VOICU
FILIPESCU
Attorneys at Law

News in Laws – Legal Monthly Newsletter
July 2017

Cover article: "Reviewing in case of discovering new documents. Conditions and practical applicability"

by Victor Cochirleanu, Senior Associate Voicu & Filipescu

Along with the reason provided in art. 509 par. (1) (1) of the Code of Civil Procedure, the reason for the review discussed in this article is perhaps the most common in practice due to multiple interpretative possibilities, but also because it is apparently much more accessible than the other grounds for review, which are more rigid in interpretation. In the majority of cases, however, reviewers are basically trying to resume the fund by invoking a seemingly new document that does not meet the requirements of the law to underpin the review of a judgment.

Legal Changes of June 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:

- Constructions
- Corporate
- Dispute Resolution
- Employment
- Energy
- Public Procurement

Drafts in Laws of June 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:

- Constructions
- Employment
- Energy
- Public Procurement

VF News

Article "Capital Markets - A New Legal Framework Allowing for New Trading Venues. The Trading of New Financial Instruments and Issuers' Mobility" by Voicu & Filipescu Senior Associate Simona Merdariu published on CEE Legal Matters. Click here to read the article.

Legal500 EMEA 2017 recommends Voicu & Filipescu for our lawyers' activity in 9 practice areas: banking and finance, mergers and acquisitions, dispute resolution, employment, energy, PPP and procurement, real estate and construction, insolvency, TMT.

VOICU
FILIPESCU
Attorneys at Law
News in Laws – Legal Monthly Newsletter
July 2017

cover article

Reviewing in case of discovering new documents. Conditions and practical applicability

By Victor Cochirleanu, Senior Associate Voicu & Filipescu

Along with the reason provided in art. 509 par. (1) (1) of the Code of Civil Procedure, the reason for the review discussed in this article is perhaps the most common in practice due to multiple interpretative possibilities, but also because it is apparently much more accessible than the other grounds for review, which are more rigid in interpretation. In the majority of cases, however, reviewers are basically trying to resume the fund by invoking a seemingly new document that does not meet the requirements of the law to underpin the review of a judgment.

The review provided by art. 509 par. (1) (5) of the Code of Civil Procedure takes into account the fact that, after the judgment requiring revision, evidence has been found, retained by the opposing party or which could not have been presented in the above circumstances by the will of the parties. According to art. 511 par. (1) (5) of the Code of Civil Procedure, the review period is one month, counting from the day on which the new documents relied on were discovered. The court practice has suggested the applicability of this ground for review, which raised issues first of all with regard to when new documents were or could have been discovered and when the one-month term stipulated by the law runs. Thus, the question has arisen in practice if the claimant in revision first learned of the document invoked and allowed it to go through a certain period of time until the document was in possession of the document, if it had been able to request it during the substantive proceedings or if there was a reason beyond his will that made them unable to obtain that document. As regards the time at which the document was issued, it has in practice been established that only a document existing at the date of the judgment may be relied on in support of this ground of review.

In terms of *"new"* nature of the document, Ploiesti Court of Appeal, by Decision No. 2632/2013, determined that *"a document can be invoked as a new for review of the decision only if it existed at the time when the judgment whose review is sought and that one could not present to the court because it had been retained by the adversary or under circumstances of force majeure."*

But if the document is *"in a file with a court, which was not retained by the opposing party and about which one proved inability to present, the application for revision is inadmissible because that document shall not constitute a new document under the law"*(the County court Section III Civil Decision no. 216/1990). In conclusion, the document is *"new"* if, although it existed, it could not have been used in the process in which the judgment whose revision is required (as is was retained by the opposing party, or there was a circumstance outside the will of the parties that prevented its obtaining).

The time of *"discovering"* the new document is important for calculating the one month term when the party may request a review. But how can we define *"discovery of the document by the party"?* In our opinion, the discovery of the document can not be left to the reviewer's discretion, in the sense that they can decide the moment from which the one-month term stipulated by art. 511 par. (1) point 5 of the Code of Civil Procedure runs. The situation must be analyzed from the time the claimant in revision learned of the document, at which point they could make the necessary diligence to obtain

it. Thus, in order to determine the point when the one-month period starts to run, one must also take into account the diligence that the party has done or could have done in obtaining the document and, in particular, one must prove the circumstance outside their will, which made them unable to take possession of the document.

The High Court of Cassation and Justice, Commercial Section, stated in this respect, by Decision no. 304/2010, that *"by taking note of new documents, the law maker means the moment when the existence of the document becomes known "*.

As an example, if the document was in a public archive and could be requested by a simple request, it can not be subsequently imposed in a review process as new, referring to all the grounds imposed by art. 509 par. (1) point 5 of the Code of Civil Procedure. The same is true of the case in which the file was filed in the archive of a court, where the claimant in revision was a party and could obtain it through a request. In this case, we consider that the one-month period runs from the time when the document was filed and brought to the attention of the claimant, and not from when they went to the case file and actually obtained it. Of course, if proof is provided that the document was requested, but was not made available due to circumstances beyond the will of the reviewer, the term will run from the moment of its effective possession. It is not possible to invoke the incidental discovery of a document filed as evidence in a court file to which the claimant is a party and which was filed long ago by one of the parties. Art. 150 Civil Procedure Code provides that each copy of the application shall be accompanied by copies of the documents that the party understands to be used in the trial and it is presumed that this document has been communicated to them. The same applies where the document is an expert's opinion made in a file, the term starting from the communication of the report.

In Decision no. 1964/1999 issued by Brasov Court of Appeal it was has held that in case documents were in the archives of a company, *"it cannot be deemed to have been retained by the opposing party or a force majeure."* But more interesting is the opinion of the Court of Appeal Galati highlighted in a decision older than 100 years, stating that *"it is force majeure when a document is in a public archive to which anyone has access"(C. Galati II, the decision of 28 May 1903)*. As a result, the lack of diligence on the part of the claimant in revision, as well as their passivity in obtaining the document, although aware of its existence, is not likely to extend the term of review in their favor in the sense of calculating the one month period from when they came into its possession.

Another discussion in practice is related to the importance of the document, more precisely to the condition requiring the document to be conclusive, meaning that not every document can be invoked in a review process, but it must be capable of leading to a change in the solution of the judgment whose revision is requested.

The Civil and Intellectual Property Division of the High Court of Cassation and Justice established by Decision no. 5525/2007 that *"under Article. 322 pt. 5 C. proc. civ., it is necessary that new documents invoked have proving force themselves, that is likely to lead to the establishment of another situation, another application of legal texts* ".

Moreover, by Decision no. 76/2015, Ploiesti Court of Appeal held that *"for the document presented in the application for revision to be "supporting document" it is necessary for it, should it have been known to the court during the trial of the case, to have led to a solution other than the one adopted".*

According to Decision no. 1512/1992 of the Supreme Court, *"to the extent that the facts recorded in the documents relied on were analyzed during the trial and found inconclusive, such acts do not constitute "supporting documents" for the purposes of art. 322 pt. 5 C. proc. CIV* "(sn: or new documents)

We note that based on the above, the supporting document must also be *"decisive"*. Thus, in accordance with the issues stated by the Civil Division I of the High Court of Cassation and Justice in Decision no. 3145/2014, *"for the documents to be "decisive" within the meaning of art. 322 pt. 5 the old C. pr. Civil [art. 509 par. (1) (5) of the NCPC, it is necessary that they, if known by the court at the time of the trial, could have led to a solution other than that which was issued."*

Regarding the condition that the document could have been retained by the adversary or could not have been presented from a circumstance beyond the parties' will (force majeure), we consider that the burden of proving the two conditions belongs to the reviewer. The claimant in revision must therefore prove that they requested the document from the person who holds it, but have not received it, or it has been retained or has they were informed that it could not be found, since it is not enough simply to present it in court.

Also in Decision no. 3145/2014 cited above, it was determined that *"the mere fact that the party subsequently discovered certain documentary evidence, without proving that circumstances beyond its will prevented them from acquiring them during the trial, it cannot justify the admission of the claim for revision because otherwise a definitively won trial could be subject to review on the basis of documents and evidence a posteriori fabricated, and the power of case law would become illusory. By basing their request for review on these documents, the petitioner actually requests a retrial of the appeal without arguing and proving why they did not take the necessary diligence to present these documents during the resolution of the main trial proceedings, the arguments in the appeal, circumscribing actually the facts, an uncensorable situation this way. The claimant in revision has the burden of proof of either the obstructionist conduct of the adversary, of not allowing them to have possession of the document in the course of the adjudication of the trial, or of a circumstance with the same impact arising above their will. In the case before the court, the claimant in revision did not prove such a hypothesis, and there was no evidence of successive steps, made in written form, whereby the claimant in revision had tried at the stage of the court's case the obtaining of the documents they proceeded to use in the review phase, steps that they speaks about in this claim. As resulting from the brief of the case, the documents invoked as new could have been requested at any time during the first phase, nothing preventing the party from doing so, thus failure to request these documents does not constitute grounds for review."*

In line with the above-mentioned solution, we also appreciate that if the document could be procured through the diligence of the interested party and thus filed in the case, there can be no question of retaining the document by the adverse party or a circumstance outside their will which prevented them from knowing about the document.

Regarding all of the above, we conclude that the case-law played a major role in shaping the conditions for the admissibility of a claim for review based on the provisions of Art. 509 par. (1) point (5) of the Code of Civil Procedure: the new document invoked by the claimant in revision must be supporting and decisive, must have existed at the date of issue of the judgment whose revision is requested, must have been retained by the adverse party in the process or due to a circumstance beyond the will of the parties and must have not been discovered within one month before the filing of the claim for review.

constructions- legal changes published in June 2017

Law no. 147/2017 for the amendment of Annex no. 2 of the Law no. 50/1991 regarding the authorization of construction works was published in the Official Gazette of Romania, Part I, no. 491 of June 28, 2017.

The law aims at making the construction of infrastructure elements more flexible, by including a legal exception allowing to obtain the building permit for the construction works necessary for the extension, maintenance of the water supply and wastewater management, on the basis of an agreement for the constructions temporarily affecting the land and with the express consent of the rightsholder.

As a consequence, one will be able to authorize the construction works necessary for the exploration / prospecting / exploitation of oil and natural gas operations, other than temporary constructions, and under an agreement for constructions temporarily affecting the land and with the express consent of the rightsholder for the construction works necessary for the extension, maintenance of water and wastewater systems, having the explicit consent / declaration by the rightsholder for the performance of the construction works on these lands.

Also, in order to restrict the scope of deeds of acknowledgment of the easement right, this will no longer be defined, for the purpose of obtaining the building documentation, as acquired by a notarial act but only by a sale-purchase, exchange or donation agreement.

VOICU
FILIPESCU
Attorneys at Law
News in Laws – Legal Monthly Newsletter
July 2017

corporate - legal changes published in June 2017

Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for the establishment of measures for the prevention and combating of the financing of terrorism was amended and supplemented by Law no. 125/2017, published in the Official Gazette of Romania, Part I, no. 415 of June 6, 2017.

Law no. 125/2017 for amending and completing the Law no. 656/2002 on the prevention and sanctioning of money laundering as well as for the establishment of measures to prevent and combat the financing of terrorism, in force as of June 9, 2017, concerns the following:

- the persons referred to in art. 10 of the Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for the establishment of measures for the prevention and combating of the financing of terrorism and the competent institutions mentioned in paragraph (1) of the same law shall transmit to the National Office for Prevention and Control of Money Laundering the requested data and the information, within 15 days from the date of receipt of the request, and for the applications that are of urgent nature, formulated pursuant to art. 5 par. (3), within 48 hours of receipt of the application (the previous term was 30 days);

- it is established that the application of the provisions of Law no. 656/2002 shall be verified and controlled by the National Bank of Romania or the Financial Supervision Authority within the scope of their duties, for the persons subject to their prudential supervision, as the case may be, according to the law, including for branches in Romania of foreign legal persons subject to similar supervision in the country of origin (amendment to Article 24 (1) letter a) of Law no. 656/2002)

- provisions are introduced regarding the information provided by art. 24 paragraph (1) let. (a) to the European Supervisory Authority, the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, on specific situations, such as: (i) the law of a third State does not permit the application of mandatory knowledge of the clientele; (ii) a third party state requires the application of procedures for knowledge of the clientele and the keeping of records related thereto, equivalent to those provided for in the present law, and their enforcement is supervised in a manner equivalent to that regulated by the law;

- it is stipulated that all civil offences found and the sanctions stipulated in para. (2) of art. 28 of the Law no. 656/2002 shall be applied by the due representatives, as the case may be, by the Office or other competent authority, according to the law, to carry out the control. If the control is performed by the National Bank of Romania or by the Financial Supervisory Authority, the finding of civil offences and the sanctions are enforced by the due representatives; specially designated by entities, under the law;

- within 30 days from the date of entry into force of Law no. 125/2017, the National Office for Prevention and Control of Money Laundering will submit to the Government, for approval, a new organization and functioning regulation.

VOICU
FILIPESCU
Attorneys at Law
News in Laws – Legal Monthly Newsletter
July 2017

dispute resolution - legal changes published in June 2017

Decision of the Constitutional Court no. 224/2017, published in the Official Gazette of Romania, Part I, no. 427 of June 9, 2017. The objection of unconstitutionality refers to the provisions of art. 6, point 6 final thesis of Government Emergency Ordinance no. 195/2002 on the public road traffic. The Constitutional Court upheld the objection of unconstitutionality, finding that the legislative solution contained in art. 335 par. (1) of the Criminal Code, which does not criminalize the driving on the public roads of an agricultural or forestry tractor without a driving license, is unconstitutional.

Decision of the High Court of Cassation and Justice no. 13/2017 regarding the pronouncement of a preliminary ruling on a matter of law, published in the Official Gazette of Romania, Part I, no. 464 of 21 June 2017. HCCJ has determined that the provisions of Art. 6 of the Criminal Code are incident in the case where the more favorable criminal law intervened after the conditional release of the convicted person, and subsequently the rest of the sentence was ordered by a new final conviction, by which the court did not rule on the application of more favorable criminal law after the final hearing of the case, since the purpose of art. 6 is to provide legal support for a final punishment in relation to the new law and until the end of any effects of the conviction that will intervene through rehabilitation.

Decision of the Constitutional Court no. 257/2017, published in the Official Gazette of Romania, Part I, no. 472 of 22 June 2017.

The exception of unconstitutionality refers to the provisions of art. 20 par. (1) and art. 21 par. (1) of the Code of Criminal Procedure. The Court held that the possibility of the injured party, who was a civil party, to request the civilly liable party to be introduced in the criminal trial "until the commencement of the judicial inquiry" in any trial phase, including the closure of the preliminary chamber procedure, violates the right of free access to justice of the civilly responsible party, enshrined in Art. 21 of the Constitution. The Constitutional Court found that the criminal procedural rules of art. 21 par. (1), regulating the possibility of the injured party who was a civil party to request the civilly liable party to be introduced in the criminal proceedings "until the commencement of the judicial inquiry", are unable to maintain the balance between the fundamental rights in competition, and the phrase "within the deadline provided in Article 20 paragraph (1)" of the content of art. 21 par. (1) of the Code of Criminal Procedure is unconstitutional.

Decision of the High Court of Cassation and Justice no. 11/2017, published in the Official Gazette of Romania, Part I, no. 479 of 26 June 2017. The HCCJ has established that in interpreting the notion of "motor vehicle", provided by art. 334 par. (1) of the Criminal Code and art. 335 par. (1) of the Criminal Code, referring to art. 6 point 6 and point 30 of O.U.G. no. 195/2002, modified by GO no. 21 / 26.08.2014, the driving on the public roads of an agricultural / forestry tractor unregistered according to the law or by a person who does not have a driving license does not meet the typical conditions of the offenses provided by art. 334 par. (1) of the Criminal Code, respectively by art. 335 par. (1) of the Criminal Code.

The Official Gazette of Romania, Part I, no. 501 of 30 June 2017 published the judgment of the European Court of Human Rights in the case of Calin and Others v. Romania. The Court held that the establishment limitation period, as it had the effects in the present case, restricted the applicants' right to take action in the determination of paternity until it had ceased to exist. The Court also considers that the national courts did not maintain a "fair balance" between the various interests involved and that the interference with the applicants' right to privacy was therefore not proportionate to the legitimate aims pursued. The ECHR therefore declared two of the three applications admissible, the Romanian State having to pay: (i) EUR 4500 to each of the two claimants for moral damage; (ii) EUR 300 plus any amount which may be owed by the claimant as tax, for legal expenses, to one of the claimants, and EUR 4,104 plus any amount which may be owed as tax, for the other party's legal expenses.

Decision of the Constitutional Court no. 392/2017, published in the Official Gazette of Romania, Part I, no. 504 of 30 June 2017. The objection of unconstitutionality concerns the provisions of art. 248 of the Criminal Code of 1969, art. 297 par. (1) of the Criminal Code and of art. 132 of the Law no. 78/2000 on the prevention, detection and sanctioning of graft. The Court found that the provisions criticized breached the provisions of Art. 1 par. (4) and (5) of the Constitution in that they allow the confiscation of the material element of the objective side of the offense of abuse in service through the activity of other bodies other than the Parliament - through the adoption of the law, 73 par. (1) of the Constitution - or the Government - by adopting ordinances and emergency ordinances, under the delegation provided by art. 115 of the Constitution. Thus, the Court upheld the objection and found their constitutionality only in so far as the phrase "defective fulfilment" in their contents means "fulfills by breaking the law". In relation to the other provisions criticized, the Court rejected, as inadmissible, the objection of unconstitutionality of the provisions of Art. 297 par. (1) of the Criminal Code, respectively dismissed as unfounded, the objection of unconstitutionality regarding art. 132 of the Law no. 78/2000 on the prevention, detection and sanctioning of graft.

employment - legal changes published in June 2017

Decision of the Government of Romania no. 374/2017 amending and supplementing the Methodological Norms for the application of Law no. 76/2002 on the unemployment insurance system and the stimulation of employment, approved by the Government Decision no. 174/2002, and for modifying and completing the procedures on access to measures for stimulating employment, the financing modalities and the implementation instructions, approved by the Government Decision no. 377/2002 was published in the Official Gazette of Romania, Part I, no. 414 of June 6, 2017.

The Decision brings a series of amendments to the Methodological Norms for the application of Law no. 76/2002 on the unemployment insurance system and the stimulation of employment, as follows:

- it introduces provisions regarding the installation premium regulated by Law no. 76/2002 stipulating that, in case of request of the installment bonus, the proof of the existence of domicile or residence in the city from where the person leaves, as a result of employment in another city, can be done, as the case may be, with the identity document, certified copy of the original, filed at registration as a jobseeker, a certificate or any other document issued by the General Inspectorate for Immigration or, upon request and express consent of the person, on the basis of the information available to Agencies for employment;

- also in connection with the installation bonus, it is also provided that its monthly value is calculated based on the road distance, on the shortest route, expressed in kilometers, in both directions, between the city of residence or and the location where the beneficiary is to be employed as a result of employment;

- it also adds new provisions regarding the relocation premium provided for by Law no.76 / 2002: persons benefiting from it, the documents to be submitted by the person concerned for granting the resettlement premium, the method of granting, the method of calculating the amount.

The new decision also amends the Procedures on access to employment incentives, funding methods and implementation instructions, approved by Government Decision no. 377/2002, introducing amendments regarding: the granting of the resettlement premium and its purpose (stimulating the employment of the registered unemployed with the employment agencies, who is employed, according to the law, in a remote city more than 50 km from their place of residence and as a result of that, they change their domicile or residence in that city or in its neighboring areas), the potential beneficiaries of the resettlement premium, modalities and deadlines for granting it.

Order of the Ministry of Communications and Information Society no. 409/4020/737/703/2017 regarding the assignment in the activity of creation of computer programs was published in the Official Gazette of Romania, Part I, no. 468 of 22 June 2017.

The new Order establishes that the employees of economic operators acting on the territory of Romania, whose scope of activity includes the creation of computer programs (NACE codes 5821, 5829, 6201, 6202, 6209), benefit from the tax

exemption on income from salaries and similar, provided in art. 60 pt. 2 of the Law no. 227/2015 regarding the Fiscal Code, if the following conditions are fulfilled cumulatively:

- the positions which they occupy correspond to the list of occupations listed in the Annex to the Order: Database Administrator; Analyst; System Engineer in Computer Science; Software system engineer; IT project manager; Programmer; Computer system designer; Computer programmer;
- the position is part of a specialized computer section, highlighted in the organisational chart of the employer, such as: department, directorate, office, service, compartment or similar;
- they hold a diploma granted after completing some form of long-term higher education or hold a diploma after completing the first cycle of undergraduate studies issued by an accredited institution of higher education and actually perform one of the activities listed in the Annex to the Order;
- the employer has achieved in the previous fiscal year and recorded separately in the analytical balances income from the creation of computer programs for retail;
- the annual income provided under point d) have a value of at least the equivalent in lei of EUR 10,000 (calculated at the monthly average exchange rate communicated by the National Bank of Romania, corresponding to each month in which the income was registered) for each employee benefiting from the income tax exemption; companies which are established during the fiscal year in order to benefit from the fiscal facility are exempted from the fulfillment of the condition stipulated in point d) for the year of establishment and for the following fiscal year.

The Order also regulates: the supporting documents which are meant to include the tax-exempt persons on salary and salary income and the fact that the tax exemption on salary and wage income is applied on a monthly basis only for wages and salaries and similar derived from the carrying out of a software development activity on the basis of an individual employment contract, irrespective of the time of employment of the person benefiting from the exemption.

The Order repeals the Order of the Minister of Communications and Information Society, the Minister of National Education and Research, the Minister of Labor, Family, Social Protection and the Minister of Public Finance no. 872 / 5.932 / 2.284 / 2.903 / 2016 regarding the assignment in the activity of creating computer programs, published in the Official Gazette of Romania, Part I, no. 22 of 9 January 2017.

The new Order entered into force on July 1, 2017, its provisions being applied starting July 2017.

Decision of the High Court of Cassation and Justice no. 15/2017 regarding the examination of the appeal filed by the Brasov Court of Appeal - Civil Division, with a view to giving a preliminary ruling on the following question of law: how to apply the provisions of art. 56 para. (1) let. f) of Law no. 53/2003 - Labor Code, republished, with subsequent amendments, in order to determine whether they are applicable in all cases of conviction of an employee, by a final

court decision, to a prison sentence, including the stay of execution of punishment was published in the Official Gazette of Romania, Part I, no. 470 of 22 June 2017.

The Court has been called upon to give a preliminary ruling on the following question of law: how to apply the provisions of Art. 56 para. (1) let.f) of Law no. 53/2003 - Labor Code, in the sense of determining whether they are applicable in all cases of conviction of an employee, by a final court decision, to a prison sentence, including the stay of the execution of punishment.

The referral was made in a case where the applicant, sentenced to a prison sentence with suspension of enforcement, disputes the employer's decision to terminate the employment contract lawfully, arguing that this measure applies only to the situation where the punishment is actually executed in custody, which makes the physical presence of the employee in the workplace impossible.

The High Court has determined that the text of the law submitted for review by giving a preliminary ruling involves a narrow interpretation, based on historical, logical and legal considerations, according to which the *termination of the employment contract occurs only if the sentenced person actually executes the sentence in the penitentiary, being physically unable to attend the workplace in order to fulfill their contractual obligations*. This justifies the reasoning for which, unlike the public dignity functions in the field of labor relations, the legislator referred to the execution of a prison sentence, and not only to the sentencing to such a punishment.

Government Emergency Ordinance no. 46/2017 for amending and supplementing the Government Emergency Ordinance no. 8/2009 on the granting of holiday vouchers was published in the Official Gazette of Romania, Part I, no. 506 of 30 June 2017.

Government Emergency Ordinance no. 8/2009 on the granting of holiday vouchers is amended as following:

- it is stipulated that the institutions and public authorities, as well as the economic operators in which the state or the administrative-territorial units are single or majority shareholders or directly or indirectly hold a majority stake, within the limits of the budget allocations for this purpose, grant between 1 July 2017 - 30 November 2018 a single holiday allowance or a single holiday bonus, as the case may be, in the form of vouchers in the amount of 1,450 lei for an employee;
- the employer establishes when to grant the vouchers, in accord with the unions or the employer's representatives, as applicable;
- the maximum amount of money that can be granted to employees as holiday vouchers by employers other than the above is the equivalent of up to six gross minimum basic salaries per country guaranteed in pay for an employee over a year fiscal;
- in the case of central and local public institutions and authorities, the way of granting holiday vouchers is established by Government decision, without reducing the annual amount paid to central and local government employees for holiday vouchers or equivalent;

- starting 1 December 2018, economic operators as defined by Government Ordinance no. 26/2013 regarding the strengthening of the financial discipline at the level of some economic operators where the state or the administrative-territorial units are single or majority shareholders or directly or indirectly hold a majority stake, will grant their employees the holiday bonuses only in the form of vacation vouchers, in the amount equal to the equivalent of a minimum basic gross salary in the country guaranteed in payment determined, according to the law, for an employee;

- the nominal values for holiday vouchers on paper medium are a multiple of 50 lei, up to 100 lei, maximal nominal value per voucher;

- it modifies the way to punish civil offences, instituting a system of fine points (one point of fine represents the value of a minimum gross wage per country guaranteed for payment).

energy - legal changes published in June 2017

Order no. 37/2017 issued by NRAE, on the change in the methodology for calculating the quantity of electricity produced by high efficiency cogeneration, for certification of origin guarantee, approved by Order of NRAE President no. 61/2015 was published in the Official Gazette of Romania, Part I, no. 414 of June 6, 2017.

The new normative act amends Article 24 of the Calculation Methodology for the determination of the quantities of electricity produced in high efficiency cogeneration for certification by origin guarantees approved by the Order of the President of the National Regulatory Authority for Energy no. 61/2015 establishing that for each cogeneration unit k included in the cogeneration production configuration the EEP of the production of electricity and heat in cogeneration shall be determined with a new formula detailed in the order.

The provisions of the new order are addressed to economic operators who hold or commercially operate cogeneration units.

Date of entry into force: 06 June 2017

Order no. 38/2017 issued by NRAE amending Framework Contract for the sale / purchase of electricity traded on the centralized market for universal service, approved by Decision of the NRAE President no. 2.667 / 2014 was published in the Official Gazette of Romania, Part I, no. 414 of June 6, 2017.

The new order amends the definition of the term "Performance Guarantee" in the table in Annex no. 1 to the Framework Contract for sale / purchase of electricity traded on the centralized market for universal service, approved by the Decision of the President of the National Regulatory Authority for Energy no. 2.667 / 2014, as follows:

"Guarantee document issued by a bank agreed by the buyer, consisting of amounts of money and / or financial instruments (bank guarantee letter, payment guarantees, promissory notes endorsed by a commercial bank, etc.) constituted in favor of the buyer by the seller according to the applicable regulations. "

Electricity producers, suppliers, suppliers and the last instance suppliers and the Operator of the Electricity and Natural Gas Market "OPCOM" - SA carry out the provisions of the new Order.

Date of entry into force: 06 June 2017

Order no. 45/2017 issued by NRAE approving the pricing methodology for system service was published in the Official Gazette of Romania, Part I, no. 442 of June 14, 2017.

The Order approves the Methodology for setting fees for the system service. The methodology is addressed to the transmission and system operator, to the electricity producers as providers of the technological services system as well as NRAE.

The methodology includes regulations on the functions of the system service, principles and rules relating to it, provisions on the determination of regulated income, calculating the fee for the system service, principles on the acquisition of system technological services.

Date of entry into force: 14 June 2017

Order no. 46/2017 issued by NRAE for the approval of the criteria for the granting of derogations for the high voltage DC systems connected to the transmission or distribution electric grid and for the generating units in a power plant which are connected by a system of high voltage direct current to the transmission or distribution grid from the obligation to meet one or more requirements of the technical norms for connection applicable to them has been published in the Official Gazette of Romania, Part I, no. 444 of 14 June 2017.

The new order approves the criteria for granting derogations for high voltage DC systems that are connected to the transmission or distribution electric grid and for generating units in an electrical plant that is connected by a high-voltage DC system to the transmission or distribution network, from the obligation to fulfill one or more of the requirements of the technical rules for connection applicable to them.

According to the Order, the criteria for granting the exemption from the obligation to meet one or more requirements of the technical rules for connection taken into account when issuing a decision on the application for a derogation are the following:

- the infrastructure of the relevant network operator does not meet the requirements of the applicable technical connection rule for which the waiver was requested. The period of validity of the derogation shall be set until the infrastructure of the relevant network operator is adapted;
- the derogation does not have any negative effect on: (i) the operational safety of the National Energy System and the stability of the network area comprising the connection point; (ii) the functioning of the electricity market;
- the derogation does not restrict cross-border electricity trade;
- the derogation does not lead to competitive advantages for the applicant towards the other participants in the electricity market;
- in identical cases, the derogation does not lead to discriminatory behavior of the relevant network operator regarding the network access of the HVDC system manager or the MGCCC module plant;
- the derogation does not have an adverse effect on the environment or the health and safety of operational personnel or the public;
- the granting of the derogation has no negative impact on other users of the existing electricity grid (costs, quality of delivered electricity, sustainable development, health and safety at work, environment, emergency situations);

- there are no other HVDC system managers or MGCCC module plants that have previously connected and have implemented the requirements of the technical regulations for the connection applicable to them under similar conditions;

The manner of granting the exemption by the National Regulatory Authority for Energy shall be made on the basis of its own procedure. NRAE will issue a supported decision on the approval / refusal to grant the exemption.

Date of entry into force: 14 June 2017

Order no. 440/2017 issued by the Ministry of Energy approving the procedure for control activities carried out by the own bodies and entities under the authority of the Ministry of Energy was published in the Official Gazette of Romania, Part I, no. 448 of June 15, 2017.

The Order approves the procedure for controlling the activity carried out by the own bodies and the entities under the authority of the Ministry of Energy. According to it, the work carried out by the bodies and the entities under the authority of the Ministry of Energy will be verified by the Controlling Body of the Minister of Energy in accordance with the duties and competences established by the hereby procedure and by the internal bylaws.

The control action is the set of operations to verify the work of its own apparatus and entities under the authority of the Ministry of Energy or its personnel in the exercise of public functions and / or work duties, in terms of legality, regularity and timeliness, With a view to identifying and correcting deficiencies and deviations, establishing the responsibilities, as well as analyzing the causes of deficiencies and deviations found to prevent them occurring again.

Date of entry into force: 15 June 2017

Order no. 44/2017 issued by NRAE regarding the amendment and supplementing of the Pricing Methodology for heat delivered in SACET from plants with cogeneration units not benefiting from support schemes for the promotion of high efficiency cogeneration approved by the Order of the President of the NRAE no. 111/2014 was published in the Official Gazette of Romania, Part I, no. 450 of 16 June 2017.

The new Order amends and supplements the Pricing Methodology for heat supplied to SACET from cogeneration units which do not benefit from support schemes for the promotion of high-efficiency cogeneration, establishing, inter alia, that:

- fuel costs include, where appropriate, transport / distribution / supply costs as well as costs for capacity reservation. In the case of gaseous fuel, excise and imbalance costs are not included;

- in the fourth quarter of 2017, the average fuel price for coal, wood and agricultural biomass is that achieved over a 12-month period between July 1 of the previous year and June 30 of the current year and determined by the National Regulatory Authority for Energy on the basis of the average prices of coal, wood and agricultural biomass reported by all producers of electricity and heat by cogeneration to which this methodology applies.

Date of entry into force: 16 June 2017

Order no. 47/2017 issued by NRAE to approve the document "Proposal of all Transmission System Operators (TSOs) regarding the Day Ahead Firmness Deadline (DAFD) in accordance with Article 69 of Commission Regulation (EU) 2015 / 1.222 of 24 July 2015, which establishes the guidelines on capacity allocation and congestion management was published in the Official Gazette of Romania, Part I, no. 457 of 19 June 2017.

The new Order approves the Proposal of all Transmission System Operators (TSOs) regarding the Day Ahead Firmness Deadline (DAFD) in accordance with Article 69 of Commission Regulation (EU) 2015 / 1.222 of 24 July 2015 laying down the allocation guidelines on capacities and congestion management, as set out in the Annex to the Order.

Also, according to the new normative act, the National Power Grid Company "Transelectrica" - SA publishes on its own internet page the Day Ahead Firmness Deadline contained in the Proposal.

Date of entry into force: 19 June 2017.

Order no. 43/2017 issued by NRAE, amending the Order of the President of the NRAE no. 78/2016 on the approval of the reference bonuses values for electricity produced from high-efficiency cogeneration and the reference prices for cogeneration produced in 2017 was published in the Official Gazette of Romania, Part I, no. 461 of 20 June 2017.

The new Order amends (i) the reference bonuses for electricity produced from high-efficiency cogeneration and delivered from plants benefiting from a support scheme and (ii) the reference prices for cogeneration.

Date of entry into force: 15 June 2017

Order no. 50/2017 issued by NRAE, regarding the amendment of Annex no. 1 to the Order of the President of the National Regulatory Authority for Energy no. 176/2015 for the approval of the regulated electricity prices applied by the suppliers of last resort to the household customers who did not exercise their eligibility right as well as the conditions of application of the regulated prices and the prices the competitive market component was published in the Official Gazette Of Romania, Part I, no. 481 of June 26, 2017.

This Order replaces Annex no. 1 to the NRAE Order no. 176/2015 for the approval of regulated electricity prices applied by suppliers of last resort to household customers who have not exercised their eligibility, as well as the conditions for the application of regulated prices and the competitive market component prices.

Annex 1 contains the regulated electricity prices applied by suppliers of last resort to household customers.

Date of entry into force: 01 July 2017

Order no. 52/2017 issued by ANRE, amending the Order of the President of the National Energy Regulatory Authority no. 119/2013 regarding the approval of the contribution for high efficiency cogeneration and some provisions regarding its invoicing was published in the Official Gazette of Romania, Part I, no. 481 of June 26, 2017.

This order approves the contribution for high efficiency cogeneration, at the value of 0.01231 lei / kWh, excluding VAT.

Date of entry into force: 01 July 2017

Order no. 55/2017 issued by NRAE amending and supplementing the Methodology for determining the regulated income, the total income and the regulated prices for natural gas transmission activity, approved by the Order of the President of the NRAE no. 32/2014 was published in the Official Gazette of Romania, Part I, no. 481 of June 26, 2017.

This Order amends and supplements the Methodology for determining the regulated income, total income and regulated prices for the natural gas transmission activity, establishing inter alia that:

- the other depreciation periods for tangible and intangible fixed assets based on an incremental transmission capacity project included in the NTS investment and development plans for the next 10 years may be established reflecting the supported decision of the transmission operator and the effective recovery system of the value of the investment made in the transmission system and the economic benefits generated, taking into account, but not limited to: (i) the duration of use of the objectives; (ii) the estimated physical wear and tear; (iii) the mode of operation of the objectives; (iv) estimated physical production, production capacity and operating mode of fixed correlation assets that generated the need for incremental capacity; (v) the duration of commitments regarding the possibility of using these transport system objectives;

- the depreciation times are proposed by the transmission system operating license holder within the incremental capacity process foreseen in the Network Code for the National Gas Transmission System.

Date of entry into force: 26 June 2017

Order no. 48/2017 issued by ANRE regarding the approval of the average tariff for the transport service, the components of the transmission price for the feed-in of the power into the grid (TG) and the extraction of the power from the network (TL), the price for the system service and the regulated price for reactive electric power, performed by the National Power Grid Company "Transelectrica" - SA was published in the Official Gazette of Romania, Part I, no. 489 of June 28, 2017.

The Order approves the average price for the transport service, the components of the electricity transmission price (TG) and the extraction of the electricity from the network (TL) and the price for the system service, performed by the National

Power Grid Company "Transelectrica" - SA. Thus, the regulated price for the reactive electric energy of 0,05 lei /kVArh is approved.

The normative act repeals the Order of the President of the National Regulatory Authority for Energy no. 27/2016.

Date of entry into force: 28 June 2017

Order no. 54/2017 issued by NRAE for the approval of the Regulation on the organized framework for trading on the centralized natural gas market administered by the Operator of the Electricity and Natural Gas Market OPCOM - S.A. was published in the Official Gazette of Romania, Part I, no. 503 of 30 June 2017.

The new Order approves the Regulation on the organized framework for trading on the centralized natural gas market administered by the Operator of the OPCOM - SA Electricity and Natural Gas Market (stipulated in the Annex).

On the date of entry into force of the Order, the Order of the President of the National Regulatory Authority for Energy no. 52/2013 for the approval of the Regulation on the organized framework for trading on the centralized natural gas market administered by the Operator of the Electricity and Natural Gas Market OPCOM - SA, published in the Official Gazette of Romania, Part I, no. 468 of 29 July 2013, as amended and supplemented, is repealed.

Date of entry into force: 30 June 2017

VOICU
FILIPESCU
Attorneys at Law
News in Laws – Legal Monthly Newsletter
July 2017

public procurement - legal changes published in June 2017

Order of the Ministry of Transport no. 600/2017 for the amendment of Annex no. 1 to the Order of the Minister of Transport and Infrastructure no. 146/2011 regarding the approval of the special contractual terms of the contracts for equipment and constructions, including design, and contracts for construction of buildings and engineering works designed by the beneficiary of the International Federation of Construction Consultants Engineers (FIDIC), for investment objectives in the field of transport infrastructure of national interest, financed by public funds was published in the Official Gazette of Romania, Part I, no. 436 of 13 June 2017.

The Order amends Annex no. 1 to the Order of the Minister of Transports and Infrastructure no.146/2011, regulating the special conditions of contract for equipment and constructions, including design, containing provisions on: (i) priority of contractual documents; (ii) the assignment of the public procurement contract, (iii) the use of the Contractor's documents by the Beneficiary, (iv) the performance guarantee, (v) the manner of preparing the reports on the progress of the works, (vi) the way of managing the traffic, (vii) the employment of the personnel and the workforce, (viii) the Beneficiary's right to terminate the contract unilaterally, (ix) the Contractor's right to suspend the works, (x) the consequences of force majeure, etc.

Order of the National Agency for Public Procurement no. 141/2017 regarding the approval of the Selection Methodology and the interaction of the contracting authorities / entities with the National Agency for Public Procurement regarding the intention to modify the public procurement contracts / framework agreements, and the sectoral contracts /framework agreements, under the conditions provided in art. 221 par. (1) let. c) of Law no. 98/2016 and art. 238 of Law no. 99/2016 was published in the Official Gazette of Romania, Part I, no. 492 of 28 June 2017.

The order approves the selection methodology and the interaction of the contracting authorities / entities with the National Agency for Public Procurement (NAPP) regarding the intention to modify the public procurement contracts / framework agreements, and the sectoral contracts / framework agreements if the following cumulative conditions established by art. 221 par. (1) let.c) of Law no. 98/2016 are met: (i) the amendment became necessary following circumstances which a diligent contracting authority could not have foreseen; (ii) the change does not affect the general nature of the contract; (iii) the price increase does not exceed 50% of the value of the public procurement contract / initial framework agreement.

If the contracting authorities / entities intend to implement the provisions of Art. 221 par. (1) let. c) of Law no. 98/2016, they have the obligation to notify NAPP by any means of communication 5 working days before the start date of the stages of the amendment of the public procurement contract / framework agreement, or the sectoral contract / framework agreement.

The information which the contracting authority / entity should include in the notification to NAPP regarding the amendment of the public procurement contract / framework agreement, or the sectoral contract / framework agreement is, in addition to the general information identifying the contracting authority / entity, the contractor and the public procurement contract: (i) the value of additional documents relating to the original contract (if any); (ii) the amount of the contractual change to be made (expressed in nominal value and percentage of the original contract); and (iii) a description of the unforeseeable circumstances that led to the need to initiate the change in question and the arguments of the contracting authority / entity that justify compliance with the legal provision, in accordance with the provisions of Art. 221 par. (1) let. c) of Law no. 98/2016.

Verification of notices submitted by contracting authorities / entities will be done on a selective basis, based on criteria such as: the source of financing of the public procurement contract / framework agreement, or sectoral contract/framework agreement to be concluded; The type of contract to be concluded; The estimated value of the change to the public procurement contract / framework agreement, or the sectoral contract /framework agreement to be changed; The history of the contracting authority / entity in the field of public procurement, by reference to the number of non-compliances resulting from ex-ante control over the last 3 years concluded, from the NAPP records.

The contracting authority / entity has the obligation to notify NAPA about the completion of the stages of the public procurement contract / framework agreement or sectoral contract on the first working day after the conditions governing the implementation of the contractual amendment have been formalized, a copy of the addendum to the original contract, within 3 working days after its conclusion, and the decision to cancel the request for modification of the public procurement contract / framework agreement, or sectoral contract within one working day of its adoption.

constructions - draft laws published in June 2017

Draft Government Decision for amending and supplementing the Government Decision no. 525/1996 for the approval of the General Zoning Regulation was published on the website of the Ministry of Regional Development, Public Administration and European Funds on June 23, 2017.

The draft law is aimed at updating the general zoning regulation in relation to the applicable laws in the field of zoning and related issues, and to the principles of sustainable development and current European trends. In this respect, the draft GD proposes the following major changes:

- clarifying the types of constructions whose building is permitted on land outside built-up areas;
- controlled development of built-up areas in correlation to the spatial distribution of local public services (urban infrastructure, public transport);
- increasing the protection of forested areas, of areas with underground resources, of protected areas;
- placement of constructions within the railway protection areas located in built-up areas shall be made with the approval of the central public authorities with duties in transportation, and not that of the National Railway Company "C.F.R." - S.A., in order to remove the provisions which can be interpreted as problematic with regard to the principles of free competition;
- establishing a grid of criteria applicable to each county, in case the required amount for financing the drafting and/or updating of general zoning plans of cities and local zoning regulations, is greater than the amount allotted by the financing program budget.

Also, the changes brought on by this law are aimed at improving the activity of designers who draft the general zoning plans and local zoning regulations, measures conducive to increasing the quality of zoning documentations, and to a better management and application of the provisions therein.

employment - draft laws published in June 2017

The legislative proposal for amending and supplementing the Law no. 52/2011 regarding the exercise of occasional activities performed by day-laborers was registered with the Senate for debate under no. B249 on June 7, 2017.

The draft law envisages adding to the provision that no day laborer can carry out activities for the same beneficiary over a period of more than 90 days cumulatively during a calendar year, some exceptions, namely: day workers who are engaged in vineyard activities, fruit farming, vegetable farming, extensive animal farming through the seasonal grazing of sheep, cattle, horses, seasonal activities in botanical gardens, as well as in agricultural research and development-innovation activities of the Academy of Agricultural and Forestry Sciences "Gheorghe Ionescu- Sisesti", of the research-development institutes, centers and resorts under its subordination and of the agricultural and forestry education institutions; in their case, the period may not exceed 180 cumulated days during a calendar year.

At the same time, it is proposed to introduce the provision that for the day laborers who work in vineyard, fruit, vegetable farming, extensive animal farming through the seasonal grazing of sheep, cattle, horses, seasonal activities in botanical gardens, as well as in research-development-innovation activities in the field of agriculture of the Academy of Agricultural and Forestry Sciences "Gheorghe Ionescu-Sisesti", of the research-development institutes, centers and resorts under its subordination and of the agricultural and forestry education institutions, the Registry of day laborers is drafted weekly.

The reasoning for these exceptions is the complexity and duration of works in the above-mentioned fields.

Draft law on remote work activities was published on the Ministry of Labor website on June 9, 2017.

The draft law regulates the way in which the employee carries out the work in a remote manner. For the job categories in which the information and communication technology is used, the draft law establishes a right and not an obligation, in the sense of the parties agreeing on the place of the employee's activity.

The purpose of this law is:

- flexibility or work relations and adapting to the social and economic realities, in relation to the new dynamics of the labor market;
- there are benefits for the employer and the employee. More precisely, the employer has reduced administrative costs with leasing of work premises, utilities, fuel, and auto fleet. The employer sees removal of time and money spent traveling to the employer's office, and the freedom to choose place of work and valorizing the working time, in order to improve the work/personal life balance.
- increased opportunities for disabled individuals on the labor market;

The draft law is published on the website of the Ministry of Labor and can be accessed at the following link:

http://www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decizionala/4895-2017-06-09-proiect-lege-tele-munca.pdf

Draft law for amending and supplementing Law no. 53/2003 - Labor Code was published on the website of the Labor Ministry on June 13, 2017.

The draft aims to amend and supplement art. 16 par. 1 in the sense of defining undeclared work as:

- the employment of a person without the conclusion of the individual employment contract the day before the start of the activity;
- the non-registration of the employment relationship in the general record of employees no later than the day before the start of the activity;
- the employment of an employee during the period when they have the individual employment contract under suspension;
- the employment of an employee outside the working hours established under the individual part-time contracts.

At the same time, it is considered necessary to introduce a clear provision on how to draw up, supplement, modify, preserve and present records of working time so that the hours actually worked by employees can be checked, given that in many situations the evidence of time worked presented by the employer, usually after the check at the workplace, does not correspond to the factual situation. Thus, it is proposed to amend Art. 119 of the Labor Code, in order to provide the employer's obligation to keep at the workplace the record of the hours worked daily by each employee, highlighting the starting and ending hours of the work program, and subject this to control by the work inspectors, whenever requested to do so.

The draft law is published on the website of the Ministry of Labor and can be accessed at the following link:

http://www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decizionala/4900-2017-06-13-proiectlege_modif-codulmuncii.pdf

The draft law for amending and completing the Law no. 52/2011 regarding the exercise of occasional activities performed by day-laborers was published on the website of the Labor Ministry on 14 June 2017.

The draft regulates the following aspects:

- the draft establishes the mediation agencies between the demand and the supply of day labor, accredited by the National Agency for Employment through the county employment agencies;

- the mediation between day labor demand and supply is the activity whereby connecting the beneficiaries with day workers, in order to establish employment relations;
- the mediation agencies can be companies with legal personality established in Romania under Companies Law no. 31/1990, republished and amended, having within the scope of activity NACE code 7810 "Activities of employment placement agencies";
- the mediation agencies can be companies with legal personality established in other EU member states,
- The accredited providers of labor mediation services or those who have fulfilled the obligation to notify the county employment agency, respectively the municipality of Bucharest under the conditions provided by the Government Decision no. 277/2002 regarding the approval of the Accreditation Criteria of the providers of specialized services for the stimulation of employment, can provide mediation services between the daily demand and supply of labor without being subject to the accreditation or the notification procedure, whereas previously, they notified the county employment agency, respectively the municipality of Bucharest, regarding the provision of these services and the right to provide labor mediation services has not been suspended or withdrawn, according to the legal provisions.
- day laborers employed through such mediation agency can provide activities for the same beneficiary for a period of up to 180 days cumulatively during a calendar year;
- the mediation agents do not charge fees to individuals who wish to work under this law in exchange for their recruitment by the beneficiary;

The draft law is published on the website of the Ministry of Labor and can be accessed at the following link:

http://www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decizionala/4901-2017-06-14-proiect-lege-ag-mediere.pdf

Draft law on vouchers which can be given to employees was registered with the Senate for debate under no. B266 on June 14, 2017.

The draft aims to regulate the vouchers which can be given to employees: meal, daycare, vouchers, sports and cultural vouchers.

The draft aims, one hand the unification of legislation on employee vouchers, and on the other hand, introducing new type of vouchers: sports and cultural. Sports vouchers have the purpose of increasing employee workproductivity by stimulating purchase of sports equipment, fitness subscriptions, physio sessions, and other such products and services which can only benefit employers and employees. Cultural vouchers are destined for expenses with events, shows, book purchasing.

The draft law for amending and supplementing Law no. 76/2002 on the unemployment insurance system and the stimulation of employment was registered with the Senate for debate under no. B283 on June 21, 2017.

The draft starts from the idea that the unemployment benefit procedure is bureaucratic, and the unemployed are obliged to contact various providers of evidence such as former employers and the territorial structures of the National Agency for Fiscal Administration and the National Agency for Payments and Social Inspection. Practically, the procedure deprives the unemployed, for an important period of time, of two of the conditions by which the law defines it, namely to be looking for a job and to be available to start work in the immediate future, if they find a job.

Thus, the draft law proposes a procedure for granting unemployment benefit relieving both the unemployed and the employers, from the obligation to procure and release documents, and transferring the active role in this respect to the public authorities and institutions.

Draft law for the development of market-driven entrepreneurship and stimulation of new job creation was registered with the Senate for debate under no. B301 on 27 June 2017.

The draft proposes to regulate some tax incentives granted to micro and small enterprises (as defined in Article 4 of Law 246/2004 on the stimulation of the establishment of small and medium-sized enterprises) that meet the following conditions:

- were established at least 3 years before;
- recorded a profit in each of the last 3 years;
- did not achieve more that 20% of income from contracts with public authorities or institutions or companies majority owned by the state;
- did not receive subsidies or other forms of non-reimbursable financing paid from the general consolidated budget.

The tax breaks applicable to these companies could be:

- exemption from paying social security contributions owed by employers for income afferent to work performed by up to 5 employees, employed for an undetermined period;
- exemption from paying healthcare contributions for income afferent to work performed by up to 5 employees, employed for an undetermined period;
- exemption from payment of unemployment security contributions afferent to work performed by up to 5 employees, employed for an undetermined period;

The draft law sets the framework for helping Romanian entrepreneurs who have already demonstrated viable ideas. Without bureaucracy and without selection files, the facility is addressed directly to all companies that have been operating for a minimum of 3 years without any subsidies or contracts with the state. The facility concerns labor taxation so as to encourage the creation of new jobs

Draft law for supplementing Law no. 53/2003 on the Labor Code was registered with the Senate for debate under no. B318 on June 29, 2017.

The draft proposal seeks to add new provisions whereby the modification of the individual employment contract takes place by: (i) delegation, (ii) secondment, (iii) transfer; (iv) moving to another compartment within the same workplace; (v) the temporary exercise of a management function. It is also proposed to introduce Art. 47^1, establishing that the transfer may take place either in interest of work or at the request of the employee and the conditions under which the transfer may take place.

The reason for the proposal is that, according to the current Labor Code, the modification of the individual labor contract can not be done by transfer, as it is done in other professional categories, and in order to ensure similar and equal conditions for all employees in the country, the introduction of these provisions is imposed.

energy - draft laws published in June 2017

Draft Order amending and supplementing the Order of NRAE President no. 116/2013 on the approval of the Regulation on the setting of the method of collecting the contribution for high efficiency cogeneration and the payment of the bonus for electricity produced in high efficiency cogeneration was published on the website of the National Regulatory Authority for Energy on 8 June 2017.

The draft order mainly proposes the following amendments / additions to the Regulation:

- export exemption from the contribution for high efficiency cogeneration;
- issuing by the Aid Scheme Administrator, on the basis of the decision issued by NRAE to approve the amount of overcompensation, a decision in accordance with the State aid legislation, which it sends to the producer for which overcompensation has been found;
- the mandatory nature of the NRAE decisions for producers regarding the amount of overcompensation and / or the undue bonus;
- the recovery by including in the cogeneration contribution the cogeneration contribution left unpaid by electricity suppliers to Romanian consumers;
- the inclusion in the cogeneration contribution of the overcompensation and / or the undue bonus left over by the electricity and heat producers in cogeneration accessing the support scheme and for which all legal steps have been taken.

The project can be viewed at:

http://www.anre.ro/download.php?f=fqyBiQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

The draft Order on the approval of the average tariff for the transport service, the components of the transmission tariff for the feed-in of the electric power into the grid (TG) and the extraction of the electricity from the network (TL), the tariff for the system service and the price Regulated for the reactive electric power, practiced by the National Power Grid Company "Transelectrica" - SA was published on the website of the National Regulatory Authority for Energy on 8 June 2017.

According to the methodological provisions, the prices for the transmission system service shall be reviewed annually.

NRAE reviewed the proposals for regulated prices and prices submitted by the National Power Grid Company "Transelectrica" - SA, as transmission system operator (TSO) and the justified costs of providing transport and system services, determined annual corrections and establishes and submits for approval the following regulated prices and prices for the price year 1 July 2017 - 30 June 2018:

- the average price for electricity transmission service - 16.86 lei / MWh (decrease by 9.8% in nominal terms compared to the current price) having the following unique components for all network areas of NES:

  (i) feed in component - 1.05 lei / MWh, which leads to a decrease SC to areas it had COMPONENT Q between 13% and 33% S increases and a third AND 1.05 RON / MWh for zones and the zone in which the rate was zero;

  (ii) feed out component - 15.73 lei / MWh, which leads to a decrease CONTENTS SC Q and between 2% and 17% for consumer areas, with the exception of the Oltenia area where it will record an increase its third AND 3.4% below its price in force.

- the price for the system service - 10.52 lei / MWh (decrease by 18.3%), of which 9.39 lei / MWh for STS (decrease by 18.9%) and 1.13 lei / MWh for SFS Decrease by 13.1%).

- regulated price for reactive power - 0,05 lei / kVArh, determined according to the methodological provisions mentioned in point 1 on the basis of the estimated average price of active electric power to cover the own technological consumption (CPT) in the electricity transmission grid (ETG) 178.28 lei / MWh, approved for the price year 1 July 2016-30 June 2017.

The Authority considers that the overall impact of the new prices proposed for approval (including the new single national components TG and TL) from 1 July 2017 will be to reduce electricity prices to end customers by approx. 1%, while at the same time ensuring full recovery of the justified costs of the TSO with the provision of the two services.

The draft can be viewed at:

http://www.anre.ro/download.php?f=fqyCgQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

The draft Order on the approval of the Balancing Adjustment and Settlement Regulation was published on the website of the National Regulatory Authority for Energy on 30 June 2017.

The Draft Order was based on the set of regulations under public debate in July 2016, with the aim of:

- consolidating in one document the changes made to the basic document (the Trade Code for the Electricity Market), with the elimination of provisions whose applicability was limited and taking into account the changes in the structure of the sector that have occurred in the meantime, and also the ancillary regulations, referenced in the document;

- making minimum changes to meet the stringent demands of the participants and at the same time not contradicting the trends arising from the consultation of European regulations, even if they are still at the proposal stage;

- changing the configuration of the wholesale market regulation system, namely the approval of individual documents for each domain, replacing the single document called the Trade Code of the Wholesale Electricity Market.

The draft can be viewed at:

http://www.anre.ro/download.php?f=fq18hg%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

Draft Rules and Procedures on the Transaction on the Centralized Gas Market Administrated by SOCIETATEA BURSA ROMÂNĂ DE MĂRFURI (ROMANIAN COMMODITIES EXCHANGE) S.A. were published on the website of the National Regulatory Authority for Energy on 19 June 2017.

Through its amendments, RCE wants to introduce standardized assets that meet market requirements and increase the liquidity of the wholesale market it manages as the operator of the centralized natural gas market.

A novelty change consists in the introduction of Central Counterparty services for transactions made on the electronic platform of the RCE (Clearing House). The central counterparty has the role of ensuring the smooth running of the settlement process between customers by interposing them, as well as by the collateral system applied to participants in the centralized market. The Clearing House thus becomes a buyer for the client who sells and the seller for the buyer.

The drafts can be viewed at:

http://www.anre.ro/download.php?f=fqyDhg%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

http://www.anre.ro/download.php?f=fqyDhA%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

http://www.anre.ro/download.php?f=fqyDhQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

http://www.anre.ro/download.php?f=fqyDgw%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

Proposals of S.N.T.G.N. TRANSGAZ S.A. on the amendment of the NTS Network Code approved by ANRE Order 16/2003, with subsequent amendments and additions, were published on the website of the National Energy Regulatory Authority on 30 June 2017.

The two proposals for modification and completion of the NTS Network Code elaborated by SNTGN TRANSGAZ SA refer to the provisions of art. 17 4 of the NTS Network code on virtual trading point, of Chapter III - "Access to transmission services related to NTS" art. 52-54, art. 78 -81, art. 86, art. 99, as well as Annex no. 13 - "PVT Notification of transaction related to forecast imbalance". Also, two framework contracts for natural gas transport - one for inward capacity services and the other for capacity exit services - are proposed, which will replace the current framework contract, set out in Annex no. 1 to the NTS Network Code in force.

Proposals can be viewed at:

http://www.anre.ro/download.php?f=fq17hw%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

http://www.anre.ro/download.php?f=fq18hA%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

VOICU
FILIPESCU
Attorneys at Law
News in Laws – Legal Monthly Newsletter
July 2017

public procurement - draft laws published in June 2017

Draft law for amending Art. 4 par. (2) let. a) of Law no. 98/2016 on public procurement was registered with the Senate for debate under no. B287 on June 21, 2017.

The proposal takes into account the fact that at present, according to art. 4 par. (2) of the Law no. 98/2016 on public procurement, it is not consider to be contracting authorities and, as a consequence, are exempt from the obligation to comply with the provisions of this law, companies of a commercial or industrial nature financed by central or local public authorities and institutions, or by others, bodies governed by public law, and those in which more than half of the members of the board of directors / management or supervisory bodies are appointed by the same public entities.

Thus, it is permissible to have a situation where companies financed up to 100% from public funds or subordinated to, under the authority or under the coordination or control of public entities, have the possibility to purchase goods and services of any value without complying with the competitive procedures prescribed by law simply because they are formally commercial or industrial in nature.

For this reason, central and local government authorities are free to abuse this breach of the current version of Law 98/2016 by setting up satellite commercial companies funded by public funds through which they carry out activities of public interest without any obligation to observe competitive procedures in the procurement process, having opened the way to contract directly with suppliers detained by the political clientele.

Therefore, it is considered necessary and appropriate to amend Law 98/2016 by removing the phrase "without commercial or industrial nature" in the art. 4 par. (2) let. a) so that companies with full or majority ownership held by public entities or controlled by them are obliged to comply with the legal norms regulating public procurement with the consequence of increasing the transparency of the spending of public money.

For additional details on this material, please do not hesitate to contact us.
Voicu & Filipescu SCA
31 General Ernest Brosteanu Street
010527, Bucharest, Romania
Tel: +40 21 314-02-00
Fax: +40 21 314-02-90
E-mail: office@vf.ro
Web: www.vf.ro