

Clients & Friends Alert

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Important Changes to Competition Law: Romania May Hit the Brakes on Dawn Raids

Ever since its 1996 inception, the Romanian antitrust agency, the Competition Council, was able to conduct unannounced inspections at undertakings' premises exclusively on the basis of an internal administrative order issued by its Chairman. The Competition Council did not need judicial approval in order to inspect corporate premises without prior notice given to undertakings.

As such, with dawn raids being relatively handy, the Competition Council has increasingly found itself encouraged these last years to use this tool more and more often, in order to detect cartels or otherwise probe into various types of competition law infringements. Thus, the Competition Council dawn raided around 150 premises each year in the last three years, a steep increase from only 42 premises in 2007.

However this may no longer be the case, since in the future the agency inspectors will be legally required to hold in their hands a court warrant authorizing the dawn raid and the search. A bill passed into law in 2013, mainly aimed at overhauling the Romanian Code of Criminal Procedure, came into force on 1 February 2014. It incidentally brought changes to a number of non-penal laws, including the Competition Law.

Essentially, the amendments extend the scope of obtaining a court warrant as a prior requirement (already in effect as regards inspection of the premises or vehicles of an undertaking's directors, managers or employees) to likewise apply to an undertaking's premises.

Thus, before making unannounced inspections at an undertaking's offices or premises, the Competition Council will, from now on, have to make first an application with the Bucharest Court of Appeals and obtain a search warrant from a judge. Notably, the law requires that an application contain all information necessary to justify the need for an inspection, and the judge must verify if the application was well grounded, and issue a ruling within 48 hours. The Competition Council inspectors must deliver a copy of the court warrant before an inspection may commence.

The need for prior court warrant will at least theoretically make it more difficult for the Competition Council to go ahead with unannounced inspections, and may be aimed at protecting undertakings from so-called fishing expeditions by setting forth a higher standard in terms of the information necessary to justify the inspection. There is also room for debate on whether this measure was needed at this point in time, on the heels of an increasingly aggressive antitrust enforcement strategy shown by the Competition Council. We also note that the Bucharest Court of Appeals does not have yet a specialized antitrust section (such as a cartel court) charged to deal exclusively with dawn raid applications and antitrust cases, which may probably make the outcome of a court warrant request less predictable for the Competition Council.

The practical consequences are difficult to determine now, and for the time being undertakings should well consider adjusting their dawn raid compliance policies to reflect these changes.

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