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News in Laws – Monthly Legal and Tax Newsletter
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Cover article: "Putting in practice the new public procurement legislation"

by Raluca Mihai, Partner Voicu & Filipescu

Amid the significant changes introduced in the 2016 legislation on public procurement, the cover story of this month addresses from a practical perspective a number of issues such as the effectiveness of the award criteria, the requirements for the quality of contract performance, the qualification and organization of staff involved in the evaluation of bids, also marking some changes considered to be problematic by our specialists.

Legislative Retrospective

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
- Constructions
- Dispute Resolution
- Employment
- Energy
- PPP and Concessions
- Public Procurement
- Real Estate

Drafts in Laws

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:

- Competition
- Constructions
- Energy
- Public Procurement

VF News

Voicu & Filipescu launches Changing Laws, a set of review articles reflecting back on the major legislative changes of 2016 and their impact on the business environment, also with a view of the main trends anticipated for this year. Click here for details on the event.

Voicu & Filipescu won the Financial Times Innovative Lawyer Award for Driving Value for Clients, in the Gala Award Ceremony organized in December 2016 by Revista Romana de Consultanta, the franchisee of these awards in Romania.

Voicu & Filipescu won the Special Award for 15 Years Anniversary at 2016 Lady Lawyer award ceremony organized by Legal Magazin in December 2016.

Senior Partner Marta Popa won the Lady Lawyer 2016 Award for her professional activity in PPP, Public Procurement and Infrastructure, at the award ceremony organized by Legal Magazin in December 2016.

cover article

Putting in practice the new public procurement legislation

by Raluca Mihai – Partner Voicu & Filipescu

Amid the significant changes introduced in the 2016 legislation on public procurement, the cover story of this month addresses from a practical perspective a number of issues such as the effectiveness of the award criteria, the requirements for the quality of contract performance, the qualification and organization of staff involved in the evaluation of bids, also marking some changes considered to be problematic by our specialists.

The initiative of the European law maker for amending the award criteria by inserting more complex criteria, which take into consideration other aspects such as the lifetime use of equipment, the costs of this use, the quality of the product or service purchased, the environmental impact, transcribed as is in the national legislation governing public procurement is visionary, meant to give more value to such proceedings, focusing on quality, higher standards, and removing the dictatorship of the lowest price, which does not ensure fulfillment of these criteria and requirements of the contracting authorities.

Using public money efficiently does not necessarily mean awarding a public contract for the lowest price without taking into account other criteria, whose failure or incomplete fulfillment at the time may result in higher costs for the purchaser, than if it had opted for a more expensive service, work or product, but superior in terms of quality and future costs generated.

Although there are four (4) award criteria, still the most widely used is the lowest price. The contracting authorities are already used in a well defined common practice to having the evaluation of bids under this criterion. Using the lowest price is obviously much easier, the evaluation of bids is much harder to be challenged by bidders participating in the proceeding, the authorities considering that in this way they are more protected and more efficient. Although here it should be noted that, since there is no threshold below one would consider an unusually low price, it remains at the discretion of the contracting authority when and if to seek clarification from the bidder, which can cause the report of the proceedings to be challenged by the other bidders.

However, as we mentioned above, in the long term, the purchase, for example, of an inexpensive product that meets the minimum technical requirements, but which does not take into account the life span, the cost of post-warranty service, the consumption of electricity/fuel/other supplies, will inevitably lead to higher costs for the purchaser, leading to a higher total cost than if they had purchased a little more expensive product but of higher quality.

For example, when purchasing medical imaging equipment, which is quite complex in terms of the required technical specifications, we note the generalized tendency of hospitals to impose as award criteria the lowest price, although it would be extremely useful to insert a criterion for the award as the best value for the price and the best value for the cost. There can be many decisive evaluation factors, such as after-sales service, after-warranty service, technical support and the average time of getting it, the specialized personnel involved in the provision of related services or servicing during warranty and post-warranty. Finally, such equipment must be sustainable and effective in the long term, not cheap and from a lower class.

Another example are the works contracts that concern building roads that do not involve complex intellectual services and are not infrastructure projects for trans-European transport, these categories being exempted from the award criteria of the lowest price and the lower cost, where one must necessarily focus on the quality of the works, the process and completion time of the project, not only on the price / cost of the works.

There is also the tendency of contracting authorities to also use in complex tenders, of high value, the award criterion of best value for price, but the price remains a determining factor, with 90% of the general assessment.

Thus, even though in theory the award criteria of best value for price and best value for cost transpose the best the vision of the European law maker, sadly in Romania the contracting authorities are still reticent to implement these criteria with priority.

Obviously, the staff of the newly formed procurement departments in many contracting authorities is still in the transition period from the old to the new legislation, and there are few guidelines, norms or national case-law to help them apply complex award criteria with greater flexibility.

A praiseworthy initiative is that of the National Public Procurement Agency (NPPA) to organize regional meetings around the country, targeted to the personnel of the contracting authorities, undertaking to develop more support materials in the form of notices, guidelines or instructions to bring clarifications where there are problems in implementation of new legislation. NPPA launched on December 19, 2016 "Public Procurement Guidelines" available on the dedicated webpage *www.achizitiipublice.gov.ro*, an online application that provides access to updated information, according to the legislative changes occurred, for all those involved in public procurement in Romania, thus replacing the tertiary legislation over-regulation.

We consider that these guides and instructions must emphasize the details of the application procedures for the new award criteria, for encouraging the contracting authorities to apply them with confidence and professionalism.

Last but not least, the Romanian law maker recently adopted Government Decision no. 774/2016 amending and supplementing Government Decision 634/2015 on the organization and functioning of the NPPA, which expressly provides that NPPA's role will be to ensure operational support for contracting authorities, through the implementation of dedicated tools to disseminate, including by electronic means, best practices in performance of the public procurement process, and to develop standard documents, forms and templates framework, guidelines, manuals and other operational instruments to support the correct and uniform application of the legislation on public procurement and must ensure their dissemination. NPPA complied with at first by starting the previously mentioned online application.

Therefore, we should expect these measures to take actual form in public procurement procedures better adapted to the real long term needs of the contracting authorities.

But the new law also contains a few problematic provisions, out of which we mention, as an example, a series of issued encountered by our team in practice:

- absence of a threshold for determining the unusually low price, which can bring many practical problems for contracting authorities, who must judge by their own analysis such threshold and request explanations from bidders, and also for bidders, who will have to have prepared a serious and justified breakdown of the offered price, to be able to provide such pertinent explanations. Obviously, the analysis of market prices by contracting authorities to establish the level below which the price of the product / service / work purchased is considered unusually low is sometimes incomplete, without there being a written report in the public procurement file, which raises criticism and complaints from unsuccessful bidders with a higher price;
- The alternative competency for solutioning of complaints - bidder submitting the complaint to the CNSC gets to plead for its case before the competent court if in the procedure another bidder submits a complaint directly to the court. There are practical problems with regard to confidentiality rules strictly outlined and implemented by CNSC, but also on the judges' understanding of the technical terms and procedures, who are still in training on public procurement procedures compared those of the courts of appeal that have already formed a good practice. The solution here would be, on the very technical side, to obtain a specialist expertise, even as the opinion of specialists in the field; otherwise, it is very difficult

for a stranger to the area, whether it be a lawyer or an engineer / economist, such as we have in the CNSC panels, to rule on delicate technical issues impacting the project profoundly;

- the institution of the subcontractor of the subcontractor declared in the bid, also called a sub-subcontractor, even though it is regulated by Law 98/2016, is not very detailed, and the contracting authorities are hesitant in admitting participation to the tender of bidders as sub-subcontractors;
- even though the stage of prior notice before submitting a challenge in awarding procedures was introduced, in case of existence of an award report, the contracting authorities are extremely hesitant to adopt remedial measures, meaning to review the decision of the evaluation committee. Implicitly, they maintain the awarding decision and this leads to complaints requesting the annulment of the procedure report, partly or in whole. The prior notice produces effects if the award documentation is challenged, when many contracting authorities prefer to comply and adopt remedial measures for avoiding the suspension of the procedure and extending the awarding date of the contract. But, if the procedure is finalized by adopting a awarding decision, the prior notice only delays without immediate effect the conclusion of the public procurement contract.

competition - legal changes published in November and December 2016

Order no. 3254/2016 approving the supportive measure consisting in the provision of State aid and *de minimis* aid for improving economic competitiveness through increasing the productivity of small and medium enterprises within the Regional Operational Programme 2014-2020 was published in the Official Gazette, Part I no. 1053 of December 27, 2016.

The Order aims to establish a supportive measure consisting in granting state aid or *de minimis* aid for small and medium enterprises that are interested in finding an optimal model of growth, both by shifting to another size category and by the development of the activity carried out in order to increase the market size. The investments for development located in the regions of Bucharest - Ilfov and the territory covered by the Integrated Territorial Investment - ITI Danube Delta are not considered as eligible.

Projects must cumulatively meet the conditions set by the Order, among which we list, as an example, the following:

- the applicant must already have registered the place of implementation of the project as a main or secondary establishment (office), except when the application for funding aims at establishing a secondary office (work place) as a result of the investment and the activities proposed by the project, the investment, must target one area of activity (NACE class) which represents the scope of the project (the project must mandatorily include an initial investment in tangible assets);
- timeframe of the project activities after the signing of the contract is of maximum 36 months without exceeding December 31, 2023. It may be extended at most to twice the initial period under the conditions specified in the financing contract.

The grant of the non-reimbursable financing that may be awarded for a project as regional state aid and *de minimis* aid, as the case may be, is at least EUR 200,000 and at most EUR 1,000,000. The project beneficiary must provide its own contribution of 10% from the eligible expenditure financed under the *de minimis* aid, *i.e.*, own contribution to the eligible expenditure financed by regional state aid and the financing of non-eligible expenditure for the project (if applicable). Own financial contribution is made either from its own resources or resources provided in a form that is not subject to any other public aid.

The supportive measure will apply starting with January 1st, 2017 until December 31, 2020 and payments will be made by December 31, 2023, within the allotted budget. The total aid value, estimated to be granted under this measure, for the entire the duration of application, is of EUR 172.94 million.

Government Decision no. 937/2016 for the establishment of a state aid scheme aimed at stimulating investment SMEs was published in the Official Gazette of Romania, Part I, no. 1067 of December 30, 2016.

The enactment was adopted in order to establish a State aid scheme, aimed at regional development through investments by SMEs in all sectors except those expressly excluded by the Decision (including, without limitation, activities in the fields of agriculture, forestry and fishing, mining & manufacturing, electricity, gas, construction, wholesale and retail, transport, IT, financial intermediation, insurance, real estate etc).

The investments made by undertakings according to the scheme must meet the following eligibility criteria:

- to be considered initial investment and have a total value, excluding VAT, of at least RON 4,500,000, equivalent to approximately EUR 1,000,000;
- to prove their economic efficiency and viability during implementation of the investment and 3 years after the date of its completion, according to the business plan and generate contributions to regional

development by paying taxes to the consolidated state budget, for the period of implementation of the investment and 3 years after its completion.

The scheme is valid until December 31, 2020. The granting of state aid to stimulate investment in the economy under this scheme shall take the form of grants and the maximum level of state aid granted to a beneficiary under this scheme shall not exceed RON 5,000,000. Financing agreements may be issued until December 31, 2020 and state aid payments will be made in the period between January 1, 2017 - December 31, 2023, based on financing agreements issued within annual budgets allocated to the scheme. The estimated number of undertakings to benefit from state aid under the scheme is 200.

The Competition Council launches the Prices Monitor project

As of November 24, 2016, the Prices Monitor project was launched at the initiative of the institutional environment in Romania, by the Competition Council and the National Authority for Consumer Protection, which is a website that displays prices for basic products of the major retail chains. This is an online platform to display weekly prices of products that are part of the daily shopping basket of the population, and the retail participants to the project voluntarily include their own stores and regularly send to the platform the selling prices for a number of 64 generic product categories. For each of these 64 categories there are two individual product prices for each store: cheapest price and best-selling price.

The stated purpose of the platform is to inform the consumer on the evolution of prices and to support market regulation by stimulating free competition, the generic product categories being set as necessary to be included in a basket of daily consumption in relation to an ordinary consumer. However, at the moment, the consumer is not able to select the display of a particular product/ brand, which means it cannot specifically identify the cheapest products, but only the total value of the basket in order to establish by comparison the value of the cheapest basket. Also, for now, consumers outside the capital cannot use this service because the site centralizes information only from certain stores in Bucharest and Ilfov.

The online version of the Prices Monitor can be accessed at: http://www.monitorulpreturilor.info/

Order no. 694/2016 for the implementation of the Guidelines on individualization of sanctions for offenses provided in Art. 55 of the Competition Law. 21/1996 was published in the Official Gazette of Romania, Part I no. 882 of November 3, 2016

As a novelty in comparison to the previous regulation (i.e., Order no. 420/2010 for the implementation of the Guidelines on individualization of sanctions for civil offenses provided in Art. 51 of the Competition Law no. 21/1996), the new Instructions state, in respect to the individualization elements of sanctions, the possibility for the Competition Council to consider the classification of concerned businesses as micro-enterprise or small businesses, as defined by Law no. 346/2004 regarding the establishment and development of small and medium enterprises.

Also, the new enactment details the legal regime **for granting favorable treatment to undertakings which admit to committing an anti-competition deed**, structuring it on several aspects, thus pursuing (i) the initiation and conduct of discussions on the possible admission, (ii) access to elements of the investigation file, (iii) the wording of the proposal for admitting the deed, (iii) the procedure applicable to the proposal for admission formulated before disclosure of the investigation report, (iv) the procedure applicable to the proposed admission of the anti-competitive deed after disclosure of the investigation report, and (v) determining the level of the fine following the acceptance of the proposal for admitting the deed.

constructions - legal changes published in November and December 2016

Government Emergency Ordinance no. 100 of December 15, 2016 amending and supplementing the Law no. 350/2001 on regional planning and the Law no. 50/1991 on authorizing the execution of construction works was published in the Official Gazette of Romania, Part I, no. 1052 of December 27, 2016.

The Emergency Ordinance was adopted due to the need to correlate and clarify some of the provisions of Law no. 50/1991 on authorizing the execution of construction works ("Law no. 50/1991"), Law no. 350/2001 on regional planning ("Law no. 350/2001") as a result of delays in implementing major investments in construction due to the existence of extremely long duration for obtaining permits and unrelated requests of the approvers.

Regarding the amendments to the Law no. 350/2001, out of the most important we mention: (i) clarifying the legal provisions according to which the public authority can condition, by the urbanism certificate, the approval of the proposed investment upon developing and approving a detailed zoning plan, (ii) maintaining the validity of landscaping and urban planning documentation, in the absence of an explicit term of validity, until the approval of other documents of the same or higher rank, amending or replacing the former ones, (iii) introducing the possibility of annulment of the decision approving a technical planning, adopted in breach of the law by administrative courts, including by request of the prefect or of the State Inspectorate in Constructions, following their own control activity.

Also, in order to increase the transparency of the decisions, local or county councilors will submit to the president of the court, in writing the reasons for their vote approving or rejecting, where applicable, landscaping or zoning documentation.

Following the above, the mentioned law aims to increase the quality of construction and to clarify the relationship between the project construction licensing, the technical project execution and the commencement of construction works. In this respect, GEO no. 100/2016 brings major amendments to Law no. 50/1991, such as:

- the authorization procedure for the construction works will not start with the application for issuing the zoning certificate, but upon obtaining the actual zoning certificate;
- in the case of administrative-territorial units where the single agreement commission is established, the permits and approvals established by the zoning certificate will be obtained directly by local government authorities through the single counter;
- the permits required by the zoning certificate will refer only to the type of works needed for the investment, being forbidden to request permits that are not relevant to the subject matter thereof;
- the validity of the permit shall extend throughout the execution of the works under the permit, from the date of commencement of works notified to the competent authorities; in the event of a failure of notification obligation, the execution period is calculated from the date of issuance of the building permit.

Law no. 197/2016 approving the Government Emergency Ordinance no. 22/2014 amending and supplementing the Law no. 50/1991 on authorizing the execution of construction works was published in the Official Gazette of Romania, Part I, no. 874 of November 1, 2016.

The law for approving GEO no. 22/2014 extended the scope of the ordinance, bringing significant changes to Law no. 50/1991.

Thus, building permits can be issued urgently within up to 15 days at the justified request of the beneficiaries, versus the standard term of 31 days. This legislative amendment was made to facilitate interventions in urgent cases (ex. to strengthen buildings) and to increase the absorption of EU funds and to accelerate public investments that lead to increased quality of life, by transposing the provisions of delegated Regulation (EU) no. 1391/2013.

Regarding the land book registration of buildings, the legislature wished that this procedure be carried out under an administrative act by the competent authority to check compliance in construction, the establishment of additional re-certification and diminishing the risk of buildings erected without compliance with rules in construction. Consequently, construction can be registered in the land book, based on (i) a certificate of attestation confirming that the building construction was done according to the building permit and that there exists a take-over protocol upon completion, or, where appropriate, (ii) a certificate of building construction, issued by the competent local government authority, confirming the current legal situation of the construction and compliance with applicable regulations and a cadastral documentation.

Also, in order to correlate the legislative provisions in construction authorization with those in zoning, the following changes have been made:

- the zoning certificate shall include information on the zoning consequences of the legal operation, in case of sale or purchase of property;
- requesting the zoning certificate becomes optional when the operations of dismemberment or unification of plots after the output of joint ownership, except when the request is made for performing construction and/or infrastructure works;
- for ensuring that the zoning rules are binding towards third parties, after the approval in the local council of the local and regional zoning plan, the city halls must send the decision with the support documentation, in order to register in the land book the fact that mentioned property is subject to the afore-mentioned zoning regulations.

dispute resolution - legal changes published in November and December 2016

Emergency Ordinance no. 95/2016 for the extension of deadlines and the establishment of measures necessary to prepare for the implementation of certain provisions of Law no. 134/2010 on the Code of Civil Procedure was published in the Official Gazette of Romania, Part I, no. 1009 of December 15, 2016.

This ordinance extends application of certain provisions of the Civil Procedure Code until January 1, 2019. The provisions of the code relating to the preparation of the case file of appeal or, where appropriate, second appeal to the court whose decision is appealed, it applies on trials started from January 1, 2019. It also extends the application of the trial research and, where appropriate, debate on the merits in the council chamber until the same date. The Ministry of Justice will carry out an action plan comprising the necessary premises for regulating the research process and, where appropriate, the merits debate in the chamber and monitor the implementation thereof and shall inform the Government on the status of its application until December 31, 2017 and quarterly during 2018.

Decision no. 35/2016 of the High Court of Cassation and Justice regarding a prior judgment for solving a question of law concerning the application of art. 24 para. (1) of the Administrative Litigation Law was published in the Official Gazette of Romania, Part I, no. 1023 of December 20, 2016.

The High Court of Cassation and Justice was asked to rule on whether the application of art. 24 para. (1) of the Law no. 554/2004, regarding the period for issuing the acts of the administrative authority must take into account the time limits of art. 32 of Law no. 165/2013 on measures to complete restitution in kind or compensation, real estate properties abusively taken during the communist regime in Romania. On this issue, HCCJ established that the interpretation and application of art. 24 para. (1) must take into account the time limits of this article, and not those covered by art. 32 of Law no. 165/2013, whereas the time limits established by art. 32 of Law no. 165/2013 holders are covered for restitution claims so that they could be just the opposite of those holders who have agreed not to invoke the benefit of these terms, but - on the contrary - have resorted to administrative court referral for constraining the authority to enforce swiftly the judgment which became final before the entry into force of Law no. 165/2013.

Decision no. 39/2016 of the High Court of Cassation and Justice regarding a prior judgment to solving a question of law concerning the interpretation and application of art. 21 para. (2) of the Land Law no. 18/1991 was published in the Official Gazette, Part I no. 1055 of December 28, 2016.

The referral was aimed at the interpretation of the provisions concerning the conditions for establishing residence in the town where the land is assigned and also the regime of this legal requirement for issuance of the title deed by the beneficiary of the establishment right. After analyzing the legal provisions, it was established that the interpretation and application of art. 21 para. (2) of the Land Fund Law no. 18/1991, the condition to establish residence in the town where the land is assigned can be carried out after the issuance of the title deed, failure to observe it attracting the sanction required under the provisions of art. 49 of the same Law for loss of ownership of land and buildings of any kind erected on it.

Decision no. 44/2016 of the High Court of Cassation and Justice on a judgment prior to unraveling a question of law concerning the interpretation of art. 31 para. (1) of the Government Ordinance on legal regime of offenses was published in the Official Gazette, Part I no. 1055 of December 28, 2016.

The legal matter of the referral is represented by the obligation to justify the civil offence complaint, where the record of findings and penalties is challenged according to art. 31 par. (1) of GO no. 2/2001 on the legal regime of civil offences. After analyzing the legal provisions, the court found that in the interpretation and application of

art. 31 par (1) of Government Ordinance no. 2/2001 on the legal regime of civil offences, the complaint against the record of findings and penalties must also be justified within 15 days from submission or communication of the record of findings. The above mentioned complaint will be subject to the regularization procedure regulated by art. 200 of the Civil procedure code.

Decision no. 20/2016 of the High Court of Cassation and Justice on examining the appeal on points of law concerning the interpretation and application of art. 915 par. (2) of the Code of Civil Procedure was published in the Official Gazette, Part I no. 1049 of December 27, 2016.

By the referral lodged by the Managing College of the High Court of Cassation and Justice it has been shown that there is no single point of view in judicial practice regarding the interpretation and application of art. 915 par. (2) of the Civil Procedure Code regarding the choice of court agreement in the event that neither the applicant nor the defendant don't have residence in the country. Specifically, the question of the meaning of the term "agreement" of the parties in the wording of the second sentence of this legal text, and the formal conditions that must be met by the parties' agreement on the choice of forum which would settle the divorce proceedings. In resolving the appeal on points of law, the court determined that in the interpretation and application of art. 915 par. (2) of the Code of Civil Procedure, the parties' agreement on the choice of court to resolve divorce proceedings must be expressly included.

Order no. 3454/2016 issued by the Ministry of Finance which approves the enforcement proceedings for debtors who are owed certain, liquid and due amounts from public authorities or institutions was published in the Official Gazette of Romania, Part I, no. 968 of November 29, 2016.

In that order it is stated that the debtor having outstanding tax obligations for whom there are ongoing enforcement measures applied by the competent tax authority and who is owed certain, liquid and due amounts from public authorities or institutions may submit to the competent tax authority an address, accompanied by the document issued by the public authority or institution, requiring the application of art. 230 of Law 207/2015 regarding the Fiscal Procedure Code relating to the debt payment notice.

In cases where the enforcement is initiated and the debtor submits to the competent tax authority the request and document issued to by the public authority or institution, the proceedings will be continued through the garnishment of certain, liquid and due amounts owed to the debtor by the public institution or authority. The amounts obtained after the establishment of garnishment settle the fiscal receivables included in the enforceable titles for which this measure was applied.

Order no. 3418/2016 issued by the National Agency for Fiscal Administration was published in the Official Gazette, Part I no. 960 of November 28, 2016 bringing some changes to special cases of enforcement.

The order mentions that currently enforcement procedures can also be generated by: (i) documents issued in criminal matters by the courts or other competent bodies according to the law, on the fulfillment, by the authorities for enforcement with the National Agency for Fiscal Administration, of precautionary measures or, where appropriate, lifting them (ii) other enforceable titles which set interest, late penalties, delay penalties or other amounts, ordered, but not individualized by final judgment pronounced in criminal matters, including those that establish the amount of the costs of enforcement, those that establish the amount of the price difference and/or costs related to the pursuit of the good and the decisions of attracting joint liability issued according to the law for purposes of recovering budgetary claims established by final judgment in criminal matters.

employment - legal changes published in November and December 2016

Government Decision no. 885/2016 amending and supplementing the Methodological Norms of applying Law no. 76/2002 on the unemployment insurance system and stimulation of employment and amending and supplementing procedures regarding access to measures to boost employment, funding methods and their implementation instructions was published in the Official Gazette of Romania, Part I, no. 979 of December 6, 2016.

Considering the changes brought by GEO no. 60/2016 regarding a number of benefits which unemployed and some graduates may receive as a result of employment, the new Decision aims to align these provisions by correlating and amending the Methodological Norms for the application of Law no. 76/2002.

Among others, the most notable changes are:

Unemployed persons earning income from certified activities - the unemployed (among those provided in art. 17 of Law no. 76/2002), deriving income from certified activities will be eligible for unemployment benefits as laid down by law, regardless of income, if they prove legal termination of said activity by law prior to applying for unemployment benefits.

The persons assimilated to those who do not earn any income – this category is supplemented with (i) persons who derive income representing non-compete allowance to be granted during the non-compete period, by the employer, after the termination of the individual employment contract, (ii) persons obtaining revenues, profit sharing, which is awarded by the employer to employees, directors or managers, after the termination of the individual employment contract or mandate contract or management contract, (iii) persons who derive income from salary received according to the law, during local elections, elections for the Senate and the House of Representatives and presidential elections.

Granting various bonuses – in addition to the amendments regarding the necessary documents for obtaining them, a series of additions are brought regarding each type of bonuses, namely:

- the activation bonus (amounting to Lei 500) – for receiving it, the unemployed should not have been awarded the activation bonus in the last 12 months; also, the activation bonus will not be received by people employed for a fixed-term for more than 3 months and subsequently to the fixed-term employment, the duration changes to exceed 3 months or becomes indefinite;
- employment bonus and installation bonus (mobility bonuses) - may be granted to the unemployed being hired, full time, for a period of at least 12 months and fulfilling the other conditions required by law; the mobility bonuses may be combined with other benefits (e.g., a percentage of the amount of unemployment benefit, the employment bonus granted to graduates, the activation bonus).

Law no. 220/2016 for supplementing par. (1) of art. 139 of Law no. 53/2003 - Labour Code was published in the Official Gazette of Romania, Part I, no. 931 of November 18, 2016

The law regulates the supplementation of the list containing non-working public holidays, provided in art. 139 par. (1) of Law no. 53/2003 - Labour Code, by introducing June 1st as a non-working public holiday.

Government Decision no. 877/2016 on amending and supplementing Government Decision no. 500/2011 on general registry of employees and for applying unitary legal provisions was published in the Official Gazette, Part I no. 963 of November 28, 2016

The Decision envisages establishing a new methodology of drafting, filling-in and submitting with the labor inspectorates of data in the general registry of employees. As the main element of novelty, the general registry of employees will be composed of two parts:

- a private registry, that registers individuals employed by concluding an individual labor contract according to Law no. 53/2003, which is drawn up, filled in and sent by employers, individuals or private legal entities; and
- a public registry, registering individuals paid from public funds, exercising a function under an individual contract of employment, an administrative appointment or of a different kind of deed issued under the law. This registry is drawn up, filled in and sent by public institutions/ authorities which are governed under provisions of the Framework Law no. 284/2010 regarding the unitary remuneration of personnel paid from public funds.

The data in the private/ public registry will be transmitted online on the portal of the Labour Inspectorate. Also, upon the written request of the employee or a former employee, employers are obliged to issue an excerpt from the private/ public registry, dated and certified for compliance or a certificate attesting the activity by them, the duration of activity, salary, seniority and specialty, as resulting from the private/ public registry and from the personal/ professional file, within 15 days as of the request.

Moreover, it expressly provides the right of every person to interogate, request and obtain from the Labour Inspectorate data from the private/ public registry on the activity they performed as an employee/ individual paid from public funds, duration of activity, salary, seniority and specialty within 5 days of the request.

Also, this decision amends the regime of sanctions regarding the drafting, filling-in and submitting of the general registry of employees, establishing minimum (300 lei) and maximum values (20,000 lei) for the civil offences found.

Until the date of implementation of the new IT system for the private/ public registry, both employers natural or legal persons of private law and public institutions/ authorities will continue to apply the legal provisions regarding the obligation of filling in and sending to the territorial labor inspectorates the data in ReviSal, in accordance with Order no. 1918/2011.

New decisions relevant to labor law:

Decision of the High Court of Cassation and Justice no. 17/2016 concerning the examination of complaints made by the Court of Appeals Constanta - Section I in civil cases no. 4024/118/2015 and 3927/118/2015, published in the Official Gazette of Romania, Part I, no. 993 of December 9, 2016.

Under this decision, HCCJ established that a decision of the Court of Auditors issued in exercise of its control duties, which established that certain rights under the collective bargaining agreement concluded at a public institution financed wholly from own revenues were awarded unlawfully, in relation to the law on salaries in public institutions, *does not deprive, by its mere existence, of effects, the terms of the collective employment agreement by which those rights have been established, if a court has not found, under the law, their nullity.*

It was also established that the nullity of a clause of the collective bargaining agreement negotiated in breach of Art. 138 par. (1) - (3) of Law no. 62/2011 (on collective negotiation of salary rights in the public sector) *can be requested by interested parties, either by action or by way of exception, and it may be invoked by the court ex officio, during the existence of the collective bargaining agreement.*

Constitutional Court Decision no. 681/2016 on objection of unconstitutionality of the provisions of sole Article pt. 1 of the Law amending and supplementing the Law on social dialogue, published in the Official Gazette of Romania, Part I, no. 1000 of December 13, 2016.

The Court held that it was unconstitutional to prohibit dismissal of persons with eligible positions within a trade union body, as provided by "the legislative initiative for amending social dialogue Law no. 62/2011", the sole article, pt. 1, as long as the dismissal measure is unrelated to union activity performed, including in situations

covered by the provisions in question (i.e., for reasons not related to the employee, for professional non-compliance or for reasons of fulfilling the mandate that they received from employees of the unit).

The Court considered as established an absolute presumption of the existence of a link between union activity and one of the reasons for dismissal under article 61 and 65 of the Labour Code and stressed in this regard that the protection of elected officials leading the trade union body must operate exclusively in relation to trade union activity actually performed, and not in terms of the - basic - professional activity of the employee.

Decision of the High Court of Cassation and Justice no. 19/2016 concerning the examination of referral to the Court of Appeal Iasi - department of labor disputes and social insurance case no. 7521/99/2014, published in the Official Gazette of Romania, Part I, no. 1010 of December 15, 2016.

HCCJ established that the provisions of art. 52 para. (1) letter b) first thesis of the Labour Code (when the employer filed a criminal complaint against the employee) do not have effect anymore and give rise to a right of receivable consisting of a compensation equivalent to the remuneration due to employees, during the suspension, in cases unresolved definitively on the date when the Constitutional court decision is published in the Official Gazette (i.e., constitutional Court Decision no. 279 of April 23, 2015 published in the Official Gazette of Romania, Part I, no. 431 of 17 June 2015). It was found in this regard that the effect of the declaration of unconstitutionality is the one regarding inapplicability of the legal text in question to a legal situation under establishment, and the court tasked with solving the dispute is obliged to take account of this aspect, even if in a reforming way of attack, without thereby being affected by the decision of unconstitutionality of the non-retroactivity rule.

Decision. 14/2016 concerning the examination of complaints made by the Constanta Court of Appeals - Section I in civil cases no. 3.185/118/2014 and no. 7377/118/2014 published in the Official Gazette of Romania, Part I, no. 878 of November 2, 2016

According to this Decision, HCCJ finds that *the court of common law can not proceed itself to analyzing working conditions and, where appropriate, to the classification of the claimants' jobs under special circumstances, where the employer defendant has not followed a reassessment procedure of jobs or has not obtained an opinion from the Commission for reassessment of jobs under special conditions* and, more so, if the unit is not nominated in the Annex no. 3 of Law no. 263/2010. Thus, the common law court can not substitute the administrative body, assuming its responsibilities in terms of procedure, including regarding the rules of evidence regarding fulfilment of technical conditions to classify a job as falling under special conditions.

Decisions regarding classifying by employers into labour groups I and II of activities performed prior to April 1, 2001**:**

- failure to observe the legal procedure for employment of workers under special conditions corresponding to labor group I or II, either because the employer considered that jobs in the unit do not meet such conditions or because they ignored the legal provisions (having not taken any steps provided by procedure for evaluating such jobs) during the validity of the order, *can be replaced, judicially, by a litigation filed by the former employee in contradiction with the employer and qualified as a conflict, subject to labor jurisdiction, if the premise of employment in a job or carrying out an activity of those exhaustively listed in the annex lists to Order no. 50/1990 or Order no. 125/1990* (HCCJ Decision no. 9/2016, published in the Official Gazette of Romania, Part I, no. 891 dated November 8, 2016);
- *there is no declaratory action in common law for finding special working conditions where employees have worked after April 1, 2001 and no action in requiring employers to classify jobs in these conditions, when they had never obtained or, where appropriate, have not renewed permits for classifying jobs in these circumstances*, under interpretation and application of art. 19 of Law no. 19/2000 on public pensions and other social security rights, art. 29 para. (1) of Law no. 263/2010 on the unitary public pension system, in

relation to the criteria and methodology for classifying jobs in special conditions, namely the methodology for renewal of employment permits for jobs in special conditions (HCCJ Decision no. 12/2016, published in the Official Gazette of Romania, Part I, no. 904 of 10 November 2016).

energy - legal changes published in November and December 2016

Order of the President of the National Energy Regulatory Authority no. 117/2016 amending the Order of the National Energy Regulatory Authority no. 119/2013 approving the contribution for high efficiency cogeneration and certain provisions regarding its billing was published in the Official Gazette of Romania, Part I, no. 1057 of December 28, 2016.

The Order of the President of National Regulatory Authority for Energy aims to reduce the contribution for high efficiency cogeneration from 0.01381 lei / kWh excluding VAT to 0.01301 lei / kWh excluding VAT.

Order of the President of the National Energy Regulatory Authority no. 118/2016 on the approval of tariffs and money contributions collected by the National Regulatory Authority for Energy in 2017 was published in the Official Gazette of Romania, Part I, no. 1057 of December 28, 2016.

The President of the National Authority for Energy Regulation ("ANRE") issued the order for approval for 2017 of (i) the charge for operators engaged in electricity, heating and gas for granting authorizations and licenses (ii) the fee charged for the issuance of certificates and permits to operators who provide design, construction, inspection and operating services for power and natural gas, (iii) the fee charged for the authorization of individuals involved in electricity, heating and natural gas, as well as (iv) tariff and monetary contributions collected annually by ANRE from economic operators carrying out activities in electricity, heating and natural gas, which, by law, is under ANRE's regulatory jurisdiction.

Government Decision no. 971/2016 amending and supplementing Government Decision no. 780/2006 regarding the establishment of emissions trading greenhouse gas emissions and amending Government Decision no. 204/2013 amending and supplementing Government Decision no. 780/2006 regarding the establishment of trading emissions of greenhouse gases was published in the Official Gazette of Romania, Part I, no. 1063 of December 29, 2016.

Among the changes introduced, the decision replaced, within the greenhouse gases certificate trading scheme, the single registry with the EU registry of greenhouse gas emissions.

Also, the National Agency for Environmental Protection ("Agency") will become one of the competent authorities responsible and the only competent authority to implement the provisions of Council Decision 2011/278 / EU establishing Union-wide rules for the harmonized and free assignment of emission allowances under Article 10a of Directive 2003/87 / EC. Furthermore, the Agency will become the central public administration authority issuing the authorization on emissions of greenhouse gases.

As a transitory measure, the greenhouse gas emissions authorizations are valid on the entry into effect of this decision and remain valid until its expiry, according to the law.

Government Decision no. 1014/2016 approving the annual mandatory quota of electricity produced from renewable energy sources, benefiting from the green certificates promotion system for 2017 was published in the Official Gazette of Romania, Part I, no. 1065 from December 29, 2016.

According to the law, for 2017, the mandatory quota of electricity produced from renewable energy sources, benefiting from the green certificates promotion system is 8.3% of the gross final consumption of electricity.

Order of the President of the National Regulatory Authority for Energy no. 119/2016 on establishing estimated mandatory quota of green certificates purchasing for the year 2017 was published in the Official Gazette of Romania, Part I, no. 1069 December 30, 2016.

According to the order President of the National Regulatory Authority for Energy, the mandatory estimated share of green certificates for economic operators who have the obligation to acquire green certificates for 2017

is set at EUR 0.320 green certificates / MWh, corresponding to a consumer final electricity exempted from payment of green certificates of 6,700 GWh.

Law no. 203 of 7 November 2016 amending the Law on electricity and natural gas no. 123/2012 was published in the Official Gazette number 892 dated November 8, 2016.

Some of the most important amendments targeted by the law are aimed at:

- obligation of electricity producers to maintain a reserve of fuel at a sufficient level or, where appropriate, sufficient reserves of water, to ensure safety of the NES (defined by the new law as representing ensuring supply continuity by the transmission system operator the carrier and system of a generation mix and system services, so that they can take over the removal of any energy capacity without disconnecting consumers from the grid) and for fulfilling the duty of continuous production and supply of electricity, which shall be remunerated in accordance with applicable regulations;
- electricity producers' right to conclude contracts with other manufacturers, creating an energy mix, in order to offer power locally or for exporting
- making it obligatory for transmission system operators to provide the public transmission service for all users of electricity transmission grids ensuring the same price to any applicant under non-discriminatory terms.
- the criteria for promoting electricity generated from renewable sources take into consideration promoting the use of renewable energy in the most efficient way so as to obtain the best price to the end user.

Government Decision no. 778 of 26 October 2016 establishing percentage rates set out in art. 177 par. (3^4) and (3^5) of the Electricity and Gas Law no. 123/2012 was published in the Official Gazette number 879 dated November 2, 2016.

The normative act, which took effect on November 2, 2016, establishes the following:

- 30% is the percentage corresponding to the obligation of every natural gas producer in the period between December 1, 2016 - December 31, 2017 to conclude agreements for the sale of natural gas in accordance with regulations issued by NRAE for the sale of a minimum quantity of gas from its own production which may not be less than the percentage of the amount of natural gas for which they conclude sale-purchase agreements, during that period, as seller.
- between December 1, 2016 - December 31, 2017, each gas supplier who is not also a producer, to the extent that they contract the sale / purchase of gas, is obliged to conclude contracts on centralized markets in Romania in accordance with regulations issued by NRAE, to purchase a minimum quantity of natural gas that can not be less than the rate of 20% of the natural gas for which they conclude sale-purchase agreements, in that period, as the buyer.
- between December 1, 2016 - December 31, 2017, each gas supplier who is not also a producer, to the extent that they contract the sale / purchase of gas, is obliged to conclude contracts on centralized markets in Romania in accordance with regulations issued by NRAE for the sale of a minimum quantity of natural gas to wholesale customers, which may not be less than 30% of the natural gas for which they concluded sale agreements in that period, as seller, with wholesale customers.

Order of the President of the National Energy Regulatory Authority no. 77 of November 9, 2016 on amending and supplementing the Regulation for accreditation of producers of electricity from renewable energy sources for the implementation of the green certificate promotion

system, approved by Order of the President of the National Energy Regulatory Authority no. 48/2014 was published in the Official Gazette number 957 dated November 28, 2016.

The Order clarifies the accreditation process of power plants producing electricity from renewable sources and on the documentation required for accreditation.

The Order also establishes that within 120 days of its entry into force, network operators are obliged to seal the power measuring systems based on which the green certificates are granted, placed in electrical installations belonging to accredited operators, including accredited individuals for applying to the system of green certificates. According to the Order, the National Regulatory Authority for Energy ("NRAE") publishes and updates annually on its website the list of accredited economic operators and accredited power plants to apply the system of green certificates promotion.

Within 90 days of the entry into force of this order, accredited economic operators that produce electricity using biomass as fuel or raw material send to the NRAE for approval the procedures used to determine the inferior calorific power of the fuel being used.

Economic operators, including individuals, holding units / plants for the production of E-RES which request accreditation / are accredited for applying the system of green certificates promotion and the network operators will carry out the provisions of this order. In this regard, the Order introduces criteria for measuring the amount of RES used and determining the inferior calorific power of the RES being used.

public-private partnership and concessions - legal changes

published in November and December 2016

Government Decision no. 867/2016 approving the Methodological Norms for applying the provisions relating to award of concession contracts for works and services from Law no. 100/2016 on concessions for works and services was published in the Official Gazette of Romania, Part I, no. 985 of December 7, 2016.

The Methodological Norms establish that, in terms of the concession contracts for works / services whose value is less than the threshold of Lei 23,227,215, they can be concluded by the simplified procedure, which is initiated by publication of a simplified concession notice in SEAP, along with the corresponding awarding documentation.

Also, the norms introduced a new decisional tool available to the contracting authority in every stage of the concession, namely the *financial model*. This is approved along with the contracting strategy and reflects the historical relationship between revenue expenditure and capital value, achieving thus, through the evolution scheme of the income or the periodic cash flow of an entity or property and calculating financial profitability indicators.

It also established *new rules for assessing the award documentations* published in SEAP, the National Agency for Public Procurement will evaluate compliance with applicable legislation before submission for publication of the invitation / notice, insofar as the estimated value of the concession is equal to or greater than the threshold of Lei 23,227,215.

According to the Decision, the award of a concession contract is the result of a concession process which takes place in several stages, expressly provided: planning stage, substantiation and preparation; stage of organizing the competition and awarding the contract; the post award stage and the execution and monitoring of contract implementation, and introduces a new approach to be followed by all authorities in the evaluation of bids, irrespective of the award procedure chosen, *namely the breakdown of this process by stages completed by interim reports which will be communicated to the bidders*.

On the whole, the application norms contain provisions regarding: registration, renewal and recovery of SEAP registration; planning and preparation of the concession; general rules for participation and conduct of the award; award conduct procedures; execution, modification and completion of the concession contract.

Law no. 233/2016 on the public-private partnership was published in the Official Gazette, Part I no. 954 of 25 November 2016 and came into force on December 25, 2016.

The public-private partnership is regulated as covering the development or rehabilitation or expansion of goods for provision of a public service and / or operation of a public service, the new law implementing a series of objectives aimed at improving and clarifying the legal framework applicable to public investment projects, as follows:

- the mechanism of public-private partnership envisages cooperation between the public partner and the private partner based on the relatively long duration of contractual relations in order to allow the private partner to recover their investment and make a reasonable profit;
- the following may be a public partner: central or local public authorities and institutions, as well as structures within these that have the delegated quality of authorizing officer and have competences in the field of public procurement; public bodies; associations comprising at least one of the above mentioned authorities; the private partner can be any legal entity or association of legal entities that do not belong to the categories of public partners;

- The law regulates both institutional public-private partnership (made under the contract concluded between the public and private sectors whereby they establish the project company that, after registration with the Trade Registry, will become party to the contract) and the contractual one (public-private partnership conducted under a contract concluded between the public and private partners and the project company whose share capital is wholly owned by the private partner);
- financing investment realized in the public-private partnership projects can be provided, as the case may be: fully, from financial resources provided by the private partner or financial resources provided by the private partner together with the public partner;
- contracts for public-private partnership, qualified by law as administrative contracts may be concluded also for carrying out a relevant activity in the sectors of public interest and the achievement by a private operator of community services of public utilities, the award procedure being the one governed by the law on public procurement;
- the law recognizes the possibility of the public partner to unilaterally change the contract of public-private partnership and to terminate the contract for reasons of public interest, with adequate compensation to the private partner;
- the law provides for the possibility of replacing the private partner and that the private partner or the project company may not assign or encumber their rights and obligations arising from the contract of public-private partnership; also, the private partner may not alienate or encumber shares or stock in the project company, without the prior express consent of the public partner and the project funders, except as expressly provided in the Law;
- the private partner may establish guarantees on shares or stock in the project company, exclusively in favor of project funders of public-private partnership which are credit institutions or financial institutions and only for the duration of the public-private partnership contract;
- last but not least, one must mention that the public-private partnership contract shall be concluded according to Romanian law, regardless of nationality of the private partner.

procurement - legal changes published in November and December 2016

Government Decision no. 866/2016 amending and supplementing the Methodological Norms for applying the provisions relating to the award of sectoral / framework agreement of Law. 99/2016 on sector procurement and amending and supplementing the Methodological Norms for the application of provisions concerning the award of public procurement contracts / framework agreements of Law. 98/2016 on public procurement was published in the Official Gazette of Romania, Part I no. 972 of December 5, 2016.

The relevant changes to the rules for implementing relevant provisions of Law no. 99/2016 on sector procurement include the introduction of a new threshold for verification of compliance with applicable law on sector procurement by ANAP of tender documentation afferent to sector contracts / framework agreements, this being Lei 4,445,400 for service sector contracts concerning social and other specific services. In addition, it establishes that the awarding of contracts whose estimated value is less than the equivalent in Lei of EUR 25,000,000, the value of the bid bond may not exceed 1% of the estimated value of the contract / framework agreement to be awarded. It also introduces a new case in which the bid is deemed unacceptable, i.e. when in its response, the bidder does not clarify any inconsistencies regarding fulfilment of the formal conditions of the bid bond (including the amount and the validity) or the bidder did not submit proof of establishing the tender bond by the deadline for submission of bids.

Also, the Decision amends the Methodological Norms of Law no. 98/2016 on public procurement, to include a new assessment threshold by NAPA of the for compliance with public procurement law applicable to the tender documentation, i.e. Lei 3,334,050 for public procurement contracts / framework agreements for services regarding social and other specific services. Also, these norms also state that in case of award of contracts whose estimated value is less than the equivalent in RON of EUR 25,000,000, the value of the bid bond may not exceed 1% of the estimated value of the contract / framework agreement to be awarded. It is also relevant the repeal of the provision that in any case, proof of bid bond establishment must be submitted in original no later than the deadline for submission of bids.

Order of the National Agency for Public Procurement and the National Commission for Prognosis no. 842/175/2016 approving the methodology for calculating the updating rate to be used when awarding public procurement contracts was published in the Official Gazette of Romania, Part I no. 1022 of December 19, 2016.

The Order establishes the discount rate used for calculating the costs during the life cycle of acquisition in the procedures for awarding public contracts / framework agreements which have the award criterion "the lowest cost" / "the best quality-cost ratio".

According to the Methodological Norms for the application of provisions concerning the award of public procurement contracts / framework agreements, the contracting authority sets, depending upon the nature of the public procurement contract / framework agreement, the calculation method associated to cost items that are considered relevant if that procurement award criterion is "lowest cost" / "best quality-cost ratio". For equivalence of costs recorded at different moments in the lifecycle under analysis, in order to sum them up economically, the contracting authority uses an update rate, which is determined by a specific formula provided by the Order.

The Order also establishes the fact that the indicators influencing the discount rate are recalibrated annually, in order to change the evolution levels, in response to changes in economic conditions, investor expectations and economic policies. The indicators can also be changed during the year if the internal or external economic status changes substantially.

Government Emergency Ordinance no. 80/2016 for the establishment of measures in the field of central public administration to prorogue the deadline stipulated in art. 136 of Law no. 304/2004 regarding the judicial organization and for amending and supplementing certain acts was published in Official Gazette of Romania, Part I, no. 939 of November 22, 2016.

This Ordinance inserts par. (4) in art. 235 of Law no. 98/2016 on public procurement, which states that a joint order of the Minister of European funds, the Minister of Finance and the National Agency for Public Procurement shall established general and specific contractual conditions for certain categories of public contracts relating to publicly funded investment objectives. Also, the entry into force of this Order will repeal Government Decision no. 1.405/2010 approving the use of contractual arrangements of the International Federation of Consulting Engineers in Construction (FIDIC) for investment objectives of the national transport infrastructure, financed by public funds.

real estate - legal changes published in November and December 2016

Order of the Minister of Justice and Minister of Finance no. 4344/C/2843/2016 for approval of the Working Methodology on the evaluation and capitalization of seized movable assets was published in the Official Gazette of Romania, Part I, no. 1037 of December 22, 2016.

The order was issued in order to implement the provisions of the Law no. 318/2015 for the establishment, organization and functioning of the National Seized Asset Management ("Agency") and for amending and supplementing certain acts. The Agency will take the necessary measures to ensure that the valorization of seized movable assets is made at the average market price, with the lowest cost and in the shortest possible time. In order to valorize the mentioned assets, several steps are necessary.

Initially, the seized assets are appraised by the Agency through a valuation commission or by certified appraisers, selected in accordance with the legal provisions on public procurement. The valuation is made in relation to the average price on the free market for goods of similar type, quality and quantity.

After the appraisal, the Agency shall select the entity to valorize the assets. Thus, the assets can be valorized directly by the Agency or through (i) specialized entities and companies, (ii) bailiffs according to their own procedures or (iii) fiscal authorities, according to own valorization procedures. The direct valorization by the Agency can be made either by direct public tender or by public tender through electronic means.

Law no. 216/2016 on establishing the destination of seized real estate assets was published in the Official Gazette of Romania, Part I, no. 918 dated November 15, 2016.

The law aims to establish the destination of real estate properties taken over by the state by seizing, within criminal proceedings. The mentioned properties can be transferred free of charge into the state's public domain and put under management of the central public administration authorities, of other public institutions of national interest or of the state business enterprises of national interest, at their request, to be used as the primary or secondary offices thereof.

Jurisdiction to judge the application belongs to the National Agency for the Management of Seized Assets ("Agency"), which will select the receiving entity upon the following criteria: (i) lack of premises used as headquarters, (ii) the need to extend the current headquarters, (iii) building location, (iv) area, (v) technical condition of the property, (vi) the current purpose, (vii) date of receipt of the request, (viii) the applicant's financial situation and (ix) the potential impact on the state budget.

In case the property is not given for free to one of the entities mentioned above, the Agency will be entitled to organize a public auction in accordance with Government Ordinance no. 14/2007 regulating the mode and conditions of valorizing the goods taken over by the state under the law.

competition - draft laws published in November and December 2016

The Competition Council has published the draft for Guidelines on the interpretation and application of the Competition Law on the public sanitation services markets

Given a series of competition concerns highlighted during the sector inquiry conducted at national level by the Competition Council (RCC) or respectively raised in other proceedings conducted on the public sanitation services markets, on November 7, 2016, the RCC launched for public debate the draft Guidelines on the interpretation and application of the Competition Law on public sanitation services markets, also drafting a series of recommendations.

With regards to public sanitation services, the RCC found that the exclusive rights granted to operators by local government authorities lead to the creation of a dominant position (monopoly) for operators on the relevant sanitation services of the city, delegated by the administrative territorial unit in the geographical area of jurisdiction of those authorities during the exclusive rights granted by the sanitation services contract. Thus, the measures taken by local government authorities should not limit the autonomy of undertakings (operators) - in this case, to be *objective*, *necessary* to achieve the objective and *proportionate* to the aim pursued - and not to set discriminatory conditions for enterprises.

To counteract the anticompetitive effects arising from the dominant position of sanitation operators, the Competition Council recommended, mainly:

- restricting areas of monopoly in the field of sanitation of cities, in particular by limiting the duration of the exclusive rights (e.g., optimizing interdependence between term - investment / cost - price, avoiding the unjustified extension of contracts for delegation of sanitation services management);
- effective intervention by regulatory authorities, including the regulation of tariffs, meaning the setting of rates at a level considered affordable for consumers in order for them to obtain similar results to those obtained in a competitive market, both in terms of tariffs level and quality of service;
- granting increased attention to the situation in which the contract for sanitation services was directly awarded by the administrative-territorial units to their own enterprises, suggesting in this case to separate the regulatory function from the operating function, namely to ensure the highest possible degree of competition in the tender for awarding the management of sanitation services

The draft Guidelines in its entirety can be accessed on the RCC website, at:

http://www.consiliulconcurentei.ro/uploads/docs/items/id11903/2016-11-01_orientari_aplic_legii_concurentei_recomandari_pe_pietele_sv_de_salubrizare_consultare_publ.pdf

constructions - draft laws published in November and December 2016

Draft law regarding the amending and the supplementing of the Law of cadaster and real estate publicity no. 7/1996 was published on the official website of the Ministry of Regional Development and Public Administration.

The new government draft law aims to adjust, to restructure and to systematize the legislation of cadaster and real estate publicity to accelerate the systematic registration in the land book and to complete the cadastral works. Thus, the ultimate purpose is to create a unified, coherent, complete and modern record of property and other real rights as the foundation of a healthy business and social environment.

In case of the envisaged amendments, the following objectives are pursued:

- introduction of the General entry register as part of the integrated system through which one determines the rank of entries in the land book
- consecrating the principle of establishing rights instituted by the Civil Code after the completion of systematic registration under the new definitions of the land book and of real estate publicity;
- regulating the organization and operation of the board of directors of the National Agency of Cadaster and Real Estate Publicity ("The Agency"), as well as financing thereof;
- supplementing and centralizing the norms on the territorial offices, on the Professional Training Centre and the National Cartography Centre, by detailing their organization, main purpose, operation and financing;
- regulating the liability of the Agency and of the territorial offices, only in case their fault was already found regarding breach of applicable legal provisions on cadaster and land book.

Draft Government Decision regarding the approval of the Regulation on the state control of quality in construction was published on the official website of the Ministry of Regional Development and Public Administration.

The draft law aims to establish a general legislative framework, objectives, content, organization and method of exercising state control of quality in construction, by replacing the previous Regulation on state control of quality in construction, approved by Government Decision no. 272/1994. The new regulation is designed to implement legislative amendments occurred since 1994 until the present in the national legislation, including the adoption of Law. 10/1995 on construction quality as well as EU legislation in the field of construction.

The most important novelty brought by the new draft regulation is the removal of the permit issued by the State Inspectorate in Constructions for interventions to existing buildings, as stipulated in article 11 of the Regulation in force, which was approved prior to the issuance of Law no. 10/1995 regarding quality in constructions.

energy - draft laws published in November and December 2016

Draft Emergency Ordinance - version revised following public consultations - for amending and supplementing Law no. 220/2008 regarding promotion of energy production from renewable energy sources was published on November 17, 2016 on the Ministry of Energy website.

The latest amendments proposed for the support scheme, aiming to find a balance between the industry and the consumer and to provide lower costs for the renewable energy sector, were cleared by the Commission on December 16, 2016 and now await implementation as a new amendment to Law no. 220/2008. The main proposed amendments are as follows:

- A new transparent manner to determine the green certificates quota is introduced, by equally spreading the entire number of green certificates expected to be issued over the years left until the end of the support scheme, in 2031, rather than the actual mechanism which provided the yearly determination of a renewable energy quota which, for 2017 has been set at 8.3%;
- Producers and suppliers shall trade the green certificates as of July 1, 2017 exclusively on the dedicated market operated by OPCOM. Any breach of this rule shall impose a sanction between 1% and 5% of the turnover achieved during the year preceding the sanctioning decision;
- The certificates issued after January 1, 2017, shall have an extended validity period, until December 31, 2031;
- Green certificates shall no longer be registered in the accounts of the beneficiaries after issuance but only after they have been traded;
- Repeated transactions of green certificates shall be banned;
- The extension of the temporary suspension from trading of green certificates for solar power until December 31, 2024;
- The extension to 8 years, starting with January 1, 2018 until December 31, 2025, of the green certificates reinsertion period for hydro and wind energy producers;
- The extension to 6 years, starting with January 1, 2025 until December 31, 2030, of the green certificates reinsertion period for solar energy producers;
- The reinsertion of green certificates will be made in equal monthly installments;
- Minimum and maximum trading values are set for each green certificate to EUR 29.4, respectively EUR 35 and the medium impact to consumer is limited to EUR 11.1/MWh.

While the purpose of these amendments is to support the progress of the renewable energy sector to achieve the target of 27 % set for 2030, it is a certainty that these measures would help the investors' cash flow and reduce their losses.

The document can be consulted at:

http://energie.gov.ro/wp-content/uploads/2016/11/OUG-modificare-Legea-220-2008.pdf

Draft Energy Strategy of Romania for 2016-2030, in prospect of the year 2050 was published on December 19, 2017 on the Ministry of Energy website

The Ministry of Energy has intensively worked in 2016 to draft the Energy Strategy of Romania for 2016-2030 and, after the public consultation held between November 15, 2016 and December 19, 2016 it has managed to finalize it.

The Energy Strategy required the expertise of over 300 experts from different energy sectors, according to the ministry's statement, and aims to replace one third of the energy production park, to maintain an important role in the energetic mix for the coal, to better increase the efficiency of the heat transfer fluid and to continue supporting the energy production from renewable energy sources. However, as the former government did not manage to approve the document, its approval is to be decided by the current government.

The Energy Strategy of Romania for 2016-2030 can be consulted at:

http://energie.gov.ro/wp-content/uploads/2016/12/Strategia-Energetica-a-Romaniei-2016-2030_FINAL_19-decembrie-2.pdf

procurement - draft laws published in November and December 2016

Draft law for amending Law no. 98/2016 on public procurement has been filed in the Senate on 8 November 2016 and covers the introduction of new articles in Law no. 98/2016.

The draft law envisages provisions of Law no. 98/2016 on public procurement regarding the fact that the contracting authority requires the bidder to state in the bid the contract sections which they intend to subcontract and the identification data of proposed subcontractors and can also make direct payments, corresponding to the sections of the contract fulfilled by subcontractors proposed in the bid, if they request, for services, products or works supplied to the contractor.

In order to protect suppliers and subcontractors who do not express this option upon contracting, the draft law intends to introduce the fact that upon handing over the work, the contractor is required to provide proof of payment to subcontractors and suppliers, and if the contractor does not fulfill this obligation, the contracting authority will have to pay directly to subcontractors and suppliers, whether or not they requested direct payment.

Also, the draft law emphasizes that the need to protect suppliers and subcontractors extends also in the context of termination of the contract from the contractor's fault. Therefore, it proposes the introduction of a provision according to which, under termination of the contract for fault of the contractor, the contracting authority must carry out payment for work performed by a subcontractor, directly to them, and delivery of products to settle within the maximum amount stipulated in the contract, directly to suppliers.

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