisions of GEO 119/2007 shall not apply for the contracts concluded by lawyers with public authorities or private entities.

It is interesting to notice that the preliminary approval issued by the Romanian Legislative

Council with regard to the project of GEO 119/2007 stipulates expressly that the project should be modified in order to make it applicable also for the liberal professions. Nevertheless, even if the Romanian Government considered other objections of the Legislative Council (and changed, e.g., 'considering that' with 'whereas' in the preamble of GEO 119/2007), it overlooked a far more significant omission regarding the applicability of this Ordinance.

Another important omission is related to the non-transposing of the provisions of the Directive related to the possibility of the organizations officially recognized as representing the small and medium-sized enterprises to file court cases on the grounds that contractual terms drawn up for the general use are grossly 'unfair' in the meaning of the Directive.

The explanation for the non-transposing of the above-mentioned provision was that GEO 119/2007 sets the nullity of any contractual provision which obliges the creditor to notify the debtor in order for the interest to be calculated from the due-date or which sets dates for the calculation of interest longer than those stipulated in the Ordinance. Or, considering that the nullity can be invoked by any party that has an interest, the

Romanian Government considered that by this provision, implicitly, the provisions of the Directive related to the organizations representing small and medium-sized enterprises are transposed.

This conclusion is, in our opinion, wrong, considering that, according to the Romanian Civil Proceedings Code, in order for a group to open a court case for the protection of a collective interest (as it would be the case with an action filed by an organization representing small and medium-sized enterprises), besides the existence of an interest, the law must give the respective group the possibility to be a plaintiff in such a court case. Or, as at present the Romanian law does not recognize this possibility for the organizations representing small and medium-sized enterprises – so, in our opinion, such organizations could not open a court case requesting the annulment of some 'unfair' contractual terms, regardless if such terms are drawn up for 'general use', as stipulated in the Directive, or they are part of a particular contract.

Another omission which needs to be pointed out is related to the debt recovery procedure set by GEO 119/2007.

Thus, GEO 119/2007 stipulates that an application for the annulment of the payment ordinance delivered by the

first court can be filed, but it does not stipulate the term in which this application should be filed.

Fortunately, this omission has been noticed by the Romanian Senate which, in the project of the law for the approval of GEO 119/2007 sets a 10 days term for the filing of the above-mentioned application.

These are, in our opinion, the most important positive aspects and omissions related to the transposing into the Romanian law of the Directive.

As an optimistic

conclusion of all the above-exposed issues, we can say that the transposing of the Directive is definitely a step ahead in the attempt to strengthen the contractual discipline in Romania and to discourage that the late payment in commercial contracts becomes economically efficient. As regards the transposing omissions, let's just hope that they are going to be corrected by the Law which shall approve GEO 119/2007 and which is, at the time of the drafting of this article, in debates at the Romanian Chamber of Deputies. ■



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