

Law no. 12 of 6 August 1990 * Republished**
on the protection of population against unlawful commercial activities
(L12/1990)

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Law no. 12 / 1990 was published in the Romanian Official Journal, Part I, No. 97 of 8 August 1990.

The Romanian Parliament has passed this law.

Article 1

The following deeds constitute unlawful commercial activities and incur civil or criminal liability, as the case may be, to those who have committed them:

- a) performing trade activities identical in nature to those specified in the Commercial Code or in other laws, without meeting the conditions established by law;
- b) selling merchandise in places other than those authorised by town halls or prefectures;
- c) selling some merchandise conditional upon purchase of other merchandise;
- d) displaying for sale or selling merchandise or any other goods without specifying the expiry date or after the expiry date;
- e) performing trade activities with goods whose origin cannot be proved, according to the law;
- f) the economic operators' failure to declare to the fiscal authorities the mark-up and the commission before applying them;
- g) buying goods or products for the purpose of reselling them, from retail outlets, public catering units, canteens, tourist or other similar units;
- h) the economic operators' failure to draw up and display, in the unit, in the customer service areas, the prices and tariffs, the quality category of the products or services, or, where necessary, the list of prices and tariffs;
- i) the supplier's refusal to sign the contract for delivering the products for public consumption, established through Government decisions and allotted by fair distribution;
- j) the delivery or purchase of the products specified in (i) without a distribution license, to the detriment of the lawful distributors;

- k) not displaying the existing merchandise for sale, preferential sale, unjustified refusal to sell the goods or to perform the services included in the activity record of the economic operator;
- l) stocking goods from the domestic market with the purpose of creating a shortage on the market and of reselling them subsequently or of eliminating fair competition;
- m) the state-owned economic operators exceeding the maximum levels of wholesale prices or of tariffs established through Government decisions;
- n) any economic operator exceeding the maximum mark-up, irrespective of the chain through which the goods travel, as well as exceeding the mark-up and commissions established and declared by the economic operators to the fiscal authorities;
- o) short weighting and short measuring the goods sold;
- p) forging or substituting merchandise or any other products, as well as displaying such goods for sale or selling them, knowing they are false or substituted.

Article 2

The deeds specified in Article 1 (a) – (k) constitute infringements, if they have not been committed in such conditions as to be considered criminal offences, according to criminal law, and incur sanctions as follows:

- a) The deeds from (d) and (h), with contraventional imprisonment between 15 days to 2 months or 10,000 to 20,000 lei fine;
- b) The deeds from (c) and (f), with contraventional imprisonment between 1 month to 3 months or 15,000 to 30,000 lei fine;
- c) The deeds from (a), (b), (e), (g), (i), (j) and (k), with contraventional imprisonment between 3 months to 6 months or 30,000 to 60,000 lei fine.

The sanctions provided in paragraph 1 are also applied to the persons within the régies autonomes, trading companies and other economic operators who, through their activity, have participated in any way in committing the deeds that constitute infringements, according to this law.

The fines can also be applied to legal persons, and the minimum and maximum limits shall double.

The infringements specified in this law are ascertained by the trade check authorities of the prefectures and town halls, by the authorised controllers of local village councils, by the Anti-fraud Squad, financial control bodies and the police.

Article 3

If the agent who ascertains the infringement estimates that a fine is sufficient, the fine is applied according to the provisions of Law No. 32/1968.

Otherwise, the ascertaining report is immediately sent to the law court corresponding to the area where the infringement occurred.

The law court chairperson sets an emergency appearance, summoning the offender.

The court is made up of one judge.

The judge pronounces himself on the legality and soundness of the report and either applies the sanction and confiscates or invalidates the report.

The offender may appeal within 24 hours after the ruling, if he/she attended the debates, or after the notification, if he/she was absent.

The public prosecutor may lodge an appeal within 24 hours after the ruling.

The appeal is resolved, in emergency procedure, by a court made up of 2 judges.

The ruling passed in the appeal is final.

The public prosecutor must attend the trial.

Article 4

Should the offender, in bad faith, fail to pay the fine within 30 days after the sanction became final, the body that the ascertaining agent belongs to will announce the law court corresponding to the area where the contravention was committed, with the aim of converting the fine into contraventional imprisonment, taking account of the part of the fine that has been paid.

At the first appearance, the court may grant the offender, at his/her request, a deadline of 30 days to fully pay the fine.

In the event that the offender has not paid within the deadline specified in paragraph 2, the court converts the fine into contraventional imprisonment.

The provisions of Article 3 (3), (4) and (6) – (10) are duly applied.

The execution of the sanction of contraventional imprisonment is lost by prescription in 1 year after the ruling became final.

Article 5

The deeds specified in Article 1 (l) – (p) constitute criminal offences and are punished with 6 months to 3 years imprisonment, if criminal law does not specify a heavier punishment.

The conviction ruling regarding tradesmen are communicated to the Commercial Register.

Article 6

The goods or products that were involved or were destined to be involved in committing any of the deeds specified in Article 1 (a), (b), (d), (e), (g) and (j), if they belong to the offender or to the economic operator, as well as the sums of money and possessions overtly acquired through the contravention, are confiscated and turned to account, in accordance with the law, by directing their exchange value to the budget of the state central administration.

The unlawfully obtained benefits of individuals or legal persons through the activities specified in Article 1, as well as the whole proceeds from selling the goods whose origin cannot be proved, are taken over as income to the budget of the state central administration in the form of a 100% tax.

Article 7

The criminal offence of bribe-taking, influence peddling and accepting undue benefits, committed by the ascertaining agents, the criminal investigation authorities or the justice authorities involved in trying deeds that constitute contraventions or criminal offences specified by this law, are punished in accordance with the provisions of Articles 254, 256 and 257 in the Criminal Code, whose minimum and maximum limits shall be increased by 2 years.

Article 8

The provisions of this law are complementary to those of Law No. 32/1968 on the establishment and punishment of infringements, of the Criminal Law and of the Code of Criminal Procedure.

The criminal offences specified in Article 5 are pursued and tried according to the emergency procedure set for serious offences.

Article 9

Inflicting the sanctions specified in this law does not remove the disciplinary liability of the offenders.

Article 10

With a view to ensuring that the commercial activities unfold according to the law, the town halls¹ will set up a trade check body.

The town halls with a trade check body, the responsibilities and organisational structure of these bodies, as well as the retribution of the trade controllers, are established through Government decision.

Article 11

At the date of publishing this law², the provisions of Articles 295 letters (c) and (d) of the Criminal Law, 70-87 of Law No.3 /1972 on the domestic trade, as well as other contrary regulations are abrogated.

¹ Through the Act of the Romanian Government no. 1290/December 10 1990, published in the Romanian Official Journal, Part I, No. 149 of 27 December 1990, the trade check body within town halls and prefectures has been organised.

² Law No. 12/1990 was published on 8 August 1990.