

## Cover article: “Audiovisual content regulations are changing - advertising for food and food supplements”

by Gabriela Badescu, Managing Associate Voicu & Filipescu

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## cover article

### **Audiovisual content regulations are changing - advertising for food and food supplements**

*by Gabriela Badescu, Managing Associate Voicu & Filipescu*

The code regulating audiovisual content has been recently amended. Among the changes, we mention the fact that minors can no longer be used in food advertising. Also, an important modification provides that the advertising of food supplements must contain the data approved by the authorities. This month's cover article examines these changes and the broader context of these specific regulations.

#### **Food advertising**

The National Audiovisual Council of Romania decided that as of August 2017, the minors can no longer be used in food advertising. Consequently, advertising should not encourage excessive consumption of food by using minors aged 3 to 15. Furthermore, advertisements should not imply giving up the consumption of fruit, vegetables, or natural foods.

This decision stems from having noted a lack of nutrition education in society and the responsibility of retailers who promote their foods without considering the degree of judgement of the target consumers.

Several countries have banned children appearing in food advertisements taking into consideration the increase in childhood obesity recorded lately. Another problem is the different reactions of children and adults to advertising, and how kids develop the ability to recognize and understand the ads as a message directed at them.

Sweden prohibited the use of minors under 12, in the UK the restrictions pertain to ads that could endanger the physical, mental, and moral health by taking advantage of the credulity of children, while in France the ads are seen as a way to educate children regarding nutrition. Other countries have established rules on the time of broadcast, such as Greece, which has banned advertisements for toys broadcast between 7 am and 10 pm and a total ban on war toys. On the other hand, Spain considers that such a ban is not democratic.

#### **Advertising for Food Supplements**

Unlike drugs where advertising is allowed only for over the counter products - provided that the advertisement material for these products are approved by the National Agency for Medicines, for food supplements the regulation envisages, in particular, their composition, the fact that they do not replace food, nor do they prevent, treat, or cure human diseases.

At EU level, it has been found that, to ensure the highest level of consumer protection and for facilitating the choice between food supplements, uniform regulations are needed to allow trading safe products to the public, with appropriate labeling.

In this respect, the Directive 2002/46/EC of the European Parliament and the Council was adopted on the harmonization of the laws of the Member States relating to food supplements. Directive 2002/46/EC sets binding principles that must be observed in relation to food supplements marketed in the EU by mentioning the vitamins and minerals that can be used in food supplements and the forms that they can take.

In Romania, the first regulations appear in 2002, included in the law on production, transportation and sale of foods.

[The ingredients of food supplements](#)

The main national regulation applicable to food supplements is represented by Order no. 1069/2007 approving the Norms on food supplements which transposes Directive no. 2002/46/EC. According to art. 2 of these Norms, food supplements are defined as the food products whose purpose is to supplement the normal diet and which are concentrated sources of nutrients or other substances with a nutritional or physiological effect, individually or in combination, marketed in doses, such as capsules, pills, tablets, and other similar forms, powder packets, liquid vials, dropper bottles and other similar forms of measurable liquid or powder for use in small quantities.

According to a communication issued to the members of the European Parliament, the Commission considers that the Directive 2002/46/EC is a valid instrument for ensuring that products marketed domestically are safe.

Therefore, food supplements are substances which contain nutrients (macro and micronutrients) and / or other edible substances consumed in specific circumstances, in addition to the usual food intake.

#### Regulation on advertising for food supplements

As of February 2017, the regulatory code for audiovisual content has brought changes related to advertising and commercials for food supplements. Thus, the information of the product presentation can contain only (i) the data from the product label, box, bottle and/or flyer which were previously approved by the National Institute of Public Health under the Ministry of Health or notified to the Institute of Food Bio-resources and (ii) the nutritional and health details as approved in compliance with the Regulation (EC) No. 1924/2006 on nutrition and health claims printed on foods.

The labeling, presentation and advertising of food supplements must not include any direct statements or suggestions that a balanced and varied diet cannot provide appropriate quantities of nutrients in general. In this sense, to guarantee the presence of sufficient quantities of vitamins and minerals in food supplements, the manufacturer must determine the minimum quantities, based on the daily recommended dose.

To facilitate efficient monitoring of food supplements, the manufacturer, importer or person responsible for placing the product on the Romanian market must notify the Public Health Authority of the Ministry of Public Health and communicate the model label for the product in question, in electronic and folio form.

Advertising of food supplements is allowed only after endorsement of the advertising content by the Public Health Authority of the Ministry of Public Health and cannot make reference to treatments, prevention, diseases. Food supplements are taken to maintain health, promote growth and development of the body.

Also, advertising must comply with legal provisions on misleading trade practices. These practices may be (i) misleading actions by the overall presentation of false information aimed to mislead the average consumer so as to cause buying a product that would not be bought if the information were correct or (ii) misleading omissions if they omit essential information necessary to the average consumer, taking into account the context, information that causes or is likely to cause the consumer to decide to buy a product that they would not otherwise have bought.

Regarding misleading advertising, it is expressly prohibited by law. On the other hand, comparative advertising is considered legal under specific conditions, one being that it should not be misleading and compare products that meet the same needs or intended for the same purposes.

#### The Romanian Advertising Council

The Romanian Advertising Council (RAC) is a professional, non-governmental, non-profit and independent organization established in 1999. The main activity of the RAC consists of self-regulation in advertising, providing as well copy advice services.

RAC's purpose is to support the advertising industry in Romania, and its activity is based on the Code of Advertising Practice, developed by its members. The Code of good practices in the labeling and advertising of food supplements is a set of ethical rules to be respected by all those involved in advertising and in any form of commercial communication. The Code regulates a set of specific principles for food supplements and is designed to support business development in Romania. To this end the RAC examines complaints, usually coming from competitors, regarding advertising materials, and mediates the conflict between them and can also apply sanctions.

### **PRISA**

Romanian Business Owners Association in Food Supplements Industry (PRISA) is an active partner of state institutions and member of specialized international organizations. PRISA's objectives are to promote and educate the public and medical professionals about the importance and beneficial aspects of food supplements.

Regarding autoregulation, PRISA created and approved two codes, the Code of ethics and the Code of good practices in labelling and advertising of food supplements, the latter being annexed from December 2013 to the RAC code.

PRISA and RAC actively collaborate on mutual sharing of information on identifying incorrect trading practices, used in commercial messaging on food supplements.

### **Miscellaneous**

Regarding the recent changes, an issue worth mentioning is that the provisions apply only to broadcasters licensed in Romania, not to TV stations licensed abroad. Also, online advertisements cannot be censured under the latest changes. In this context, the final goal of protecting children, and raising awareness on nutrition and the role of food supplements will only be partially fulfilled for now.

## corporate - legal changes published in February 2017

### **Approval of the Application Norms of Law 102/2016 on business incubators**

Order no. 17 of February 1, 2017 approving the responsibilities of the Ministry for Business, Trade and Entrepreneurship regarding implementation of Law no. 102/2016 on business incubators was published in the Official Gazette of Romania, Part I, no. 113 dated February 10, 2017.

Order no. 17/2017 approves the rules for implementing Law no. 102/2016 on business incubators which establishes the principles, rules and procedures for the application of the legal provisions mentioned.

The application norms regulate these main aspects:

- specific criteria for business incubators, afferent to each 3 years' period, from the date of awarding the title of business incubator;
- the procedure for awarding the title of business incubator (indicating the authority of the public administration competent for awarding it; the necessary documents; the specific deadlines for analysis and resolution and the conditions taken into account for awarding the title);
- the assessment and performance criteria of the feasibility study and business plan;
- the circumstances for expiry of the validity and cancelation of the title of business incubator.

Also, the norms establish the model of the title of business incubator which shall be issued by the Ministry for Business, Trade and Entrepreneurship, under the indicated conditions.

In addition to the application norms, Order no. 17/2017 also approves (i) the Rules of selecting and appointing the manager of the business incubator, if among the founders is a public authority under Art. 9 paragraph. (1) b) of Law no. 102/2016 on business incubators, and (ii) the Procedure for establishing the Commission with responsibility for business incubators.

## dispute resolution - legal changes published in February 2017

**Decision no. 36/2016 on examining the referral made on application of the provisions of art. 4 of Law no. 554/2004** published in the Official Gazette of Romania, Part I, no. 104 dated February 7, 2017.

The panel of the High Court of Cassation and Justice for interpreting matters of law has been notified for ruling on the interpretation and application of art. 4 of Law no. 554/2004. As stated in this Article, "the legality of an individual administrative act, irrespective of the date of issue can be examined at any time within a trial, by way of objection, ex officio or at the request of the interested party." The referral regarded the question of whether the legal rule provides the opportunity to raise an objection of illegality directly in the stage of reviewing the trial court's decision or, on the contrary, contains a restriction related to the time when one may object over the illegality of the administrative act.

After analyzing the referral, the High Court concluded that the said provisions are prescribing a legal institution whose purpose is to remove the effects of the individual administrative act on which the opposing party might rely in a pending case. On the same time, it emphasized that to place a restriction over raising the objection of illegality during the stage of judicial review would deprive the other party of the opportunity to challenge the legality of the administrative act and defend itself. Furthermore, it noted that since art. 4 stipulates that the objection of illegality may be raised at any time during the procedure, the interpretation whereby the objection cannot be invoked directly in the stage of reviewing the trial court's decision is contrary to the principle that the law must be interpreted towards its application, and not to its non-application.

In view of these findings, the High Court admitted the referral and established that the provisions of art. 4 of Law no. 554/2004 allow the objection of illegality of an individual administrative act to be raised directly during the stage of judicially review.

## employment - legal changes published in February 2017

**The decision of the High Court of Cassation and Justice no. 37/2016 concerning the examination of referral by the Court of Appeal Iasi - Department of labor and social insurance disputes,** published in the Official Gazette, Part I no. 114 of February 10, 2017.

The High Court found that the written form is a condition of validity of the individual employment contract, in accordance with art. 57 para. (1) of the Labour Code and art. 1242 par. (1) of the Civil Code, applicable in the case of a labor dispute in the absence of special rules to the contrary, **and failure to comply with this condition attracts the nullity of the individual employment contract** (nullity of the legal act is the only applicable sanction while neither labor law nor civil law regulates a theory of inexistence of the legal act). As a matter of general interest, in this case the nullity is absolute. The procedural framework where such invalidity can be found is not only an action for claiming (the action for nullity is such an action), a declaratory action being admissible in this case.

Therefore, the Court states that conclusion of a written contract, for validity, is a requirement imposed to the employer, however, since the nullity operates only for the future, failure to observe the written form does not prevent proving by the employee, by whatever means, of the work performed for the benefit of the employer until the termination of the legal relationship of employment, so that when formulating an action one is trying to prove the conduct between the parties of labor relations unlicensed formally through written deed, the court must proceed with their research, based on the evidence which also show the factual basis of the claims. **So, in case of failure of the parties to observe the obligation of concluding the individual employment contract in writing, the individual who performed work for and under the authority of the other party has open the way to action for acknowledgment of the employment relationship and its effects, also in case said employment relationship has ceased prior to referral to the court.**

## energy - legal changes published in February 2017

**Order no. 8/2017 regarding the approval of cap values for trading green certificates and the value of a non-acquired green certificate** was published in the Official Gazette of Romania, Part I, no. 118 of February 13, 2017.

The purpose of the approval of the order is to approve the cap values for trading green certificates on the green certificate market, as follows:

- the minimum value is RON 133.0611 per green certificate (namely EUR 29.4559 per green certificate);
- the maximum value is RON 271.0624 per green certificate (namely EUR 60.0054 per green certificate).

At the same time the order establishes the value of a green certificate which was not acquired by economic operators having annual quota of green certificates, for failure of their mandatory quota of green certificates, to:

- RON 539.4450 per non-purchased green certificate (namely EUR 119.7702 per non-purchased green certificate) for the year of analysis 2016;
- RON 542.1198 per non-purchased green certificate (namely EUR 120.0097 per non-purchased green certificate) for the year of analysis 2017.

On the date this order takes effect, the Order of the President of the National Authority for Energy Regulation no. 3/2016 regarding the approval of caps for trading green certificates and the value of a non-purchased green certificate, shall be repealed.

**Order no. 7/2017 establishing rules on the publication of information relating to deals concluded on the electricity market** was published in the Official Gazette of Romania, Part I, no. 123 of February 15, 2017.

The provisions of the new Order are addressed to economic operators in the electricity industry, establishing that operators involved in contracts on the regulated market or export market are required to submit to the operator of the electricity market a copy of these contracts, within 7 days from the date of their conclusion and, where operators who have concluded ongoing contracts on the regulated market or export market before the entry into force of this order, it provides the obligation to provide the operator of the electricity market copies of those contracts within 7 days from the date of entry into force of this order.

**Order no. 6/2017 approving Performance Standard for the supply of electricity** was published in the Official Gazette of Romania, Part I, no. 124 of February 15, 2017.

The performance standard approved by this Order regulates the quality of electricity supply, establishing the following:

- provisions on the quality of the supply activity;
- performance indicators characterizing the supply activity;
- guaranteed levels of the performance indicators;
- compensations which the last mile suppliers pay to end users of the universal service, in case of failing to observe the guaranteed levels of the performance indicators;
- the reporting of the performance indicators afferent to the supply activity.

The performance standard also includes provisions on requirements on ensuring electricity supply, establishing the following general performance indicators:

- the number of supply contracts concluded with the end customers following template and/or customized supply offers send upon their request, under negotiated prices and conditions;

- the number of breaches of the deadline for issuance of supply offers;
- the number of compensations paid to end users for failing to observe the deadline for issuance of supply offers.

It also regulates the situation of resolving complaints concerning billing, stating that if the end client disputes the amount of an invoice and communicates this to the supplier within 30 days from the date of issue, the supplier must consider the merits of the complaint and communicate to the customer the analysis result within 5 business days from lodging, regardless of whether or not the bill was paid by the customer.

On communicating the values of the performance indicators, it is stated that starting in 2017, the providers determine quarterly the performance indicator values for the supply of electricity by type of end customers, namely households, small non-household customers, large non-household customers. These values are transmitted (electronically) quarterly by NRAE until the 15th of the second month following the quarter for which reporting is done.

**Order no. 10/2017 amending and supplementing the methodology of establishing regulated revenue, total revenue and tariffs for the transmission of natural gas, approved by Order of the President of the National Regulatory Agency for Energy no. 32/2014** was published in the Official Gazette of Romania, Part I, no. 135 of February 22, 2017.

The Order introduces changes to the methodology for establishing the regulated revenue, total revenue and tariffs for natural gas transmission activity. Among the changes occurred we mention the change of the allocation of total revenue in the fixed component and the volumetric component and introducing obligations on the licensee to operate the transmission system of publishing a set of data on its website at least 30 days before beginning of the regulatory period/year.

**Order no. 11/2017 on the establishment of mandatory quota of green certificates, for the year 2016** was published in the Official Gazette, Part I no. 147 of February 27, 2017.

According to this order, the mandatory quota of green certificates for economic operators who have this obligation for 2016 is set at 0.306 green certificates / MWh, corresponding to a final consumption of electricity exempted from payment of green certificates of 6845.56 GWh.

**Order no. 13/2017 on supplementing the Regulation for the organization and operation of simultaneous decreasing price auctions on the centralized market for the universal service, approved by Order of the President of the National Regulatory Agency for Energy no. 65/2014** was published in the Official Gazette of Romania, Part I, no. 149 of February 28, 2017.

The Order supplements the Regulation for organizing and conducting simultaneous decreasing price auctions on the centralized market for universal service, approved by Order of the President of the National Regulatory Agency for Energy no. 65/2014, in that it introduces stay on the right to submit offers for sale in the subsequent three (3) organized auction sessions, of bidders who were declared winners after conducting an auction sessions but who do not comply with obligations arising from contracts concluded with the last mile supplier and that, during the staying period of the license under which the seller was registered in the centralized market for universal service, the sale-purchase contracts concluded on the basis of the auction results by them are suspended.

## corporate - draft laws published in February 2017

### **Draft Government Decision approving the Methodological Norms for the application of Government Emergency Ordinance no. 10/2017 in order to stimulate the creation of new small and medium enterprises**

On the website of the Ministry for Business, Trade and Entrepreneurship a draft Government Decision approving the Methodological Norms for the application of Government Emergency Ordinance no. 10/2017 in order to stimulate the creation of new small and medium enterprises, under the "Start-up Nation - Romania" Program, is published for public consultation.

The draft norms include, among others:

- activities excluded from application of the program;
- eligibility criteria for companies;
- eligible expenses;
- the program implementation stages (registration, assessment of the business plan, contracting and financing); and
- provisions on reporting and monitoring aids.

The draft can be accessed at: <http://www.aippimm.ro/categorie/communicate/>

## employment - draft laws published in February 2017

### **Draft law for amending par. (5) of art. 65 of Law no. 263/2010 on the unitary public pension system** was registered to the Senate for debate with no. B27 on February 2, 2017.

The legislative proposal is aimed at supplementing Law no. 263/2010 so that the citizens of the city of Slatina, Olt County, benefit from early retirement as compensation for being subject to a continuous and permanent pollution from processing nonferrous ores on the industrial platform. When adopting the law on the unitary system of public pensions, the legislature considered just as an exception to the rule that people living in areas with permanent pollution be able to retire two years earlier, since they suffer from negative health effects and low quality of life.

Currently, early retirement is awarded, as a social protection benefit, to citizens in Baia Mare, Coșta Mică, Zlatna and Tîrgu Mureș.

Given the fact that the citizens of Slatina are affected by some form of permanent pollution with various metals from ore processing (coke dust, hydrocarbons, fluorine, carbon monoxide, etc.) the legislative proposal is seeking to amend the law on the unitary system of public pensions so that citizens of Slatina benefit under the law, from the possibility of early retirement.

### **Draft Order amending and supplementing Classification of Occupations in Romania - occupation level (six characters), approved by Ministry of Labour, Family and Social Protection and the President of the National Statistical Institute no. 1832/856/2011** was published on the website of the Ministry of Labour on February 15, 2017.

The draft envisages amending and supplementing Classification of Occupations in Romania - occupation level (six characters) with new occupations practiced within the national economy, namely: assistant for attracting funds, electricity auditor, heating auditor, curator, ergonomist, wind power plant engineer, photovoltaic plant engineer, management and control engineer for energy utilities systems, process engineer in treatment / water purification hydropower equipment and systems engineer, electrical engineer, buildings energy engineer, engineer for operating hydroelectric plants, engineer for operating thermoelectric power plants, mining equipment and nuclear installations engineer, water resources management engineer, programming and optimization of energy facilities and processes engineer, environmental protection in energy engineer, hydraulic networks and systems engineer, nuclear facilities security engineer, energy IT engineer, manager for attracting funds, culture manager, social services manager, patient navigator, museum education specialist, supervisor in social services, IV line technician.

The draft order is published on the Labour Ministry website at:

<http://www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decizionala/2017-02-15-ordin-COR-anexa.pdf>

## public procurement - draft laws published in February 2017

**Draft law for amending Law no. 98/2016 on public procurement** was registered to the Senate for debate under no. B25 on 2 February 2017 and is aimed at introducing a new paragraph in article 10 of Law no. 98/2016.

The legislative proposal envisages art. 10 para. (1) of Law 98/2016 establishing that if the contracting authority has in its structure separate business units, the estimated value of the procurement is calculated by taking into account the estimated total for all business units taken separately. Notwithstanding this regulation, the proposal wants to introduce that in the case of land improvement highlighted in the centralized inventory of goods from public / private state domain and administered by the Ministry of Agriculture and Rural Development - Agency for Land Improvement, the contracting authority has the right to award public contracts/framework agreements for maintenance and repair, whose estimated value of is calculated independently for each improvement, while respecting the value cap referred to in art. 7 of Law 98/2016.

The grounds for the legislative proposal took into account the fact that the National Land Improvement Agency is unable to intervene urgently in compliance with the law on contracting public works of maintenance and repair, to ensure the functioning of land improvement, given that the functioning of land improvement is independent and specific to each geographic area and during operation there may be unforeseen circumstances which lead to decommissioning of facilities.

For additional details on this material, please do not hesitate to contact us.

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