

THE COMPLIANCE OF THE NATIONAL LEGISLATION WITH THE REGULATIONS OF THE EUROPEAN UNION

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Abstract

Romania's Integration in the European Union has triggered the compliance of the national legislation with the communitarian regulations, as a natural necessity of the capacity to undertake the duties as a member of the European Union, which imply the responsibility to have a complete transfer of the communitarian acquis to the national legislation, both before the accession date and afterwards, within the forthcoming regulations.

Consequently, it is believed that most normative acts represent a new legislation, made according to the new Constitution and in accordance with the communitarian spirit and the old ones were changed to comply with the communitarian regulations of the respective field, or with the modern regulations of the communitarian states.

As for the education, there is a need for an intensification of the measures to insure the mutual acknowledgement of the professional qualifications and degrees, as well as the introduction of the necessary administrative structures and of the educational programs in accordance with the new requirements.

Keywords: communitarian regulations, communitarian acquis, communitarian law

As a major objective for any state that accesses the European Union, the compliance of the national legislation with the communitarian regulations, must be found in the accession strategy of any candidate state to the quality of member of the European Union. A binding measure for the accession, formulated by the European Council in Copenhagen from June 1993, is the capacity to undertake the obligations as a member of the European Union, that engender the responsibility to have a complete transfer of the communitarian acquis in the Romanian legislation.

As a consequence, in June 1995 The National Strategy for the accession was adopted at Snagov, in 1996 the National Program for legislative compliance was

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drawn up and in December 1997 the Romanian Government adopted The National Program for the Adoption of the Communitarian Acquis, creating administrative institutions and structures to insure the implementation of the new legislation.

The process of complying with the communitarian acquis means its acquisition, its assimilation by the legislator and its organic integration in the respective system of law, the absence of which makes it impossible for the communitarian acquis to be actually enforced²¹.

A constant effort has been made so that the initiators could draw up normative acts that are in compliance with the essential instruments of the European Union, even though a complete compliance with the Romanian realities hasn't yet been possible in all domains.

The Communitarian Law represents a coherent set of norms, coherence that must be present within our whole system of law, that is the legal norm in the law in compliance with the communitarian one, must be transposed appropriately in the inferior normative acts up to the normative orders of the Ministers or the local regulations.

The compliance of the legislation is a continuous process that develops within the context of the actual European accession, the compliance with the communitarian acquis implying its thorough knowledge, its compliance with the Romanian realities and the insurance of a coherence for the new complied legislation or for the one issued after the accession.

Meanwhile, it is a necessity triggered by Romania's option for the reforms it has undertaken and the creation of a market economy, an obligation undertaken through the Agreement signed by our country with the European Union, an agreement ratified by Act 20/1993²².

Ever since the official launch of the accession to the European Union request, in June 1995, Romania has undertaken the obligation to carry out the criteria established by the European Union as necessary for the integration in the European structures.

In May 2000 The National Program for Romania's Accession to the European Union (PNAR) was adopted, through the consensus of all the political forces, it was updated in June 2001 for 2001-2004. During 2000 the National Strategy for Romania's mid-term Economic Development was adopted.

²¹ See Act 24/2000 concerning the norms of legislative technique for the elaboration of the normative acts, republished in the Official Monitor, Part I no. 777 of 25/08/2004, that provides specifically that the presentation of the motives and the fundamental notes must include a special mentioning about the compliance of the normative acts with the communitarian regulations and, if necessary, the future measures of compliance that need to be taken.

²² See Chapter III from Title V in the Agreement signed by Romania with the European Union, which is entirely concerned with the compliance of the legislation.

There are three large departments within the European Integration Ministry, set up in 2001, as a specialized body for the central public administration that has insured the fundament and coordination of the process of preparation for Romania's accession to the European Union: the preparation of the accession, the compliance of the Romanian legislation with the communitarian regulations, the negotiation for the accession.

The compliance of the domestic legislation with the communitarian regulations has been a complex process that implies a close cooperation and even solidarity between all the bodies concerned with the European accession.

Within the transfer of the directives in the national legislation, there must be a special attention paid to their assimilation in the substance of the specific for law of each associated state, so as the communitarian provisions be transposed accordingly, in the terminology specific to our system of law through the identification of those terms corresponding to the natural meaning of the Romanian language.

The process of the compliance of the national legislation with the communitarian one, as well as the process of European accession, has been a complex, long, and actually irreversible process.

The compliance of the national legislation with the communitarian regulations implies the Knowledge, understanding and broad casting of the European regulations, to know the communitarian *acquis* and Romania's role in an enlarged European Union.

The compliance is checked on the occasion of the approval of the normative acts, and according to the issues the Executive is concerned with, there is the need for agreement between the experts in the Ministry of European Integration and those in the Ministries that initiate measures for the identification of the best solutions to comply the legislation with the communitarian regulations.

The documents drawn up by the Ministry of European Integration showed that substantial progress has been registered in the compliance of the Romanian legislation with the communitarian one, the degree of transfer of the *acquis* to the domestic market being of about, while there are domains where the progress is larger, up to 100%, as is the case of the commercial law, competition law, labor law.

The Legislative Council and the Executive have adopted many measures to reexamine the 6.000 and more normative acts existing before the accession moment, so that the only unmodified normative acts are those whose application is not an anachronism and does not affect in any way the state of law (about 300 drawn up in 1864-1989). The undertaken studies showed that actually the whole present legislation is a new one, based on the new Constitution and according to the communitarian spirit.

In order to have the national legislation comply with the world regulations, Romania has also ratified some instruments of some regional organizations such

as the European Council or with a universal vocation – the Organization of the United Nations or the International Labor Organization. For example: The revised Law for the Ratification of the Social Cart or the Law for Romania's Accession to the European Convention concerning the elaboration of a Ministry of European Farmacopia, of the Ordinance concerning Romania's accession to the Convention of 1990 about the preparation, reaction and cooperation in case of hydrocarbon pollution, and so on.

According to art. 70 of the Agreement, the compliance of the legislation will pursue mainly the following domains: customs law, company law, bank law, company accounts and taxes, intellectual property, labor force and jobs protection, social security, financial services, competition rules, health and life protection, consumer's protection, indirect taxation, technical standards and norms, laws and regulation for the nuclear field, environment and transportation, actually all the fields of the economic and social life.

As for the chapter free *circulation of the persons* some progress has been made with the labor permits for the foreign citizens. On the other hand, there was no significant evolution for the coordination of the social security systems, in this sense a development being necessary for the administrative structures and the training of the necessary personnel.

There is the need for an intensification of the measures to insure the mutual acknowledgement of the professional degrees and diplomas, as well as for the introduction of the necessary administrative structures and of the adequate educational and training programs.

As for the free *circulation of goods*, the compliance with the communitarian *acquis* has been considerably limited by the lack of the frame legislation based on the principles of the New Approach and of the Global Approach, which has come against the progress of the specific legislation sector, normative acts being recently adopted to introduce these principles in the domestic law.

As for the development of Romania's administrative capacity for the implementation of the horizontal and procedural measures and of the specific legislation sector, the Romanian body for accreditation (RENAR) has signed a lot of multilateral acknowledgement agreements and the Romanian standardization institution (ASRO) has transferred most of the complying European standards.

A significant progress with the legislative compliance has been made with the normative act adopted in May 2001 concerning public acquisitions, modified several times. There has been a great challenge for the management of all these institutions to get used to the new system and make sure that the legislation is correctly and adequately applied, within the whole country.

As for the *free circulation of services*, The National Bank of Romania has issued a series of regulations in accordance with the communitarian *acquis*, regulations concerning the accounting norms, the minimum social capital, the personal funds and the level of the assets, progress being made in the

implementation of the legislation concerning the spreading of the prudential supervision on the credit companies.

Significant progress has also been made with the investment and real estate services, the new law of the real estate market supervision being still debated at the Parliament and in the absence of a proper legal frame, the National Commission can only bring marginal improvement to a situation that has lately triggered major crisis all over the world, an adequate legislative frame being necessary to prevent the crisis in other countries.²³

One should also notice the adaptation of the law concerning the electronic signature and its methodological norms, being a first step in the insurance of the necessary legal frame for the development of the operations concerning the electronic trade, as well as the adaptation of the law for the protection of the persons regarding the processing of the personal data and the free circulation of these data, of the law concerning the processing of the personal data and the protection of the private life in the telecommunication sector and of the law concerning the ratification of the Convention for the protection of the persons against the automatic processing of the personal data, adopted at January 28, 1981.

As for the chapter the *free circulation of the capitals*, the only modification introduced in the foreign currency regulation was the permission awarded to the residents to purchase foreign currency in order to pay other residents, but only for the transactions within the free areas.

The preparations for the creation of a new system of inter-banking payment and back payment is still at the beginning, although in June 2001 the TransFonD S.A. was set up, thus creating the legal frame to externalize the transfer of inter-banking funds from the National Bank of Romania. Considerable efforts still have to be made to transfer the acquis concerning the payment system (including the introduction of some appropriate and efficient procedures to regulate the disputes between banks and clients) and the improvement of the payments infrastructures.²⁴

²³ See the numerous normative documents in this respect, among which: Law no. 7/1996 Cadaster Law and real estate publicity, published in the Official Monitor, Part I no. 201 from 03/03/2006, Law no. 34/2006 for modifying and completing Law no. 190/1999 regarding the mortgage credit for real estate investments, published in the Official Monitor, Part I no. 200 from 03/03/2006; Order of Minister of Finances no. 1706/2008 regarding the approval of procedures for establishing, paying and ratifying the revenue tax on tranfer of real estate properties from personal patrimony and of the model and contents of forms provided at title III from Law no. 571/2003 regarding the fiscal Code, with the subsequent modifications and completions, published in the Official Monitor, Part I no. 533 from 15/07/2008

²⁴ Law no. 297/2004 regarding the capital market, published in the Official Monitor, Part I no. 571 from 29/06/2004 and modified from Law no. 208/2005 for modifying art. 285 from Law no. 297/2004 regarding the capital market, published in the Official Monitor, Part I no. 578 from 05/07/2005 and the last one modified several times.

In the domain of the prevention of money laundry, the National Office for the Prevention of Money Laundry has adopted important measures concerning the obligations for reporting of the financial institutions, but there is a need for the revision of the existing legal frame concerning the civil responsibility of the Office during the Investigations.²⁵

Regarding the communitarian documents from *accountancy*, elaboration of the content of the 4th Directive continued, Romanian current legislation providing the legal framework for consistent application of Complied Accountancy Regulations.

Legislation in the industrial and intellectual property rights is generally compatible with the communitarian *acquis*; it is necessary to continue the process of compliance with the directive regarding copyright in IT society and the directive regarding copyright re-sale, as well as the one regarding copyright protection.

As far as the *anti-trust* legislation is concerned, national legislation largely complied with communitarian legislation and covers a large part of its provisions; however adoption of secondary legislation in this domain is necessary.

As far as state aid is concerned, the actual normative documents cover the basic principles of state aid control, România haing to rapidly adopt the necessary secondary legislation in this domain, and this is a pre-requisition for any activity of efficient legislative application. Progress was also prominent in elaborating the *acquis* chapter which regulates *agriculture*, especially in the fito-sanitary sector.

As for *agriculture*, the adoption of the legislation regarding plants health, the control of pesticide waste products and harming bodies in the veterinerian sector, by improving laboratory infrastructures for plants health control, they made important progress, most of the norms complying with the ones of the European Union²⁶. The agricultural lands market has extended more than it was expected in

²⁵ See the normative documents and the agreements concluded by Romania with other contries regarding money-laundry and acts of terrorism, among which: Government Decision no. 907/2008 for approving the Memorandum of ageement between expert authorities in Romania and Norway in the domain of financial information exchange which is related to money-laundry and terrorism financing, signed in Seul on 28th May 2008, published in the Official Monitor, Part I no. 629 from 29/08/2008; Government Decision no. 906/2008 for approving the Memorandum of ageement between National Office of Money –Laundry Prevention and Fight in Romania and the Nigerian Financial Information Unit from Nigeria Federal Republic regarding the cooperation in the domain of financial information exchange related to money-laundry and terrorism financing signed in Seul on 28th May 2008, published in the Official Monitor, Part I no. 629 from 29/08/2008; Memorandum of ageement between expert authorities in Romania and Norway in the domain of financial information exchange which is related to money-laundry and terrorism financing from 28/05/2008, published in the Official Monitor, Part I no. 629 from 29/08/2008 etc.

²⁶ As for agriculture, see also COUNCIL REGULATION (CE) no. 1782/2003 from 29th September 2003 for establishing common norms for direct support schemes in the common agricultural policy and establishing support schemes for farmers and Regulations modifying (CEE) no. 2019/93, (CE) no. 1452/2001, (CE) no. 1453/2001, (CE) no. 1454/2001, (CE) no. 1868/94,

center statistic estimates; today in Romania there are significant sale-purchase transactions, not only renting transactions.

Regarding Common Market Organizations, they adopted new communitarian documents regarding the evaluation system of quality and deposit receipts, and regarding the SAPARD program they created the necessary legislative framework for its implementation, and set up SAPARD Agency.

In the agricultural domain there still a lot of unsolved issues at the communitarian level, the agricultural reform rhythm and elaboration of the communitarian *acquis* relevant for Common Agricultural Policy not being up to expectations. As a result, one cannot see improvement of organized market and price-monitoring. Their lack as well as the lack of price-monitoring market instruments, together with the lack of competitive trading opportunities weaken the decision-taking process at the governmental level and the effort of legislative compliance.

Regarding the elaboration the environmental *acquis*, Romania has registered progress especially in ratifying international conventions, elaborating action plans for communitarian legislation compliance and the adoption of some *acquis* elements. As far as horizontal legislation is concerned, Romania has ratified Espoo Convention on the evaluation of the environmental impact in transfrontier framework and the Kyoto Protocol concerning climate changes. Meanwhile, a series of important normative documents have been adopted for legislative compliance regarding air quality, waste product management, water quality, nature protection, chemicals and genetically-modified bodies. For, legislative compliance in the field of industrial pollution control and risk management represents a priority.

In commercial companies' law, legislative developments have included the introduction, starting from May 2001, of simplified procedure, unique for registering and authorizing traders. Meanwhile, in June 2001, they have adopted a law which provides a rapid procedure for commercial companies for which the minimum social capital is the one indicated. At the same time, it is necessary to go on complying with the dispositions regarding commercial companies registration for the Economic Interest Group, too and the provisions regarding the jurisdiction and application of foreign decisions in civil and commercial law²⁷.

(CE) no. 1251/1999, (CE) no. 1254/1999, (CE) no. 1673/2000, (CEE) no. 2358/71 și (CE) no. 2529/2001.

²⁷ See: Law no. 191/2007 for approving Urgent Government Ordinance no. 119/2006 regarding some necessary measures for communitarian regulation application at the date of Romania's accession to the European Union, published in the Official Monitor, Part I no. 425 from 26/06/2007. Also see Urgent Ordinance no. 119/2006, published in the Official Monitor, Part I no. 1036 from 28/12/2006; Regulation (CE) no. 805/2004 of the European Parliament and Council from 21st April 2004 regarding the creation of a European writ of execution for non-contested debts and the Council Regulation (CE) no. 44/2001 from 22nd December 2000 regarding competence, acknowledgement and execution of decisions in civil and commercial matter. Also

Cooperation in the justice and internal affairs domain also represents an important domain where Romania made significant progress, a model of visa application form being introduced compatible with the Schengen model. At the same time, in April 2001, it was adopted the Governmental Decision regarding the exchange of current passports with a new passport type which contains supplementary security characteristics. In this respect, they have achieved important results in complying with the *acquis* in the domain of external frontier control, Frontier Police being reorganized and modernized, trying to reinforce the control and to take measures against antisocial and terrorist conduct.

In so far as foreigners' treatment, in May 2001 a new law on foreigners was adopted, establishing the access and stay regime in Romania as well as foreigners' expulsion regime, including application norms of the respective law, and the law regarding refugees has considerably improved legislative compliance with the asylum legislation.

They have also adopted methodological application norms of Agreements between Romanian Government and Hungarian Republic Government, on the one hand, and between Romanian Government and Luxemburg Great Ducat Government regarding the exchange of season and probation workers. It was also signed and ratified the Agreement between Romanian Government and Portuguese Republic Government regarding temporary stay on the purpose of employing Romanian workers on the territory of Portuguese Republic. Meanwhile, they have adopted doctor's, dentist's and chemist's status as well as the status of graduates from the medicine, stomatology and pharmacy faculties with minimum one year's practical training, as well as the law regarding nurse job practice, setting up, organizing and functioning of the Order of Nurses in Romania.

Romania is a part of all international conventions enumerated in the communitarian *acquis* in drug-dealing, except the agreement in 1995 regarding the illegal trafficking on sea, and in December 2000 they adopted the secondary legislation for the application of the Law concerning the fight against drug-dealing and drug-taking.

Regarding foreign investment, the law for their promotion has had a direct and significant impact in economy, law which pursues the guarantee of stability and coherence of the legislative framework for foreign investments and the application of international conventions in this domain.²⁸ We also have to

see the modifications of the Regulation through Regulation (CE) no. 1496/2002 of the Commission (JO L 225, 22.8.2002, p. 13). Also see Fl. Măgureanu, G. Măgureanu, *European Writs of Execution*, Forced Execution Magazine no. 11/2007, p. 12 and the rest.

²⁸ See in this respect: Ordinance no. 66/1997 regarding foreign investment regime in Romania, realized by state titles purchase, published in the Official Monitor, Part I no. 928 from 18/10/2005, modified through Law no. 46/2006, published in the Official Monitorul, Part I no. 238 from 16/03/2006. Also see the agreements concluded by Romania with numerous countries, among which the following examples: agreement Memorandum with a view to bilateral

mention the fact that Romania continued to comply with the external policy of the European Union and constructively participated in the Common Security and External Policy (*PESC*), showing that it does not have difficulties in complying with the domain *acquis*.

As a consequence of the facts herein presented, Romania has largely performed its pre- and post-accession tasks regarding legislative compliance with the communitarian regulations, an important issue in this period being the effort of the so-established norms application and creating the agents and institutions for practical compliance with the new harmonized legislation.

We consider that European Union does not have to evaluate a country according to the number of directives complied with through internal normative documents, but according to the quality of the national legislation compliance with the communitarian regulations, according to the effort regarding correct and whole application of the harmonized provisions.

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