CMS România: Weather business in Romania. A forecast of opportunities and challenges

Fast and precise weather information is in big demand, especially among weather-sensitive industries such as transportation, agriculture, energy as well as utilities, travel, construction, sports and even the retail sector[1]. Increasingly, private companies use the latest in technological and analytics advancements to offer value-added weather services specifically tailored to meet the practical needs of these industries.

Available data show that in the EU, the commercial weather services market was valued in 2012 at EUR 300 million per year and growing[2]. In the US, the market value of the private weather-information industry was valued at USD 7 billion in 2017 with a growth estimation of 10% to 15% yearly.[3]

In Romania, the National Meteorological Agency (NMA) – an autonomous public company, operating under the authority of the Ministry of Environment and Forestry (MEF) – provides weather services with virtually no competition from the private sector. The question is whether the current legal framework in Romania is lenient enough to allow private companies to break the NMA's strong grip on weather services.

With the EU commercial weather services market valued at EUR 300 million and the US market valued at USD 7 billion and growing, weather information is big business that some investors hope to expand in Romania where weather services is solely provided by the state-controlled National Meteorological Agency (NMA), which is part of the Ministry of Environment and Forestry (MEF). Clearly, the weather-information market in Romania has ample room for growth. The question, however, is whether Romania possesses the legal framework for private companies to break into this potentially lucrative industry.

Regulation of weather in Romania

Romania's relevant weather-related legislation describes "meteorological activities" as those aimed at permanent supervision and understanding of the environment through specific monitoring and measurements of the state and evolution of weather as is necessary for Romania's social and economic development.

Such "Meteorological Activities" are deemed of national public interest and are vital to Romania's national security and defence. Consequently, these activities must comport with current legal restrictions dictating that specific prior authorisations should be obtained from MEF or the NMA.

Categories of Meteorological Activities requiring specific authorisation in Romania include:

- meteorological data collection;
- weather forecasting; and
- distribution of meteorological data to the public.

Collection of meteorological data on Romanian territory

Under the law, "meteorological data" is defined as the product of observation and measurements performed or

registered at meteorological stations and posts, including by radar and satellite. It represents the quantitative expression of the atmospheric parameters that describe the state of weather at a certain time for a certain place.

Under applicable Romanian law, “meteorological data” is:

- raw quantitative data;
- registered or obtained from observation and measurements at stations and posts, including by radar and satellite;
- pertains to a certain place and timeframe (i.e. relevant for Romania).

Generally, raw “meteorological data” is used for making “weather forecasts” and preparing “weather information”.

In Romania, NMA is primarily responsible for gathering “meteorological data” since this agency is the sole entity having the technical capacity and infrastructure to perform weather monitoring and measurements on a large scale.

Private companies, however, are allowed to perform weather monitoring and measurements for the gathering of meteorological data, but only with prior authorisation from MEF, which is mandatory in all cases, including where such data is to be released to the public, sold commercially to third parties (e.g. to construction, agricultural or energy companies) or for the use of the company collecting the data.

A private company can in principle carry out weather monitoring and measurements in Romania for gathering meteorological data, provided that prior MEF authorisation is obtained.

Sale of meteorological data

NMA is the official source of meteorological data in Romania. As per the relevant law, a private company can obtain meteorological data from NMA and even use this data for commercial purposes provided that due consideration is paid to NMA. No authorisation is required to do this.

At the same time, the law provides that NMA can authorise a person to release to the public meteorological data obtained from other legal entities or natural persons. In this case, the applicant for this authorisation must indicate the “source” of the meteorological data and the “consent” of the provider for the data's release.

A construal of Romanian law leads to the conclusion that in principle meteorological data can be acquired (with or without consideration) from other sources than NMA. Furthermore, when such meteorological data is to be “released to the public”, this release requires the NMA’s authorisation.

The law does not provide for a definition of the terms “release to the public” and “making available to the public”, and there is no available case-law on the interpretation of the legal texts. In particular, uncertainty exists as to whether “release to the public” or “making available to the public” means the activity of broadcasting (i.e. over a TV channel) or whether the law applies to a private transfer of use between private companies.

Certain applicable secondary legislation on weather uses the wording “making available to the public” in connection with “dissemination to the public” in the same context. Such wording leads to a possible interpretation that by “making available to the public”, the legislator referred only to the provision of meteorological data in the public space through broadcasting means (e.g. radio, TV transmissions).

It follows that in principle a private company would not be targeted by the requirement to obtain NMA authorisation when selling its meteorological data obtained from its own sources or other sources to other private companies (e.g. a construction, energy or telecommunication company).

Weather forecasting

Weather forecasting is also strictly regulated in Romania. The law deems “weather forecast” as a qualitative or quantitative description of the evolution of one or more weather elements for different prediction periods and areas in order to ensure the protection of life and goods. A weather forecast can be general, describing the general characteristics of the weather, or specialised, intended for a specific field of activity or for a restricted area.

Given that weather forecasting is aimed at ensuring the protection of life and goods, all weather forecasting in Romania is performed by NMA with the exception that a private company may perform general or specialised weather forecasts with the MEF's prior authorisation.

Several mandatory conditions have to be met in order for MEF authorisation to be granted. Firstly, for performing its weather forecast, a company must use only “meteorological data from authorised sources”.

“Authorised sources of meteorological data” are deemed under the law to include:

- onational networkd of meteorological radar, surface and air meteorological observations, and meteorological satellites;
- meteorological data that circulates in the international, regional and bilateral exchange under the coordination and control of the World Meteorological Organisation; and
- oobservation stations and meteorological posts certified by MEF.

In Romania, a private company can perform weather forecasts if the company uses meteorological data only from the authorised sources mentioned above.

Secondly, the company must prove that its weather forecast was derived from forecast methods, models and methodology that are based on scientific principles. Furthermore, a private company must provide the Romanian authority with a series of meteorological forecasts in order for the latter to verify its degree of achievement. Finally, the company must prove that it uses qualified personnel for creating whether forecasts (i.e. persons with formal studies in the field of meteorology).

Arguably, new, and emerging forecast systems and technology that use or are based on scientific methods, models and methodology and that meet the required degree of accuracy may be authorised for use in weather forecasting.

Conclusion

The current Romanian legal framework allows private companies to compete with NMA on certain weather services such as weather data collection, weather forecasting or sale of weather data provided that proper prior authorisation is obtained from MEF. However, the commercial weather services' market in Romania is undeveloped and NMA faces almost no competition from the private sector.

Firstly, this is due to the fact private companies must obtain specific authorisations from MEF to carry out weather services in Romania. Such authorisation is granted by MEF based on an assessment made by NMA of whether the company meets the requirements for authorisation. In other words, NMA has a significant say over whether its

potential direct competitor will
obtain the required authorisation. Secondly, since the official source in Romania of meteorological data is NMA, access to this data by the competing private commercial sector is left to the NMA's discretion, a process that is in need of more transparency.

These hurdles cannot be surpassed without a regulatory framework that creates a level playing field for all actors involved. Without the reform of current weather-related legislation, private companies will be prevented from competing with the NMA on weather services.

For more information on opportunities in Romania's weather services' industry, contact your CMS client partner or local CMS experts: **Horia Draghici**, **Valentina Parvu** and **Anna Morogai**.

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[1] See: Five Industries That Rely On Weather To Make Decisions (forbes.com)

[2] See: https://rmets.onlinelibrary.wiley.com/share/SQ6ZJCVWAF87DWTWJPC2?target=10.1002/met.1470

[3] See: Final_NWS Enterprise Analysis Report_June 2017.pdf (weather.gov) and NWS_Weather-Ready-Nation_Strategic_Plan_2019-2022.pdf