



TOBACCO LICENSING
Implications of the reinstated Law on State Monopoly
on Tobacco Products and Cigarettes Paper's Licensing Regime

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1 License under State Monopoly Law

The Law No. 31/1996 regarding the State Monopoly (hereinafter referred to as the "Law" or the "State Monopoly Law") has been initially repealed, being reinstated by Law No. 171/2001, as completed and amended (amendments do not concern however the "tobacco products").

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Art. 2, lett. f) of the Law provides that "manufacturing and import, with a view to be traded under quality conditions, of the tobacco products and paper for cigarettes" is deemed as State Monopoly.

On the other hand, art. 9 of the same law provides that the Law's provisions are applied as well to "trading of imported products and the export of products falling under State monopoly, in accordance with art. 2".

Pursuant to the systemic interpretation of the Law's provisions, it results that the operations provided for by art. 2 lett. f), as well as those provided for by art. 9 are subject to the licensing regime established by art. 4, 5, 6, 7 and 8 of the Law.

From corroborating of the art. 2 with art. 9 of the Law and pursuant to the grammatical and logical interpretation of these two articles, the following conclusions arise:

- The license required by the State Monopoly Law is necessary for the operations concerning the manufacturing of tobacco products and cigarettes paper in Romania, as well as for import operations concerning the same goods, provided the said operations are taking place with the view to trading such goods in Romania;
- The same license is required for products imported with the view to trading them in Romania, meaning the tobacco products and cigarette paper to which art. 2 of the Law refers to;
- The license required by the State Monopoly Law is not necessary for commercial operations with tobacco products carried out by undertakings that only trade the said products without previously having imported or manufactured them;
- The license required by the State Monopoly Law is necessary as well for the export of the products provided for by art. 2, meaning the export of tobacco products and cigarette paper (the grammatical interpretation of art. 9 thesis II corroborated with art.2 let. f) of the State Monopoly Law).

These conclusions must be circumstantiated by relating them to the meaning of "tobacco products". The State Monopoly Law does not expressly define the meaning of "tobacco products". By an Emergency Ordinance (E.O.) draft [as well as by an alternative Governmental Decision (G.D.) draft] concerning the tobacco products, it has been unequivocally cleared out the meaning of "tobacco products". In accordance with the provisions of this draft, "tobacco products" means products "that are having as raw material processed tobacco, [?] meant for consumption by smoking". Although this ordinance remained on draft stage, reference to it is of importance with a view to determining the meaning given by the "legislator" to "tobacco products". In relation with this draft, the conclusion is that **"tobacco products" are only the products resulted from tobacco processing and, out of these, the products meant for consumption by smoking only**. Per a contrario, the

unprocessed tobacco does not match with the meaning of the expression "tobacco products".

Being this the apprehension of "the tobacco products", it would be possible to state that State Monopoly Law concerns the products resulted from tobacco processing only, and not at all the unprocessed tobacco.

The confusing expression of the art. 7 of the State Monopoly Law, and the fact that neither art. 2, nor art. 9 of the Law does expressly refer to operations with unprocessed tobacco, leads to a difficulty in establishing whether the undertakings carrying out operations with unprocessed tobacco should apply or not for the license required by the Law. Practically, it makes possible the argumentation both ways in the sense that the license may be or may be not necessary¹. Because the intention of the "legislator" cannot be clearly inferred as a result of the Law's drafting deficiencies, and for safety reasons, in our opinion *it is advisable for the undertaking intending to carry out operations with unprocessed tobacco to apply for – by way of its license application drafted pursuant the State monopoly law – the authorization concerning the carrying out of the said operations as well.*

Conclusion: The export of all "tobacco products" and cigarette paper falls under the State Monopoly Law. The carrying out of any export operation concerning tobacco products and cigarette paper is subject to authorization by way of the license required by the State Monopoly Law. For safety reasons, it is however advisable, in our opinion, for the undertakings (carrying out operations with unprocessed tobacco) to indicate and apply as well, by their application for license, for the authorization of this kind of operations.

¹Art. 7 par. 1 of the State Monopoly Law excludes the granting of license to persons that have been convicted for certain crimes, if the rehabilitation of the said persons did not operate yet. The second paragraph of the same article states that: "the tobacco farmers are exempted from the applicability of these provisions." As the Romanian criminal law does not provide for the criminal liability of the legal entity, it results that art. 7 par. 1, as well as the exception provided for by art. 7 par. 2 of the law, concerns the individuals only and not the legal entities. The conclusion that may be drawn is that the license required by the State Monopoly Law would be granted not only to individuals or legal entities carrying out operations concerning "tobacco products", provided for by art 2 and 9 of the law, but to tobacco farmers also, as individuals authorized to carry out commercial activities. Nevertheless, per a contrario, it would result that the tobacco farmers – legal entities, which do not carry out operations concerning tobacco products provided for by art. 2 and 9 of the Law, do not need the license required by the State Monopoly Law for operations with unprocessed tobacco. As a matter of fact, presumably, the legislator's intention - when enacting the art. 7 – was to sanction all undertakings, whose shareholders, executives or any other decision-makers that committed the crimes limitatively enumerated by art. 7 par.1 and had been not yet rehabilitated, by not granting them the license. Pursuing the same reasoning, it would be possible to assume that again the "legislator's" intention was – by way of exception provided for by art. 7 par. 2 of the Law – to allow the granting of the license required not only to individual tobacco farmers but to tobacco farmers – legal entities as well. Based on this reasoning, it may be drawn the exact opposite conclusion that arises from the grammatical and logical interpretation of art. 7, in the sense that the legal entities carrying out operations with unprocessed tobacco should apply for the license required by the law.

2 State Monopoly Law – back in force; Deadlines for Tobacco Undertakings

According to the art. 16 of the Law: "The persons that, on the date of coming into force of this law, carry out one of the activities provided for by the art. 2, shall apply for relevant licenses within 90 days from coming into force of the law." On the other hand, art. 17 par. 1 of the Law stipulates that: "The present law will come into force after 6 months from its publishing into the Official Gazette of Romania."

Corroborating the two legal texts, it results that the undertakings that, on the date of coming into force of the Law, are carrying out the operations falling under the State Monopoly Law, must apply for the license required by the Law within a term of 6 months plus 90 days from the date of its publishing into the Official Gazette of Romania. The Law No. 171/2001, which reinforced the State Monopoly Law, was published into the Official Gazette of Romania of April 11th 2001.

Conclusion The State Monopoly Law comes back into force after 6 months from the publishing of the Law No. 171/2001 into the Official Gazette of Romania, thus from **October 11th**, 2001. The term of 90 days within which the undertakings must apply for the license required by the State Monopoly Law is counted down from the date of coming into force of the Law No. 171/2001 i.e. from October 11th, 2001. The deadline for filing by the undertakings – which at the date of October 11th, 2001 were carrying out activities falling under the state monopoly law – of the application for the license required by the State Monopoly Law is **January 9th**, 2002.

3 'Monopoly' and Manufacturing License; Imports – Exports

The provisions of G.D. No. 23/1995 concerning the introducing of the marking system for cigarettes, tobacco products and spirits, corroborated with the art. 5 of the Order No. 1172/1998, sets up the requirement for to obtain the license attesting the right of marking the cigarettes and tobacco products. **This license is required for imported tobacco products and cigarettes**, where this license attests the right to carry out the import (art. 6.B of the Norms approved by the Order No. 1172/1998), **as well as for the tobacco products and cigarettes domestically manufactured, for which**, besides the said license – that is issued by the Ministry of Finance [art.6 A (1)] – **a manufacturing license issued by the Ministry of Food and Agriculture is required as well** [art. 6.A. (2) lett. a)]. The same conclusion arises from G.D. No. 27/2000 concerning the products subject to excises (published into the Official Gazette of Romania No. 42/31.01.2000).

As regards the export, art. 7 of the GD No. 23/1995, as amended and completed by art. 1.4 of the EO No. 47/2000 (published into the Official Gazette of Romania No. 45/05.05.2000), provides the following items are not subject to marking by stamps and therefore a license attesting the marking right is not needed:

- The products domestically manufactured and meant to be exported (art. 7 par. 1 of the GD 23/1995);
- The tobacco products that are exported under temporary export regime with a view to their depersonalization and re-importing for testing the market (art. 1.4. of the EO 47/2000).

Effective from 11th of October, 2001 – meaning "the date of coming into force of the State Monopoly Law" (as specified by point 2. above) – the undertakings carrying out activities concerning tobacco products must apply for the license required by the State Monopoly Law (deadline, as we have aforementioned, is 9th January 2002).

From the grammatical interpretation of the articles 16 and 17 par. 1 of the State Monopoly Law and their corroboration with the provisions applying to the licenses for attesting the marking right and as well reviewing the articles 2 letter f) and 9 from the State Monopoly Law, it **results as follows**:

- **For the products imported with a view to trading them in Romania, both of the licenses, the license for attesting the marking right (which attests also the right to import these products), and the license stipulated by the State Monopoly Law, are required;**
- **For the tobacco products manufactured in Romania for to be domestically traded both of the said licenses are also required;**
- For the trade in Romania of tobacco products by the undertakings that do not manufacture or import such products, it is not necessary to obtain either the license for attesting the marking right or the license required the State Monopoly Law;
- **For the tobacco products manufactured in Romania, in view of their export, the license required by the State Monopoly Law is needed only, and not at all the license for attesting the marking right;**
- For the export of tobacco products under temporary export, with a view to their depersonalizing, neither the license for attesting the marking right nor the license provided for by the State Monopoly Law is required.