

Cover article: “Fiscal Inactivity: Initiation, Reactivation, Tax Implications”

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Expenses and value added tax are non-deductible for purchases made during the period in which your company or one of your business partners from whom you purchase goods or services is declared fiscally inactive. They can be deducted after fiscal reactivation in certain conditions. This article describes the situations where a company is declared fiscally inactive and how one can check the fiscal inactivity status, also analyzing the regime of expenses and value added tax during inactivation and after fiscal reactivation.

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- Banking and Finance
- Competition
- Dispute Resolution
- Employment
- Energy
- Public Procurement
- Real Estate

Drafts in Laws of March 2017

Get ahead legal changes with our guide on legislative projects and find out which one of the turmoil of legislative amendments is more likely to affect your business and how. Read in this issue of Drafts in Laws about draft laws in the following areas:

- Employment
- Energy
- Real Estate

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Voicu & Filipescu partners Marta Popa, Roxana Negutu and Raluca Mihai, interviewed by BizLawyer on their perspective over the life of women-lawyers. [Click here](#) to read the full interview.

cover article

Fiscal Inactivity: Initiation, Reactivation, Tax Implications

by Alex Tabacu, Tax Partner Voicu & Filipescu Tax Advisers SRL

Expenses and value added tax are non-deductible for purchases made during the period in which your company or one of your business partners from whom you purchase goods or services is declared fiscally inactive. They can be deducted after fiscal reactivation in certain conditions. This article describes the situations where a company is declared fiscally inactive and how one can check the fiscal inactivity status, also analyzing the regime of expenses and value added tax during inactivation and after fiscal reactivation.

Fiscal inactivity

The fiscal procedure code mentions several situations where a tax payer can become fiscally inactive.

The practical circumstances which can lead to fiscal inactivity are related to the fiscal behavior, the relationship with fiscal authorities, the observance of corporate aspects on using the headquarters as an actual place of business, the existence of statutory bodies of the company, the renewal of the headquarters deed.

Specifically, the situations which can lead, regarding a taxpayer, to adopting a decision of fiscal inactivity, described exhaustively by the Fiscal procedure code, are:

- the taxpayer does not fulfill during the course of a calendar quarter any declarative obligation prescribed by law;
- the taxpayer circumvents the controls of the central fiscal body by declaring fiscal residence data which do not allow the fiscal body to identify it;
- the central fiscal body finds that they do not operate at the declared fiscal residence;
- temporary voluntary inactivity registered with the trade registry;
- the company's duration expires;
- the company no longer has any statutory bodies;
- the headquarters deed is expired;

Who and when can establish inactivity?

The process of fiscal inactivity is initiated by the relevant tax authority, with only one exception, that of temporary voluntary inactivity registered with the Trade Registry, when the inactivation process is started by the taxpayer.

Beyond the matter of starting the process, in all cases the inactivation decision rests with the central fiscal body.

The document upon which inactivation takes place is a written decision issued by the tax authority according to the procedure established by order of the president of the National Agency of Fiscal Administration (NAFA).

The decision is issued taking into consideration the procedural deadlines mentioned by the fiscal procedure code (e.g. 15/30 days), if applicable, and is always communicated to the taxpayer.

How can a taxpayer and/or its business partners verify if they are under fiscal inactivity status?

For ensuring publicity of inactivated persons, NAFA organizes a registry of inactivated /reactivated taxpayers through the Registry of inactive/reactivated taxpayers.

This is an electronic registry and contains the following information:

- identification data of the taxpayer;
- the date they were declared inactive;
- the reactivation date;
- the name of the central fiscal body which issued the decision to declare inactive/reactivate;
- other mentions.

The registry is public, posted on NAFA's website at: <https://www.anaf.ro/inactivi/>

The procedure of identification of a taxpayer in the Registry of inactive/reactivated taxpayers is very easy. For this, two search criteria can be used: (i) by name or (ii) by fiscal identification code.

Once the taxpayer's name or fiscal identification code are inserted, the system returns either a short message saying the taxpayer is not included in the inactive list, either a detailed table containing information on the identification data and the status of said taxpayer, if they are registered as inactive.

Entry into the Registry of inactive/reactivated taxpayers is made by the issuing central fiscal body, after communicating the decision to declare inactive/reactivate, within 5 days from communication.

Taking into account that the Registry of inactive/reactivated taxpayers has a publicity role, the decision to declare inactive/reactivate has effects towards third parties from the day after the registration.

The tax situation applicable to cases of declared fiscal inactivity

The tax situation applicable to persons declared fiscally inactive

- The general rule applied during fiscal inactivity
Taxable persons residing in Romania, declared inactive according to the fiscal procedure code, who perform economic activities during the inactivity period, are subject to obligations regarding payment of taxes and mandatory social security contributions provided by the Fiscal Code.
At the same time, during fiscal inactivity, taxable persons do not have the right to deduct expenses and VAT afferent to the purchases they make.
- The situation of VAT after fiscal reactivation
By the amendments to the Fiscal Code as of January 1, 2017, in case of registration for VAT purposes according to the Fiscal Code art. 316 par. (12) on registration after canceling the VAT code, the taxable person may exercise their right of deduction for purchases of goods and / or services performed during the period they had their VAT registration code cancelled.
Exercising the right of VAT deduction is made by mentioning the tax in the first VAT return submitted after registration or, as the case may be, in a subsequent return, even if the invoice does not include the

registration code for VAT purpose of the taxable person. The exception regarding the lack of registration code for VAT purpose only applies to this case.

After registration for VAT purpose, for deliveries of goods/services made during the period they had their VAT registration code cancelled, the taxpayers issue invoices in which they distinctly write the VAT collected during said period, and these invoices are not registered in the VAT return.

- The situation of deduction of expenses made during the fiscal inactivity period after fiscal reactivation

If the inactivity and reactivation, according to the Fiscal Procedure Code, are declared in the same fiscal year, the related expenses will be taken into account in determining the fiscal result, according to the provisions on income tax, starting with the quarter of reactivation.

If inactivity or reactivation are declared in different fiscal years, the expenses for the period of inactivity of the previous year / years / before the one when the reactivation occurs are taken into account in determining the fiscal result, according to the provisions on income tax, by adjusting the fiscal result of the year to which they relate to by submitting a corrective statement as provided by the Fiscal Procedure Code.

The expenses afferent to the inactivity period of the reactivation year shall also be taken into account for determining the fiscal result, according to the provisions on income tax, starting with the reactivation quarter.

The situation applicable to beneficiaries of goods and/or services provided by taxable persons declared fiscally inactive

- The general rule during fiscal inactivity

Beneficiaries purchasing goods and/or services from taxable persons residing in Romania, after registration as inactive in the Registry of inactive/reactivated taxpayers according to the Fiscal procedure code, do not have the right to deduct the expenses and the VAT afferent to said purchases.

There is only one exception, applicable to purchase of goods made during the mandatory enforcement procedures and/or procurement of goods/services from taxable persons undergoing bankruptcy, according to Law 85/2014 on procedures for preventing insolvency and insolvency, with subsequent amendments. In these cases the beneficiaries can deduct the expenses and the afferent VAT even if the seller/provider is registered as inactive taxpayer.

- The situation of the VAT after fiscal reactivation

Similarly to the rule on reactivated taxpayers and their partners, in case of registration for VAT purpose of the supplier/provider, the beneficiaries who acquired goods and/or services in the period when the supplier/provider had the VAT registration code cancelled, exercise the right to deduct VAT for said purchases.

Exercising the VAT deduction right is made upon invoices issued by the supplier/provider, by registering the tax in the first VAT return submitted after registration of the supplier/provider or, as the case may be, in a subsequent return.

- The situation of expenses made during fiscal inactivity, after fiscal reactivation

If the inactivity and reactivation of the supplier, according to the Fiscal Procedure Code, are declared in the same fiscal year, the beneficiary will consider those costs when determining the fiscal result according to the provisions on income tax, starting with the reactivation quarter.

If inactivity or reactivation of the supplier are declared in different fiscal years, the beneficiary will take into account the expenses related to the inactivity period in the year / years preceding the one in which reactivation is declared to determine the fiscal result according to provisions on income tax, by adjusting the fiscal result of the year to which they relate.

Adjustment of the fiscal result also involves submitting a correcting statement according to the Fiscal procedure code.

The expenses related to the inactivity period from the year when reactivation is declared will be taken into account in determining the fiscal result, under the provisions relating to income tax, starting in the quarter of reactivation.

Reactivation of inactive taxpayers

If, during the period in which the taxpayer is declared inactive for reasons not related to operating in a location other than the declared fiscal residence, or not related to circumvention of tax audits, said taxpayer (i) fulfills all reporting obligations under law and (ii) does not have outstanding tax obligations, they are reactivated.

A taxpayer who has been declared inactive for reasons of operating in a location other than the declared fiscal residence or for reasons of evading tax audits, if they meet the above mentioned conditions and the central fiscal body which decided inactivation finds that they operate at the declared fiscal residence or they ascertain cooperation on tax audits, as appropriate, is reactivated.

Naturally, for reactivation to take place, the cause for which the taxpayer had been declared inactive must also have disappeared.

In case of a taxpayer for whom insolvency proceedings in simplified form were opened, a taxpayer who entered bankruptcy or a taxpayer for whom a dissolution decision was issued, is reactivated by the central fiscal body, at their request, after fulfilment of declarative obligations.

If a taxpayer is declared inactive by error, the issuing central fiscal body must cancel the decision whereby they declared the taxpayer inactive, with effects in the future and in the past.

The reactivation procedure for each individual case is made according to instructions detailed in the Order issued by NAFA President no. 3846/2015.

banking and finance - legal changes published in March 2017

Decision no. 62/2017 regarding the unconstitutionality of the provisions of Law for supplementing Government Emergency Ordinance no. 50/2010 on consumer credit agreements was published in the Official Gazette of Romania, Part I, no. 161 of March 3, 2017.

By Decision no. 62/2017 on the Law for supplementing the Government Emergency Ordinance no. 50/2010 on consumer credit agreements with a new section "Information and rights to be included in credit agreements in foreign currency", which introduced an obligation for creditors under credit agreements in Swiss francs to make the conversion in lei of the credit balance expressed in Swiss francs, and the consumer's right to address to the court to recalculate the debt in case of credit agreements outsourced / sold / transferred and agreements concluded with consumers who were subjected to mandatory enforcement, was declared unconstitutional in its entirety.

The legal provisions, namely Government Emergency Ordinance no. 52/2016 (applicable to credit agreements in progress after its entry into force - September 30, 2016) provides the consumer's right to request the conversion of the loan agreements in an alternative currency, usually the one in which the consumer receives his income or owns assets that finance the loan repayment. The conversion is made at the market exchange rate applicable on the day of the conversion.

Regarding credit agreements in Swiss francs, the law submitted to constitutional control established a legal regime different from the common law, a regulation derogatory to it. The legal norms considered unconstitutional established that the creditor has the obligation to accept the replacement of the balance of the amount payable in a currency with equivalent in lei, but not at the exchange rate prevailing at the date of conversion, but on the rate established at an earlier date prior to the operation, considered more favorable for one of the parties, namely the consumer.

The Court considers that the incidence of monetary nominalism principle (under which the debtor of a sum of money is discharged by delivering the nominal amount due) in loan agreements in Swiss francs is not a hindrance to the mechanism of hardship, if the conditions of its incidence are met.

The Court considers that the arguments retained in Decision. 623 of October 25, 2016 on the Law no. 77/2016 on giving in payment of real estate in order to settle obligations undertaken by credits regarding the incidence of hardship theory are fully applicable with regard to credit agreements in Swiss francs. Thus, the court has the power and obligation to apply hardship if all the conditions of its existence are met, so that the situation of consumers with loans in Swiss francs has a viable judicial remedy, designed to eliminate the effects of changes in circumstances that led to the loan. Adapting to new conditions may be performed including by a conversion of the installments in national currency at an exchange rate that the court may determine in the particular circumstances of the case in order to rebalance the obligations, an exchange rate which can be that at the conclusion of the contract, that on the date of the occurrence of hardship event or that on the date of conversion.

competition - legal changes published in March 2017

March 2017 did not bring notable legal changes in the area of competition, however we would like to draw the attention in this issue towards the publication on the website of the Competition Council of two relevant documents for the actors of the pharmaceutical sector and for the public procurement sector, respectively:

The final Report on the investigation aimed at understanding the pharmaceutical sector in Romania was published by the Romanian Competition Council on its website in March, 2017 and comprises amendments brought following the public consultation process. The Report is available in Romanian language at the following link:

http://www.consiliulconcurentei.ro/uploads/docs/items/id12125/raport_final_ptr_site_martie_2017.pdf

The Guide on observing the competition rules when participating as an association during a public procurement procedure

The Guide provides a series of useful guidelines for undertakings participating as bidders within the public procurement procedures, clarifying practical aspects related to the situations where an association of undertakings is permitted as well as the situations where associations of undertakings are susceptible of infringing the competition rules.

dispute resolution - legal changes published in March 2017

Decision no. 7/2017 regarding the examination of a request made enforceable promissory note was published in the Official Gazette of Romania, Part I, no. 220 of March 30, 2017.

The panel for debating legal issues of the High Court of Cassation and Justice was asked to issue a preliminary ruling that would give a resolution on principle regarding the question of law regarding making a promissory note enforceable in light of the provisions of art. VII of GEO. 1/2016 amending Law no. 134/2010 on the Code of Civil Procedure and certain related acts.

The High Court felt that under the procedure established by art. 666 CPC, the enforcement court will verify formally the compliance with special legal provisions applicable to each writ of enforcement invoked by the creditor. Also, the High Court found that the changes in art. VII of GEO. 1/2016 simplified the procedure for enforcement in that, currently the proceedings for a declaration of enforcement include applying the enforcement formula, which excludes the existence of distinct procedures of declaring enforceability of securities.

Following the legal analysis, the High Court admitted the objection and established that, under the unitary application and interpretation of art. VII of GEO no. 1/2016, in relation to art. 640 and art. 666 CPC, declaring enforceability of a promissory note is made within the procedure of approving mandatory enforcement, and not through a distinct prior stage.

Decision no. 2/2017 on examining the second appeal on points of law concerning the correct interpretation of art. 414 par. (1) thesis I of the Code of Civil Procedure was published in the Official Gazette of Romania, Part I, no. 175 of March 10, 2017.

The Managing College of the High Court of Cassation and Justice referred to the High Court of Cassation and Justice a second appeal on points of law on "admissibility of exercising the extraordinary procedure of the second appeal against the conclusions which interrupted the course of judgment, issued by courts of appeal, in cases where the appeal is the last available remedy".

Looking at those provisions, the court found that, in principle, the legal text does not bring limitations on the admissibility of the remedy in cases where the decision on the merits is not subject to appeal or second appeal, except rulings delivered by the High Court of Cassation and Justice. It also adds that these provisions make no distinction in relation to the procedural stage of the dispute and provides jurisdiction to appeal to a higher court (except mentioned above). In the Court's view, this clarification of the law maker would not have been necessary in relation to the general procedural provisions regulated by art. 466 par. (4) C. Civ. Proc. The court also noted that when the law maker created an exemption regarding the remedy exercised against previous rulings, it expressly provided an opportunity to submit an appeal or a second appeal, even if the decision on the merits is final, exemplary in this regard being the provisions of art. 406 par. (6) and Art. 421 par. (2) C. Civ.Proc..

In relation to these observations, the High Court decided that in the unitary interpretation and application of art. 414 alin. (1) thesis I C.Civ.Proc., the second appeal submitted against the conclusion which suspended judgment, as well as against the conclusion rejecting the resumption of the case is admissible, regardless whether the suspension conclusion was issued by the court in a case where the decision to be issued on the merits is final or not.

employment - legal changes published in March 2017

Law no. 16/2017 concerning the posting of workers in the transnational provision of services was published in the Official Gazette of Romania, Part I, no. 196 of March 21, 2017.

The law establishes a common framework of rules, measures and control mechanisms applicable to posting of workers in the transnational provision of services, including measures to prevent and punish any abuse or circumvention thereof. The law does not affect the exercise of fundamental rights as recognized in national legislation and at EU level, including freedom and the right to strike or to take other actions covered by labor relations, in accordance with national legislation.

The provisions of Law no. 16/2017 apply to:

- enterprises established in a Member State other than Romania or on the territory of the Swiss Confederation which, in the provision of transnational services, post on Romanian territory employees under labor relations with them;
- enterprises established in Romania which, in the provision of transnational services, post on the territory of a Member State other than Romania or on the territory of the Swiss Confederation employees under labor relations with them.

The law does not apply to ship personnel of trading navy enterprises.

The new law provides that throughout the period of posting, the employees will retain direct employment relationship with the employer who posted them. Also, employees posted in Romania within the transnational provision of services shall, whatever the law applicable to the employment relationship, benefit from the working conditions provided by the Romanian legislation and / or collective agreement concluded at sectoral level, applicable by extension to the whole sector, as required by law, on: (i) the maximum working time and minimum periodical rest; (ii) minimum paid annual holidays; (iii) the minimum wage, including overtime compensation or payment; (iv) the conditions of availability of workers by temporary employment agencies; (v) labour health and safety; (vi) protective measures with regard to working conditions for pregnant women or those who have recently given birth, and for children and youth; (vii) equality of treatment between men and women and other provisions on non-discrimination.

It is also provided that any specific indemnity for transnational posting is considered to be a part of the minimum wage, to the extent it is not granted as compensation for expenses generated by posting, namely travel, accommodation and meals. If the Romanian legislation provides more favorable working conditions than those provided in the member state or the Swiss Confederation, on the territory of which the Romanian workers are posted, Romanian law has priority.

It is important to mention that the employer of the posted worker bears direct liability for granting all employee's rights provided in the individual or collective employment agreement, having the following obligations towards the employee: (i) to pay any net outstanding compensation; (ii) to pay any retroactive amounts or reimbursements of tax or social security contributions, unjustifiably retained from their salary; (iii) to compensate the costs whose amount cannot be justified in relation to the net salary of the posted employee or to the quality of the accommodation, retained or deducted from salaries for the accommodation provided by the employer; (iv) to pay the contributions to mutual funds or institutions of social partners, unjustifiably retained from the posted employee's salary.

The new law takes effect on May 20, 2017, when the Law no. 344/2006 on posting of employees in transnational service provision is repealed.

energy - legal changes published in March 2017

Emergency Ordinance no. 24/2017 amending and supplementing Law no. 220/2008 on the system for promoting energy production from renewable energy sources and amending certain acts was published in the Official Gazette of Romania, Part I, no. 224 of March 31, 2017, the date on which entered into force.

The Emergency Ordinance brings several changes to Law no. 220/2008 for establishing the system for promoting electricity production from renewable energy sources, relevant being the following:

- it provides that the green certificate is not a financial instrument;
- it introduces definitions of terms such as: annual static amount of green certificates, anonymous centralized market of green certificates, centralized market for electricity from renewable sources supported by green certificates, average impact of green certificates to the final consumer;
- it provides that starting 2018, NRAE calculates the annual static amount of green certificates, every two years, based on a methodology, published on its website and informs the Government by June 30 on the annual static amount of green certificates for the next two year period;
- also from 2018, NRAE establishes by order, by March 1st of each year, the annual mandatory quota of green certificates for the previous year, based on the static amount of green certificates and final consumption of electricity in the previous year, but without exceeding the average consumer impact of 11.1 EUR/ MWh established considering the weighted average price of transactions in the anonymous centralized spot market for green certificates during the previous year. The RON value is calculated at the average exchange rate set by the National Bank of Romania for the previous year.
- it provides that NRAE will draft until September 1, 2017 the regulatory framework for the functioning of the anonymous centralized market of green certificates and centralized electricity market supported by state aid scheme
 - The Ordinance also provides that no later than March 1, 2018, NRAE shall determine by order the mandatory annual quota of green certificates for the year 2017. The green certificates issued by the transmission system operator from the first day of the month of May 2017 and the green certificates postponed to trading from July 1, 2013, are available and can be traded until March 31, 2032. However, upon the entry into force of the emergency ordinance, the bilateral agreements to be concluded on the bilateral agreements market for green certificates can have a maximum validity period up to august 31, 2017. Bilateral SPAs for green certificates concluded before the entry into force of the Ordinance are in effect until their expiry, without possibility of extension.

Order no. 14/2017 repealing NRAE Order no. 9/2013 on the establishment of the Technical Commission for approval of feasibility studies prepared for concession for natural gas distribution service and issuing compliance permits for business operators in the gas industry was published in the Official Gazette of Romania, Part I, no. 175 of March 10, 2017, the date on which it entered into force.

The new Order repeals *NRAE President Order no. 9/2013 on the establishment of the Technical Commission for approval of feasibility studies prepared for concession of natural gas distribution service and issuing compliance permits for business operators in the gas industry*, mentioning also that under all NRAE regulations, any reference to

the "technical Commission for approval of feasibility studies prepared for the concession of natural gas distribution service and granting compliance permission for operators in natural gas" are deemed to be made to "technical Commission for concession of natural gas distribution service and issuing compliance permits for business operators in the gas industry within NRAE".

Decision no. 284/2017 repealing Decision NRAE no. 2.340 / 2013 regarding the appointment of the Commission for reviewing the design verifiers and technical experts for objectives / systems in the natural gas sector was published in the Official Gazette of Romania, Part I, no. 175 of March 10, 2017, and entered into force on the same date.

The new Decision repeals the Decision of NRAE President no. 2.340 / 2013 regarding the appointment of the Commission for reviewing the design inspectors and technical experts for objectives / systems in natural gas sector, published in the Official Gazette of Romania, Part I, no. 538 of August 26, 2013, as amended and supplemented.

Senate Decision no. 15/2017 on the Proposal for a Regulation of the European Parliament and of the Council on preparation for risks in electricity and repealing Directive 2005/89 EC - COM (2016) 862 final was published in the Official Gazette of Romania, Part I, no. 176 of March 10, 2017 and entered into force on the same date.

The Decision shows that the proposal for a regulation of the European Parliament and of the Council on preparation for risks in electricity and repealing Directive 2005/89 EC - COM (2016) 862 final observes the principles of subsidiarity and proportionality.

Order no. 15/2017 amending section. II sub point. 8 Annex. 4 of NRAE Order no. 178/2015 on the approval of tariffs and money contributions collected by NRAE in 2016 was published in the Official Gazette of Romania, Part I, no. 184 of March 15, 2017, and entered into force on the same date.

Annex 4 of NRAE Order no. 178/2015 on the approval of tariffs and money contributions collected by NRAE in 2016, point II, paragraph 8, is amended as follows: the stipulation that "the adjustment period for the value of the cash contribution / fee for 2016 is from March 1 to March 15, 2017, given that reporting for December is made in accordance with art. 6 para. (1) of the Methodology for monitoring the natural gas market, approved by NRAE president Order no. 5/2013 ", and the following are added: "except the licensees of natural gas supply, transportation and distribution for whom the adjustment period of the financial contribution / fee is between May 1 - May 15, 2017. For licensees for the upstream pipeline operation and the holders of supply licenses for LPG, LNG, biogas / biomethane or CNG / GNCV, the adjustment period for the contribution is between March 1 and March 15, 2017, taking into account quantities made in 2016, declared until 31 January 2017. The statement is sent by e-mail at NRAE@NRAE.ro, fax no. 021-312.43.65 or mailed to str. Constantin Nacu. 3, Bucharest, District 2, postal code 020995".

Government Decision no. 129/2017 supplementing Art. 8 of Government Decision no. 1215/2009 laying down the criteria and conditions for the implementation of the support scheme to promote high efficiency cogeneration based on useful heat demand has been published in the Official Gazette of Romania, Part I, no. 192 of March 17, 2017, and entered into force on the same date.

Government Decision amends GD. 1215/2009 laying down the criteria and conditions for the implementation of the support scheme to promote high efficiency cogeneration based on useful heat demand.

According to the normative act amended, producers of electricity and heat in cogeneration benefit from the support scheme for a period exceeding 11 consecutive years without exceeding 2023.

Law no. 34/2017 regarding the installation of infrastructure for alternative fuels was published in the Official Gazette of Romania, Part I, no. 214 of March 29, 2017, entering into force on May 28, 2017.

The new law regulates measures for installing infrastructure for alternative fuels in order to minimize dependence on oil and to mitigate the environmental impact of transport. It provides the following:

- the minimum requirements on the creation of an infrastructure for alternative fuels, including charging stations for electric vehicles and refueling points with compressed natural gas, liquefied natural gas and hydrogen, which are to be implemented through the national policy frameworks;
- the technical specifications for such refueling and charging stations;
- requirements on the information of users (the habilitated institutions take the relevant measures necessary to ensure that users are supplied with relevant, consistent and clear information on vehicles that can be refueled with various fuels introduced on the market or recharged at the charging stations; this information is provided to the public in the user manuals of the vehicles, at the refueling and charging stations, and aboard motor vehicles and the vehicle traders; the requirement applies to all motor vehicles and their operating manuals placed on the market after May 1, 2017).

Within 180 days from the date of publication of the Law, the Government will issue the necessary regulations to implement it.

Order no. 17/2017 amending NRAE president Order no. 145/2014 on the deployment of smart metering of electricity was published in the Official Gazette of Romania, Part I, no. 216 of March 29, 2017, and entered into force on the same date.

The new Order provides that based on the outcome of cost-benefit analysis in art. 51 para. (1) and proposals of distribution operators lessees, NRAE approves until April 30, 2017, by order of the President, the framework conditions for drawing up the national plan for implementing intelligent metering systems for electricity in Romania and the timing of implementation.

Department for Energy Efficiency and specialty directorates in the NRAE will follow the fulfillment of the provisions of the new order.

Order no. 16/2017 amending and supplementing the methodology for setting tariffs for electricity transmission service, approved by NRAE President Order no. 53/2013 was published in the Official Gazette of Romania, Part I, no. 217 of March 30, 2017, and entered into force on the same date.

The Order amends and supplements the methodology for setting tariffs for electricity transmission, approved by NRAE President Order no. 53/2013.

The changes include:

- defining the regulated provision / reserve and repealing the definitions of regional transmission for electricity and the tariff zone;
- the transmission system operator (TSO) will no longer require quarterly growth increase of tariffs if the inflation rate exceeds 5% quarterly;

- Phase V (setting average transmission tariff) no longer requires the allocation by network nodes of the electrical network transmission service costs, but establishing the input and output components of electricity in/and out of the grid;
- in case of decrease in power consumption by up to 3%, TSO is obliged to reduce controllable operating and maintenance costs proportionately previously established by the competent authority for tariff period t, which does not represent efficiency gains;
- the efficiency gain resulting from the reduction of controllable operation and maintenance costs which register a decrease in electricity use from the forecast will be established in relation to the controllable operation and maintenance costs reduced by no more than 3% below the controllable operation and maintenance costs previously established by the competent authority and it will not be reduced proportionally with the reduced electricity use;
- costs of redundancy payments are no longer considered uncontrollable costs.

Order no. 18/2017 amending and supplementing the methodology for establishing unitary income for the regulated supply activity held in a regulatory year and approval of regulated natural gas prices since 2016, approved by NRAE President Order no. 182/2015 was published in the Official Gazette of Romania, Part I, no. 217 of March 30, 2017, and entered into force on the same date.

The Order aims to amend the methodology for establishing unitary income for the regulated supply activity held in a regulatory year and approval of regulated natural gas prices since 2016, approved by NRAE Order no. 182/2015.

Order brings important changes to the methodology, among them we mention:

- the regulated supply of natural gas will comprise the conclusion of contracts for purchasing gas for enduring regulated natural gas supply, in the context of minimizing the cost of resources allocated by suppliers, based on transparent procedures, enduring at the same time equal and non-discriminatory treatment for participants in the procedure of purchasing natural gas as bidders, for ensuring continuity of supply gas, in accordance with legal provisions in force, and for covering consumption of its clients;
- at the end of every regulatory year (December 31), the value of the active regulatory base afferent to regulated supply shall be adjusted in relation to the migration of clients from the regulated market towards the free competition market;
- the regulated price formulas are changed;
- changes to the procedures for estimating the fixed amount per unit to cover the cost of purchasing of natural gas;
- the fixed amount per unit for covering purchasing of natural gas shall be determined quarterly/half-yearly/annually and not just annually for another period.

Order no. 24/2017 amending NRAE president orders establishing regulated tariffs for distribution service and approval of the prices for the regulated supply of natural gas was published in the Official Gazette of Romania, Part I, no. 221 of March 31, 2017 and entered into force on April 1, 2017.

The new order sets regulated prices for natural gas supply regulated for a number of operators in the gas sector, namely: AMARAD DISTRIBUȚIE S.R.L., B.E.R.G. SISTEM GAZ S.A., CORDUN GAZ S.A., COVI CONSTRUCT 2000 S.R.L., CPL CONCORDIA FILIALA CLUJ ROMÂNIA S.R.L., DESIGN PROIECT S.R.L., DISTRIGAZ VEST S.A., EURO SEVEN INDUSTRY S.R.L., GAZ EST S.A., GAZMIR IAȘI S.R.L., GAZ NORD EST S.A., GAZ SUD S.A., GAZ VEST S.A., GRUP DEZVOLTARE REȚELE S.A., HARGAZ HARGHITA GAZ S.A., INSTANT CONSTRUCT COMPANY S.A., M.M. DATA S.R.L., MĂCIN GAZ S.R.L., MEGACONSTRUCT S.A., MEHEDINȚI GAZ S.A., S.C. MIHOC OIL S.R.L., NORD GAZ S.R.L., NOVA POWER & GAS S.R.L., OLIGOPOL S.R.L., OTTO GAZ S.R.L., PREMIER ENERGY S.R.L., PRISMA SERV COMPANY S.R.L., PROGAZ P&D S.A., ROMGAZ S.A., SALGAZ S.A., TEHNOLOGICA RADION S.R.L., TIMGAZ S.A., TULCEA GAZ S.A., VEGA 93 S.R.L., WIROM GAS S.A., CONI S.R.L.

Emergency Ordinance no. 25/2017 for amending the Annex to Government Ordinance no. 7/2013 on the establishment of taxes on additional revenues as a result of deregulation of natural gas prices was published in the Official Gazette of Romania, Part I, no. 224 of March 31, 2017 and entered into force on April 1, 2017.

The New Ordinance replaces the Annex to Government Ordinance no. 7/2013 on the establishment of taxes on additional revenues as a result of deregulation of natural gas prices. The Annex provides the additional revenue calculation formula.

Order no. 26/2017 to repeal art. 1 and art. 2 letter b) of NRAE Order no. 8/2017 on the approval of cap values for trading green certificates and the value of a green certificate not acquired was published in the Official Gazette of Romania, Part I, no. 224 of March 31, 2017 and entered into force on April 1, 2017.

The Order repeals the provisions stipulating the cap values for trading green certificates on the green certificates market (a minimum value of 133.0611 lei / green certificate or maximum value of 271.0624 lei / green certificate).

It also repeals, the provision whereby the value of a green certificate not acquired by operators who have annual obligation of green certificates, in case of failure to fulfill the mandatory quota of green certificates is 542.1198 lei / green certificate not acquired (ie 120.0097 euro / green certificate not acquired) for the year of analysis 2017.

Order no. 27/2017 establishing mandatory estimated quota of green certificates, for the period April-December 2017 was published in the Official Gazette of Romania, Part I, no. 224 of March 31, 2017 and entered into force on April 1, 2017.

The Order governing mandatory estimated quota of green certificates by economic operators who have the obligation to acquire green certificates for the period from April to December 2017. The rate is set at EUR 0.358 green certificates / MWh, corresponding to final consumption of electricity exempt from payment of 5.048 GWh green certificates, according to annex part of the Order.

Upon the entry into force of the new Order, NRAE Order no. 119/2016 laying down mandatory estimated quota of green certificates for the year 2017 shall cease to apply.

public procurement - legal changes published in March 2017

Order of the National Agency for Public Procurement no. 55/2017 amending the Order of the National Agency for Public Procurement no. 264/2016 on establishing methodology for ex-ante selection of tender documentation related to procurement contracts / framework agreements covered by Art. 23 para. (2) of Annex to the Government Decision no. 395/2016 approving the Methodological Norms for applying the provisions on awarding public procurement contracts / framework agreements of Law. 98/2016 on public procurement contracts / framework agreements covered by art sector. 25 para. (2) of the Annex to the Government Decision no. 394/2016 approving the Methodological Norms for applying the provisions relating to award of sectoral / framework agreement of Law. 99/2016 on the sector procurement and developed for the interaction with verified authorities / entities was published in the Official Gazette of Romania, Part I, no. 183 of March 15, 2017 and entered into force on the day of its publication

The new normative act amends the Order of the National Agency for Public Procurement no. 264/2016 on establishing methodology for ex-ante selection of tender documentation related to procurement contracts / framework agreements for the public procurement contracts / framework agreements sector, relevant being the following:

- under the provision whereby *"selection of tender documentation is ensured technically at SEAP level and is made every working day"* the order inserts that the tender documentations mentioned in art. 1 (ex-ante assessment of award documentation, along with the contracting strategy) is grouped in intervals of ten, for each type of contract/framework agreement, namely supply contract/framework agreement or service contract/framework agreement or works contract/framework agreement, in the order they are entered into the system; the old regulation did not provide this distinction of grouping documentations by types of contract/framework agreement (supply, services or works);
- art. 4 of the Order is amended in the sense of introducing the provision that the evaluation of the award documentation is performed via the specific information available in SEAP. NAPP assesses the documentation submitted to SEAP in the order of their receipt in the specific computer application, taking into account the type of contract / framework agreement (supply, service or works). Also, the contracting authority shall take into account the time allowed for assessing NAPP tender documents when developing the timing of the award procedure for the sector procurement contract / framework agreement.

real estate - legal changes published in March 2017

Government Decision no. 80/2017 amending and supplementing Government Decision no. 717/2009 regarding the approval of the implementation of the "First Home" program

was published in the Official Gazette of Romania, Part I, no. 153 of March 1, 2017.

The Government Decision was adopted in order to harmonize the methodological norms for implementing the "First Home" program, adopted by Government Decision no. 717/2009 regarding the approval of the implementation of the "First Home" program with modifications to the program by the Government Emergency Ordinance no. 97/2016 amending and supplementing art. 1 of Government Emergency Ordinance no. 60/2009 on certain measures for the implementation of the "First Home" program and establishing measures at central public administration level ("GEO no. 97/2016").

At the outset, the decision establishes the introduction of a new set of definitions of homes which can be bought/built within the program. Thus, a new home means any property that meets the requirements to be classified as residential building, received on completion of the works no later than five years before the guaranteed loan application. The housing subject to intervention works to strengthen and/or mitigate seismic risk at most five years before the loan application will be treated as new housing.

The 5 year term applicable to new and/or consolidated homes shall be calculated upon the date of taking over at the end of the works, with the final point being the date of the loan application.

In order to transpose the principle established by GEO no. 97/2016, the decision establishes the obligation of the state to guarantee a maximum of 50% of the new and/or consolidated housing finance, excluding interest, fees and bank charges and a maximum of 40% of the funding, except interest, fees and bank charges, in case of housing accepted at new construction or completion of interventions to strengthen and / or reduce seismic risk, as appropriate, with more than five years before the loan application.

Finally, in order to reduce the bureaucracy involved in the program, the National Loan Guarantee Fund for SMEs takes over the task of issuing approvals for cancelation of mortgages and interdictions for sale and encumbrances provided by the law in case of full early repayment or repayment in due time of the guaranteed financing, as well as in case of rejection of payment applications with strict impact on the monitoring activity of guarantees issued within "First Home" program.

employment - draft laws published in March 2017

The draft law ratifying the Agreement between Romania and the Republic of Serbia on Social Security, signed in Belgrade on October 28, 2016 was published on the website of the Ministry of Labor on March 22, 2017.

The draft is aimed at Romania's ratifying the Agreement and thus expressing consent for its entry into force. The Agreement between Romania and the Republic of Serbia in the field of social security will apply to Romanian law on compensation for temporary disability, maternity allowance, allowance for sick child care, allowance for disease prevention and recovery of work capacity, pensions awarded under the Public pension system, benefits in kind in respect of sickness and maternity benefits in kind and in cash in case of accidents at work and occupational diseases, death grants, state allowance for children.

The agreement establishes as a general principle that the person who is employed in the territory of a Contracting State shall be subject only to the laws of that Contracting State (*lex loci laboris*), although domiciled in the other Contracting State or if the employer has residence on the territory of the other Contracting State. Also, self-employed workers operating within a Contracting State are subject to the laws of that Contracting State, even if domiciled in the other Contracting State.

Special provisions apply to workers posted by the employer to carry on an activity in the other Contracting State, self-employed workers who perform temporary work in the other Contracting State, personnel of international transport enterprises, crew and staff aboard a ship, civil servants and persons treated as such, and members of diplomatic missions and consular posts.

The draft is published on the Ministry of Labor's website at:

<http://www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decizionala/2017-03-22-proiect-lege-ratif-acord.pdf>

Draft Government Decision approving the Methodological Norms on the posting of workers in the provision of transnational services in Romania was published on the website of the Ministry of Labor on March 28, 2017.

The draft law is aimed at the following aspects:

- The Labor Inspectorate's establishing and assessing, through territorial inspectorates, certain factual elements in order to identify the situations representing transnational posting, for preventing abuse and circumvention of law;
- assessing the risks caused by failing to observe the legal provisions on posting of employees noted during controls made by labor inspectors;
- the procedure and communication deadlines for the decision imposing administrative financial sanction, and other relevant documents;
- establishing civil offence penalties for discouraging the intent to circumvent the law.

The draft decision is published on the Ministry of Labor's website at:

http://www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decizionala/2017-03-28-1-HG_aprobare_norme_detasare.pdf

Draft law for amending paragraph (4) of article 66 of Law no. 76/2002 on the unemployment insurance system and employment stimulation has been registered in the Senate for discussion under no. B115 on March 29, 2017.

The proposed amendment aims to increase the period in which inmates can follow a training program organized by county employment agencies or by the Bucharest employment agency, the necessary expenses incurred in professional training being borne from the unemployment insurance budget. Thus, it is proposed to increase the period until the last day of incarceration from 9 months to 1 year but not less than 3 months (3 months is the minimum duration of a training course). Also, the legislative proposal is aimed at broadening the scope of the text, namely when a person can benefit from training courses, including situations where the person is serving an educational sentence and situations where persons benefit from conditioned parole or the replacement of the admission measure with the measure of daily assistance.

The reasons under this proposal are linked to the idea that the practice of the correctional system proved that the 9 month term is insufficient for going through all the procedural steps necessary for obtaining the documentation requested by the professional training providers, for each inmate selected for these courses.

energy - draft laws published in March 2017

Proposal of all transmission system operators in the Union (TSO) on the opening time of the intra-day market and the closing time of the interzonal intraday market was published on March 7, 2017.

In order to implement the coupling of the single markets for the next day and for intraday markets, it is necessary that transmission system operators establish a coordinated opening time of the intrazonal intraday market and closing time of the intrazonal intraday market and the deadline firmness for the following day. The proposals mentioned are for achieving this goal.

Notes and comments could be submitted by April 10, 2017. Documents can be viewed at:

<http://www.anre.ro/ro/energie-electrica/legislatie/documente-de-discutie-ee1/aplicarea-regulamentului-ue-nr-1222-2015/propunerea-tuturor-ots-termenul-pentru-fermitatea-din-ziua-urmatoare&page=1>

Proposal of all transmission system operators in the Union (TSO) on the firmness deadline for the following day was published on March 7, 2017.

In order to implement the coupling of the single markets for the next day and for intraday markets, it is necessary that transmission system operators establish a coordinated opening time of the intrazonal intraday market and closing time of the intrazonal intraday market and the deadline for firmness the following day. The proposals mentioned are for achieving this goal.

Notes and comments could be submitted by April 10, 2017. Documents can be viewed at:

<http://www.anre.ro/ro/energie-electrica/legislatie/documente-de-discutie-ee1/aplicarea-regulamentului-ue-nr-1222-2015/propunerea-tuturor-ots-termenul-pentru-fermitatea-din-ziua-urmatoare&page=1>

Draft decision on the common grid model was published on March 31, 2017.

NRAE submits for public consultation a draft decision created for observing the requirements of Regulation (EU) 2015/1222 of the Commission dated July 24, 2015 for establishing directives for allocating capacity and managing bottlenecks regarding the establishment of a common grid model at EU level, in order to facilitate electricity trading.

The deadline for notes is April 24, 2017. The document can be viewed at:

<http://www.anre.ro/ro/energie-electrica/legislatie/documente-de-discutie-ee1/aplicarea-regulamentului-ue-nr-1222-2015/proiect-de-decizie-privind-modelul-comun-de-retea&page=1>

Draft Order on amending NRAE Order no. 145/2014 on implementing electricity smart meters was published on March 6, 2017.

NRAE submits for public consultation a proposal to amend Order 145/2014 in order to approve the national schedule for implementing SMs, containing the dated for the implementation stages, and the national SM implementation plan regarding the investment works afferent to each distribution operator lessee, its value and financing sources, and information of end users.

The final deadline for submission of notes and proposals is 10 calendar days from publishing on the website. The document can be viewed at:

<http://www.anre.ro/ro/energie-electrica/legislatie/documente-de-discutie-ee1/smart-metering1395831128/proiect-de-ordin-pentru-modificarea-ordinului-anre-nr-145-2014-privind-implementarea-sistemelor-de-masurare-inteligenta-a-energiei-electrice&page=1>

Draft order for national implementation of electricity smart meters and setting the implementation schedule was published on March 10, 2017.

NRAE submits for public consultation this draft order, issued for compliance with the European and national regulatory framework for implementation of smart meters provided in the third legislative package of the EC for liberating the electricity markets by the European directive on the common norms for the internal electricity market, transposed in the national legislation by the Electricity and Gas law no. 123/2012.

The final deadline for submission of notes and proposals is 30 calendar days from publishing on the website. The document can be viewed at:

<http://www.anre.ro/ro/energie-electrica/legislatie/documente-de-discutie-ee1/smart-metering1395831128/proiect-de-ordin-privind-implementarea-la-nivel-national-a-sistemelor-de-masurare-inteligenta-a-energiei-electrice-si-stabilirea-calendarului-de-implementare&page=1>

Draft order on amending and supplementing the Methodology for the annual Report by license holders in the electricity sector, approved by NRAE Order no. 32/2016 was published on March 22, 2017.

NRAE submits for public consultation between March 22 - April 2017 this draft order created following the provisions of Law on community services for public utilities no. 51/2006, subsequently amended, whereby granting licenses for supply/provision of public utility services for heat went under NRAE's responsibility after entry into effect of Law no. 225/2016 for amending and supplementing Law on community services for public utilities no. 51/2006.

Taking into account that, in the sphere of NRAE license holders who must draft and send annual reports, one must also include the license holders for providing public utility services for centralized heating supply, NRAE started the revision process for the Methodology for the annual Report by license holders in the electricity sector, approved by NRAE order no. 32/19.07.2016 by issuing this draft order.

The final deadline for sending opinions, proposals and notes is April 20, 2017. The document can be viewed at:

<http://www.anre.ro/ro/energie-electrica/legislatie/documente-de-discutie-ee1/licente/proiect-de-ordin-privind-modificarea-si-completarea-metodologiei-de-intocmire-a-raportului-anual-de-catre-titularii-de-licente-din-sectorul-energiei-electrice-aprobata-prin-ordinul-anre-32-2016&page=1>

Draft order on amending and supplementing the Methodology for establishing system services fees, approved by Order no. 87/2013 was published on March 29, 2017.

NRAE submits for public consultation this draft for amending the methodology approved by Order 87/2013 for observing the provisions of Electricity and Gas Law no. 123/2012, subsequently amended, recently amended by Law no. 203/2016, published in the Official Gazette, Part I, no. 892/08.11.2016.

The final deadline for sending opinions, proposals and notes is April 28, 2017. The document can be viewed at:

<http://www.anre.ro/ro/energie-electrica/legislatie/documente-de-discutie-ee1/metodologii-proceduri-tarifare/proiect-de-ordin-pentru-modificarea-si-completarea-metodologiei-de-stabilire-a-tarifelor-pentru-serviciul-de-sistem-aprobata-prin-ordinul-87-2013&page=1>

Draft Order for amending the Performance standard for the electricity distribution service, approved by NRAE Order no. 11/2016 was published on March 3, 2017.

For observing the provisions of the national and European regulatory framework, NRAE submits for public consultation this draft for amending Order 11/2016, taking into account the aspects resulting from the practice of applying the current Standard, and the fact that the operators lessees of electricity distribution requested from NRAE additional information on the interpretation of certain provisions of this regulation.

The final deadline for sending opinions, proposals and notes was April 14, 2017. The document can be viewed at:

<http://www.anre.ro/ro/energie-electrica/legislatie/documente-de-discutie-ee1/regl-tehnice-regulamente/proiect-de-ordin-pentru-modificarea-standardului-de-performanta-pentru-serviciul-de-distributie-a-energiei-electrice-aprobat-prin-ordinul-anre-nr-11-2016&page=1>

real estate - draft laws published in March 2017

Draft law amending and supplementing Government Ordinance no. 20/1994 on measures to mitigate seismic risk with existing buildings was published on the official website of the Ministry of Regional Development, Public Administration and European Funds on March 6, 2017.

Given the seismic conditions specific to Romania, which are among the harshest in Europe, the main seismic source - Vrancea - generating earthquakes measuring over 7.0 on the Richter scale, the Ministry of Regional Development has put into public debate the bill amending Government Ordinance no. 20/1994 on measures to mitigate seismic risk with existing buildings ("GO no. 20/1994").

The draft law incorporates several changes, among which we mention:

- introducing new definitions for the phrases *premises involving gatherings of persons and crowded hall*, in order to correlate them with the norms in the Technical regulations „Fire safety regulations for buildings” – index P118 – 99;
- interdiction to organize and host permanent and/or temporary activities in the premises involving gatherings of persons, until completion of works aimed at increasing the security against seismic activity of the existing building, classified under Class I seismic risk.
- providing the possibility to evacuate persons who did not vacate in due time the premises owned in residential buildings classified under Class I seismic risk and who present public risk during the period of works at said buildings, by mayor's order, in emergency accommodation provided by the local public administration;
- in order to prevent a potential earthquake disaster, owners and proprietors with any title of buildings subject to GO no. 20/1994 must allow entry into their buildings for performance of assessment operations, measurements and drafting of cadastral documentation;
- implementing the possibility of local public administration to finance from local budgets, within the limit of funds allocated annually with this purpose, the designing and performing intervention works in public spaces with purposes other than residence, owned by entities, located in buildings included in the annual programs.

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

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