

Cover article: “2016, a Year of Contradictions in Insurance Regulations”

by Dumitru Rusu, Partner and Simona Merdariu, Senior Associate Voicu & Filipescu

Read in this month’s cover article an analysis of the insurance market in view of the amendments introduced throughout 2016 – in the opinion of our specialists, a year of contradictions in the regulations affecting this field.

Legal Changes of January 2017

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company’s activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in:

- Competition
- Employment
- Energy
- Public Procurement
- Real Estate

Drafts in Laws of January 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:

- Energy

+ VF News

2 ILO Client Choice Awards for Voicu & Filipescu in 2017: Partners Roxana Negutu and Raluca Mihai are the exclusive winners for Romania of the Real Estate and Projects & Procurement awards, respectively.

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cover article

2016, a Year of Contradictions in Insurance Regulations

by Dumitru Rusu, Partner and Simona Merdariu, Senior Associate Voicu & Filipescu

In terms of legislation, 2016 was for insurance a year of contradictions – we saw, on one hand, the strengthening of the alignment and implementation of EU law, but, on the other hand, it was a year of local interferences and initiatives amplified by the effect of the election year, with some of these initiatives being questionable in terms of legal and economic reasons or compatibility with the European legislation. We mention in this regard, first, on a better understanding and consolidating of the application of the provisions of European insurance law (Solvency II) and the capping of MTPL (RCA) prices (by GEO 54/2016).

Implementation of Solvency II

The Solvency II Directive (Directive 2009/138/EC of the European Parliament and Council on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) November 25, 2009), a complex regulation applicable from 2016 to local insurance companies (assessing legal solvency for financial insurance groups on a consolidated basis of capital), but with different transitional periods regarding quantitative requirements (capital requirements) and quality requirements (quality regulations on supervision, including the obligations of transparency and reporting), was implemented mainly by Law 237/2015 regarding the authorization and supervision of insurance and reinsurance, published in GO 800/10.28.2015, with subsequent amendments.

This law bordering the Solvency II regime and the national regime, as the case may be, applicable to local insurance companies, attracted during 2016 a special effort in implementing it, including the issuance by the Financial Supervisory Authority of specific secondary legislation, implementation of rules and transitional plans applied by insurance entities.

By Norms no. 21/2016 on reporting relating to the insurance and/or reinsurance, published in the Official Gazette no. 268/08.04.2016 and the Norms no. 35/2015 on quality requirements set by the European Insurance and Occupational Pensions Authority, published in the Official Gazette no. 971/29.12.2015, applicable from 1 January 2016, the Romanian Financial Supervisory Authority confirmed the applicability of the related guidelines that contain qualitative and reporting requirements set by EIOPA, and set additional requirements to those provided by Law no. 237/2015, the Commission Delegated Regulation (EU) 2015/35, implementing technical standards and regulations.

Passporting the license for underwriting MTPL policies

The procedure on passporting/authorization in Romania of an insurer authorized in one EU Member State to subscribe MTPL policies is regulated mainly by Law 237/2015 regarding the authorization and supervision of insurance and reinsurance, the Norms of the Financial Supervision Authority no. 20/2016 regarding the authorization and monitoring and reinsurance insurance companies and Norms of the Financial Supervision Authority no. 39/2016 regarding the MPTL insurance in Romania.

According to such legislation, an insurer headquartered and authorized in a Member State of the European Union for underwriting of risk of mandatory third party civil liability, which intends to underwrite on the territory of Romania, the same risks pertaining to such insurance category no. 10 "civil liability insurance for vehicles (other than carrier's liability)", under the mechanism of freedom of services or the right of establishment, has to prior submit with the Financial Supervisory Authority in Romania, through the competent authority of the home Member State, the notification of intention in such respect.

The passported MTPL insurance business may be carried out in Romania only with the approval of the Financial Supervisory Authority and in accordance with national law. The Member State Insurer shall be considered authorized to practice MTPL insurance in Romania on the date on which the competent authority of the home Member State notices the confirmation from the Romanian Financial Supervisory Authority on receiving the notification of intent to exercise the freedom of services or the right establishment and related required documentation according to national norms.

[Adjusting the mechanism for calculating insurance premiums on MPTL](#)

As part of the measures package adopted by the Romanian Financial Supervision Authority under the general purpose to stabilize the MTPL insurance market and protect the interests of related insured persons, including amendments to primary legislation in this area, MTPL regulation was amended by Government Emergency Ordinance 54/2016, published in the Official Gazette no. 723 as of 19.09.2016.

In consideration of the measures taken by Financial Supervision Authority that led out to the exit from the insurance market of the two local insurers subscribing significant MPTL risks (Astra Asigurare Reasigurare SA and Carpatica Asigurari SA), situation followed by a trend of increasing of the average premiums on this MPTL market, and taking into account the high volatility and extreme dispersion of such premiums, by the Norms issued by the Financial Supervision Authority no. 37/2016, published in the Official Gazette no. 807 as of 13.10.2016, it was established the methodology for calculating the maximum threshold of the premiums rate for underwriting MTPL risks.

Consequently, taking into account such exceptional circumstances of this insurance area, and with observing the competition legislation, by the Government Decision no. 826/2016 published in the Official Gazette no 896 as of 11.08.2016 and which entered into force on 18.11.2016, it was instituted practically a mechanism of control the Romanian MPTL insurance market by setting by the Financial Supervision Authority of the maximum thresholds for the MPTL premiums for vehicle categories, prices to be applied by the insurance entities, for the new contracted MPTL policies, for a period of 6 months as of the Government Decision date of entering into force. Thus, insurers apply premium rates notified to the authority before the entry into force of this decision, but not exceeding the maximum premium rates set forth in this enactment. Basically, if prior to the implementation of this decision, insurers practiced lower rates, they would not be increased to the maximum level, but if the rates exceed this level, insurers are required to reduce to the maximum threshold allowed.

[New applicable requirements for performing damages ascertaining activity for MTPL policies](#)

The Financial Supervision Authority, through secondary legislation, the Norms no. 39/2016 on motor insurance in Romania, published in the Official Gazette no. 986 as of 08.12.2016, established new criteria for qualification and professional certification for persons performing damages ascertaining activities for MTPL policies, together with their approval by ASF for registration in the Register of Damage Ascertaining Specialists, up to 30 June 2017. It is relevant to mention the requirement for the claims inspectors to have a university degree in auto specialization or similar. The deadline to obtain certificates of competence issued by the Institute of Financial Studies is set for March 31, 2018.

competition - legal changes published in January 2017

New Competition Council recommendations on the cereal grains market

The Romanian Competition Council (RCC) issued a series of new recommendations following an investigation carried out on the cereal grains market, which was mainly aimed towards analyzing the behavior of major grain retailers amid imbalances observed by the authority in this market. The RCC recommendations mainly concern measures such as:

- establishment of a Romanian exchange of cereal grains which, according to the RCC, will provide an alternative to existing open private auctions;
- supporting the association of small Romanian cereal growers, in order to ensure funding and facilitating access to credit, and to reduce production costs and increase bargaining power.

The RCC's recommendations come amid consistent monitoring of the grain marketing sector. Earlier, in 2009, the Authority completed a sector inquiry on the grain market for bread products after which recommendations were made, subsequently included into the national agricultural policy.

The Competition Council published a summary of its activities in 2016 - investigations and fines

During the year 2016, the RCC initiated 12 new investigations on possible violations of the Competition Law, mainly aimed at fields such as woodworking; short messages; rental of land belonging to the public domain and part of port infrastructure; access services to communications infrastructure; wholesale and retail distribution of drugs; travel agencies; notary services market.

Also, 5 new sector investigations were started and, following analysis of the markets of natural mineral waters in Romania, copyrights and related rights, retail banking services, production and marketing of cement, e-commerce - section regarding marketing strategies.

Top fines remain high; in 2016 the RCC imposed fines amounting to a total of 68,438,985.74 lei (15.20 million euros). The main fines targeted agreements and abuse on markets of piloting and towing services for maritime ships (22,317,212 lei - approx. 4,9 million for seven players in these markets); fixing resale prices or mark-up rates in relations of distribution (15,063,781 lei - approx. 3.3 million euros and 13,061,813 lei - approx. 2.9 million euros); rigging tenders (8,951,540 lei - approx. 1.9 million euros for five dairy companies).

Emergency Ordinance no. 10/2017 to stimulate the creation of new SMEs was published in the Official Gazette, Part I no. 79 of January 30, 2017.

Under the new Ordinance, the Ministry for Business, Trade and Entrepreneurship launches a program to stimulate the establishment of small and medium enterprises (The "Start-up Nation - Romania" Program).

This new Program benefits (i) companies established by individuals following the entry into force of the Ordinance, based on the provisions of specific legislation and (ii) companies that, at the time of application for funding, meet the eligibility criteria imposed by the legislation on *de minimis* aid conditions for eligibility under the Government decision on approval of the implementation of the *de minimis* aid scheme (pending adoption), and the specific conditions for financing from European funds.

Also, the enterprise benefitting from the *de minimis* aid under the program has the obligation to prove, at the time of filing the return, full time employment by indefinite duration agreement of at least 2 persons and the obligation of maintaining two jobs for at least three years, starting the year following the payment of *de minimis* aid.

The maximum *de minimis* aid which can be granted under this Program amounts to 200.000 lei/beneficiary, representing 100% of the eligible expenses, for a maximum of 10.000 beneficiaries each year.

The Ordinance mentions that within 30 days from its entry into effect, the Ministry for Business, Trade and Entrepreneurship shall draft and submit for approval to the Government a decision on approving the implementation norms of the *de minimis* aid scheme.

employment - legal changes published in January 2017

Government Decision no. 1/2017 to establish the minimum gross wage guaranteed for payment at national level was published in the Official Gazette of Romania, Part I, no. 15 of January 6, 2017.

According to it, since February 1, 2017 the minimum gross wage guaranteed for payment at national level, amount of money that does not include bonuses and other supplements is set at Lei 1,450 per month for a full working schedule of 166.00 hours on average per month in 2017, representing Lei 8.735 /hour.

Establishing a base salary below the amount mentioned by the Decision constitutes a civil offence and employers will be sanctioned with a fine between Lei 300 and Lei 2,000 for each individual employment contract where the minimum wage is set below that required by the new law, insofar as this action does not represent a crime.

Government Emergency Ordinance no. 6/2017 amending and supplementing certain laws, as well as for the establishment of measures on investments financed by public funds was published in the Official Gazette, Part I no. 62 of January 25, 2017

The Ordinance brings changes to the following provisions relevant to labor law:

- increasing the amount of the incentive insertion - EGO no. 111/2010 on leave and monthly allowance for raising children is changed, supplemented with the provision that, from April 2017, the incentive insertion amount is set at 650 Lei; for rights following the month of April 2017 the incentive insertion amount will be increased through another normative act;
- granting the relocation bonus - Law no. 76/2002 on the unemployment insurance system and employment stimulation is supplemented with new provisions under which persons registered as unemployed at the agencies for employment who are hired in another town situated at a distance greater than 50 km from their town of residence and, as a consequence, they change their domicile or establish their residence in said town or in its neighboring towns, receive a relocation bonus. In this regard, the following provisions are established:
 - the relocation bonus is not taxable and is paid from the unemployment insurance budget, equal to 75% of the amount intended for housing expenses at the new domicile or residence, but no more than 900 Lei;
 - the relocation bonus is granted to persons whose net monthly income, either as a single individual or together with their families, does not exceed 5.000 Lei/month;
 - the conditions in which the relocation bonus is granted, the method and the period, the persons who cannot benefit from it. It is notable that the relocation bonus is granted upon request and is not cumulative with the activation bonus, the hiring bonus or the installation bonus.

Government Decision no. 35/2017 establishing the number of workers per types, newly admitted to the labor market in 2017 was published in the Official Gazette, Part I no. 85 of January 30, 2017.

The decision regulates the quota for 2017 by types of workers newly admitted to the labor market in Romania, as follows: permanent workers - 3,000; seconded workers - 700; intra-corporate transferees - 700; highly qualified workers - 500; seasonal workers - 400; trainee workers - 100; cross-border workers - 100.

New decision of the High Court of Cassation and Justice relevant in labor law: Decision. 34/2016 on the referral made by the Court of Appeal Iasi - Department of labor and social security disputes, published in the Official Gazette, Part I no. 18 of January 9, 2017.

Under this decision, HCCJ established that, under the interpretation and application of art. 77 of the Labor Code, with reference to the provisions of art. 278 par. (1) of the Labor Code and the provisions of art. 1326 of the Civil Code, *individual dismissal decision issued in accordance with art. 76 of the Labor Code can be communicated via e-mail.*

HCCJ believes that this method of communication is procedurally capable of triggering the running of the judicial appeal term for the decision (according to art. 211 letter a) of Law no. 62/2011 related to the provisions of art. 216 of the same law, with reference to the provisions of art. 184 par. (1) of the Civil Procedure Code), provided that (i) the employee gave the employer this contact information and (ii) there is an established practice of this form of communication between the parties. Such decision communicated by email in PDF format accessible electronically must comply only with the formal requirements of the provisions of art. 76 of the Labor Code, not those imposed by Law no. 455/2001, on documents in electronic form.

energy - legal changes published in January 2017

Order no. 2/2017 approving the procedure of designating a natural gas distribution operator to take over operation of a natural gas distribution system published in the Official Gazette of Romania, Part I, no. 62 of January 25, 2017.

The purpose of approving the procedure is to establish the framework for the NRAE, the designation of an operator of natural gas distribution to take over operation of a distribution system for natural gas in a bounded area - a territorial-administrative unit in the event of the withdrawal of the operating license for the natural gas distribution system or termination of the concession so as not to hinder continuity. Designation of the operator shall be done by a decision issued by the NRAE President.

Decision no. 10/2017 regarding certain safety measures on the electricity market published in the Official Gazette of Romania, Part I, no. 40 of January 13, 2017.

The decision was adopted in the context of the imminent appearance of a crisis caused by developments in fuel stocks in relation to expected extreme weather conditions. These circumstances have imposed the quick adoption of safety measures for the period between January 16 - February 15, 2017, should the crisis in the energy market materialize, to be implemented by the National Company of Power Transmission "Transelectrica" - S.A. in the following priority order:

- increasing the technological reserves in production units that can operate on alternative fuel, for example fuel oil, for use as the case may be;
- reducing/canceling available interconnection capacity on the direction of exports;
- reducing/canceling notified exchanges on the direction of exports;
- limiting electricity consumption in tranches under conditions established by the Norms limiting electricity consumption, in tranches, in crisis situations arising during the operation of the national power grid, according to the annex which forms part of this decision.

The decision also provides the obligation to notify the electricity market participants at least 24 hours prior to the actual application of the measures outlined above.

public procurement - legal changes published in January 2017

National Agency for Public Procurement Instruction no. 1/2017 issued for application of Art. 179 let. g) and art. 187 par. (8) let. a) of Law no. 98/2016 on public procurement, and art. 192 let. g) and art. 209 par. (8) of Law no. 99/2016 on sector procurement was published in the Official Gazette of Romania, Part I, no. 32 of January 11, 2017.

The Instruction took into account the need for guidance on how requirements can be established and used regarding education, training and/or qualifications of personnel, either in the process of qualification and selection of economic operators participating in award procedures for public procurement contracts/sectoral procurement, or as part of implementing the contract/framework agreement to be awarded/concluded, in the latter case there is the possibility of formulating evaluation factors associated with the organization, qualification and/or experience of experts who will actually perform the activities covered by the contract.

The Instruction's purpose is to establish the wording, in a tender documentation, of the qualification and selection criteria related to the management staff of the bidder/candidate and/or requirements on the proposed personnel in the bid in order to achieve the object of the contract. The instruction brings clarifications on the personnel referenced by the terms "*permanent staff, especially management, of the economic operator*" and "*personnel which will actually carry out the activities covered by the contract to be awarded*" mentioned in art. 32 of the Norms for the application of provisions concerning the award of public procurement contracts/framework agreements of Law. 98/2016, and art. 38 of the Methodological Norms for applying the provisions relating to award of sectoral/framework agreements of Law. 99/2016, accompanied by examples.

The Instruction also includes references to how one can formulate criteria for qualification and selection of the personnel with the role of representing the organization, such as the number of years that may be imposed as a minimum requirement, both in terms of field of studies or, where appropriate, the specialization required and the specific experience that can be requested and how these are calculated.

There are also presented situations in which the qualification, professional experience and/or the organization of key personnel, as appropriate, should be used as evaluation factors within the awarding criterion price-quality/cost-quality, namely:

- in case of contracts that concern the provision of intellectual performance involving a high complexity or including intellectual activities that result in the identification, design and development of the technical solution that underpins the implementation of those contracts;
- the situation of contracts referred to in art. 32 par. (6) GD no. 395/2016 and art. 38 par. (6) GD no. 394/2016, respectively service contracts of the nature/type of consultancy/technical assistance, development of research studies, design, supervision and others alike afferent to projects/investment objectives of high complexity.

It is important to note that, when determining the evaluation factors on qualification, professional experience and/or the organization of key personnel, the contracting authority must ensure that the evaluation factors are associated to one / several extensions of the mandatory minimum requirement/requirements established by the tender book, the benefit sought being in line with higher values of the levels of qualifications and/or professional experience presented by key experts, subject to the evaluation factors, in relation to the minimum level which must be met for the technical proposal to be declared compliant.

In the Annex attached to the Instruction there are examples of evaluation factors which can be used, including the calculation method and how the contracting authorities/entities may require bidders to supplement the bid, so that it contains all the objectives taken into account for the score. All examples and notes from the Instruction are not limitative in the practice in the field, and are intended for guidance.

real estate - legal changes published in January 2017

Order of the General Manager of the National Agency for Cadastre and Real Estate Publicity no. 1608/2016 on amending and supplementing the Regulation of approval, acceptance and enrolment in the cadastre and land registry records, approved by Order of the General Manager of the National Agency for Cadastre and Real Estate Publicity no. 700/2014 was published in the Official Gazette of Romania, Part I, no. 66 of January 26, 2017.

The order was adopted following the launch for public use, based on user name and password, of the e-payment platform for online payment and online consultation of the electronic archive of cadastre and land registry. Through the order, the land registry statements for information / authentication can be requested and issued via the online platform, based on the user account and password, for land books available in the computer system. Thus, the land registry statements in electronic form can be requested by any interested person and not just a notary public.

Also, the order brings important reforms to the organization and conduct of cadastral procedures. A prime example in this regard is the possibility of committees constituted by the territorial offices to proceed to the correction of errors committed upon cadastral acceptances and registrations in the land book by making verifications on site for buildings registered in the integrated cadastre and land book system located in *intra muros* areas, fenced, and in those from outside the city where there is an accepted plot plan, and clearly defined areas.

Also, territorial offices may open land books *ex officio*, at the level of an administrative-territorial unit, converting into electronic format the information in the archives regarding real rights for which legal publicity formalities have been performed and there is graphical and textual information on buildings.

In the Annexes, the Order approves new models of land registry extracts for authentication and information to adapt their content to the new legal provisions.

Order of the President of the National Agency for Fiscal Administration no. 112/2017 for establishing the competence on the takeover and valorisation of the goods entered, by the law, under private ownership of the state, as well as the bodies habilitated to carry out the procedures of valorisation was published in the Official Gazette of Romania, Part I, no. 70 of January 27, 2017.

The law establishes the competence in taking over and valorising the goods entered, by law, under private ownership of the state as belonging to (i) the General Directorate of special cases mandatory enforcement, through central and regional structures within it with responsibilities for recovery of goods entered, by law, into private ownership of the state by final criminal judgments ordering the seizure, and (ii) county administrations of public finance / Bucharest public finances, through the services / offices / departments with responsibilities in the recovery of goods for other assets entered, according to the law, under private ownership of the state.

The National Agency for Fiscal Administration will monitor the recovery procedures and determine the method of recovery of goods entered under the private ownership of the state. The goods will be evaluated by the evaluation committee formed by order of the General Manager of the regional valorisation bodies.

According to a transitional provision of the order, within 15 days of the entry into force of the order, county administrations of public finances and the Bucharest General Directorate for Public Finance shall proceed to making the inventory of all the goods entered under private ownership of the State by final court decisions in criminal matters ordering the seizure.

energy - draft laws published in January 2017

Draft Decision approving the calendar for implementing Regulation (EU) no. 1447/2016 of the Commission dated 26/08/2016 establishing a network code on grid connection requirements for high voltage DC systems and central generator modules generate connected in direct current was published on January 9, 2017.

The draft sets the calendar of regulations to be drafted for implementing Regulation (EU) no. 1447/2016 of the Commission dated 26.08.2016 and can be accessed at:

<http://www.NRAE.ro/download.php?f=fqp%2FhQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

Draft Operational Procedure on the establishment of financial guarantees in contracts for providing the electricity transmission and system services was published on January 30, 2017.

The draft procedure establishes the method for assembling, restoring, updating and reimbursing of financial guarantees established in the contracts for providing electricity transmission and system services, to protect the interests of C.N.T.E.E. Transelectrica S.A. against the risk of default on the electricity market and can be accessed at:

<http://www.NRAE.ro/download.php?f=fqqAgQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

Draft Order amending and supplementing the Methodology for establishing regulated revenue, total revenue and regulated tariffs for the transmission of natural gas, approved by Order of the President of the National Regulatory Agency for Energy no. 32/2014 was published on January 30, 2017.

Amending and supplementing the methodology approved by Order no. 32/2014 has become necessary given the imminent starting by the natural gas transmission system operators SNTGN Transgaz SA, FGSZ Zrt. and Gas Connect Austria GmbH of the open season procedure for booking incremental grouped cross-border transport capacity or new cross-border transport capacity at the borders between Romania -Hungary and Austria-Hungary.

The proposed amendments mainly concern (i) establishing the percentages allotted from the total revenue in the fixed and volumetric component, namely at the levels of 85% and 15%, starting from the fourth regulatory period and (ii) the introduction of mandatory publication by the transmission system operator of information used in establishing the regulated revenue, total income and regulated tariffs for the gas transmission activity.

The amendments can be viewed at:

<http://www.NRAE.ro/download.php?f=fqqAhA%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

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