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News in Laws – Monthly Legal Newsletter
June 2017

Cover article: "Capital Markets - a New Legal Framework Allowing for New Trading Venues. The Trading of New Financial Instruments and Issuers' Mobility"

by Simona Merdariu, Senior Associate Voicu & Filipescu

This month's cover article analyzes Law no. 24/2017 regarding the financial instruments issuers and stock market operations, aimed to reflect the dynamics of the capital market and of the European legislation, with an aim to help investors stay more informed, to increase transparency, to improve the public offers' regime and the financial instruments' issuance, and to harmonize the sanctions for market abuse.

Legal Changes of May 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
- Public Procurement

Drafts in Laws of May 2017

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

- Employment
- Public Procurement

VF News

Voicu & Filipescu partner Raluca Mihai, interviewed by BizLawyer on the firm's employment practice. Click here to read the full interview.

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cover article

Capital Markets - a New Legal Framework Allowing for New Trading Venues. The Trading of New Financial Instruments and Issuers' Mobility

de Simona Merdariu, Senior Associate Voicu & Filipescu

Law no. 24/2017 regarding the financial instruments issuers and stock market operations published in the Official Gazette of Romania, Part I, no. 213 of March 29, 2017, is based on legal provisions that initially existed in Law 297/2004 on capital market, as further amended, provisions taken further and/or amended by this new law so as to reflect the dynamics of the capital market and of the European legislation, with an aim to help investors stay more informed, to increase transparency, to improve the public tender offers' regime and the financial instruments' issuance, and to harmonize the sanctions for market abuse.

New Trading Venues

The normative act under discussion sets forth the legal framework applicable to stock market operations regarding financial instruments which have been or are to be admitted for trading on a regulated market or traded on a multilateral trading facility (MTF) or on organized trading facility (OTF) regulated by the Romanian Financial Supervisory Authority (ASF), carried out on Romanian territory, as well as to certain operations carried out on the territory of another state, as expressly mentioned in the law and the regulations for the application of such. On the other hand, this normative act considers the general legal framework that would allow for the trading of new financial instruments.

Thus, this law transposes, in addition to the regulated markets and multilateral trading facilities covered by MiFID I, the introduction of this new trading venue: the organized trading facility (OTF) envisaged by MiFID II (Directive 2014/65/EU of the European Parliament and of the Council of May 15, 2014).

OTF means a multilateral system in which there are traded bonds, structured finance products defined as per Art. 2 para. (1) item 28 of the Regulation (EU) no. 600/2014 of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments, emission allowances and derivatives.

Issuers' Transparency

Law 24/2017 provides that the prerequisites for the periodical reporting, continual informing and special provisions regarding the events of the issuers whose securities are admitted to trading on a regulated market shall be similarly applicable to the issuers whose securities are admitted to trading MTF or OTF, as of January 3, 2018. The for pre and post trade transparency requirements applicable to trading venues as regards the bonds, structured finance products, emission allowances and derivatives stipulated by the Regulation (EU) no. 600/2014 of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments and amending Regulation (EU) no. 648/2012 are directly applicable.

By introducing a new trading venue (OTF) and regulatory requirements for such, MiFID II improves the transparency requirements for the stock market trading activities, allowing for the identification of so-called dark pools.

As regards the shares as financial instruments, we remind the continuous informing requirements in connection with qualified holdings. Hence, in case a shareholder buys or sells shares of an issuer which are traded and to which

voting rights are attached, then the respective shareholder is under the obligation to notify to the issuer the percentage of voting rights held following such sale or purchase, in case said percentage reaches, exceeds or drops below one of the following thresholds: 5%, 10%, 15%, 20%, 25%, 33%, 50% and 75%. The voting rights are calculated based on all holdings of shares to which the voting rights are attached, even if the exercising thereof is suspended. This requirement is also extended to cover other financial instruments which grant the right to buy shares with a comparable economic effect in the sense that, in order to assess the holding threshold, the owner shall cumulate the shares with such other financial instruments.

New Instruments and Issuers' Mobility

It can be noticed that by the class of transferable securities representing "bonds or other debts instruments, which are negotiable on the capital market", the inclusion is also clarified of "securitized debt".

In the case of an issuer of shares or securitized debts with a unit nominal value lower than EUR 1,000, the member state of origin is the state where such issuer is headquartered, while in case the issuer is registered in a third-party state, then the member state of origin is selected by the issuer out of the member states in which its securities are admitted for trading on a regulated market. The definition of member state of origin applies to the securitized debts issued in another currency other than Euro, under the condition that the unit nominal value is, on the date of the issuance, lower than EUR 1,000. The issuer of securitized debts of a unit nominal value higher than EUR 1,000 can select as member state of origin the member state where it is headquartered or the member state where its securities are admitted for trading on a regulated market.

According to the regulations of ASF, an issuer shall give notice of its selected member state of origin to the jurisdictional authority of the member state where it is headquartered or, as the case may be, to the jurisdictional authority of the member state of origin and to the jurisdictional authorities in all host member states.

The financial reporting requirements do not apply to the issuers who exclusively issue debts (i) admitted for trading on a regulated market and the unit nominal value of which is of at least EUR 100,000 or, for the debts expressed in another currency other than Euro, with the unit nominal value equivalent with at least EUR 100,000 on the date of the issuance or (ii) traded on MTF or OTF.

The issuer is under the obligation to make sure that all means and all information that are necessary in order to allow the shareholders or debt owners to exercise their rights are publicly available in the member state of origin, and that the data integrity is kept. The shareholders or debt owners are not restricted from exercising their rights by power of attorney in the conditions stipulated by the legislation of the state where the issuer is headquartered.

Also, the category of financial instruments is completed with greenhouse gas emissions certificates (as such instrument is defined at Art. 3 letter b) of the Government Decision 780/2006 on the greenhouse gas emissions certificates trading).

General Applicability of the Rules regarding Market Abuse

The provisions regarding market abuse are applicable to the financial instruments traded on any of the trading venues, as well as to the behaviors or transactions, including offers, regarding the trading on a trading platform authorized as a regulated market for the trading of greenhouse gas emissions certificates or of other products traded based on such, including when the traded products are not financial instruments.

constructions - legal changes published in May 2017

Government Decision no. 343/2017 for the amendment of Government Decision no. 273/1994 on the approval of the Regulations for the handover of construction works and installations afferent thereto was published in the Official Gazette of Romania, Part I, no. 406 of May 30, 2017.

Said normative act refers to the approval of a new Regulation for constructions handover, for the purpose of strictly regulating the handover procedure, increasing the quality in the field of constructions, as well as for increasing the liability of investors, contractors and parties involved in the handover procedure.

According to the most important of the amendments, the commission in charge with the handover of the constructions and installations thereof no longer can make recommendations for the handover to be postponed, but only for such to be admitted or rejected. Also, in line with this provision, the handover can only be admitted without objections regarding the quality of the construction works.

Also, for the purpose of rendering the construction works handover procedure more flexible, the investor or landlord, as the case may be, can take over a part of the construction, by execution phases which are physically and functionally distinct, before the finalization of the entire project provided by the construction authorization, based on a protocol ascertaining the construction achievement phase. The protocol ascertaining the construction achievement phase also serves for the registration with the land book of the ownership title over constructions by execution phases.

Moreover, following said principle, the new regulations also indicate clearly the cases in which the representatives of the State Inspectorate for Constructions are under the obligation to take part as members of the handover commission, as well as their duties as members thereof. Thus, they shall participate in the handover commissions:

- regarding investment objectives, irrespective of their financing source, consisting in building new constructions which are categorized, according to the provisions of Annex no. 3 to the Government Decision no. 766/1997 for the approval of some regulations regarding the quality in constructions, as importance class A – "exceptional", B – "special" and C – "normal", as well as in the case of intervention works regarding these categories of constructions;
- regarding investment objectives which are of public or social interest or which are financed entirely or partially from public sources, consisting in building new constructions which are categorized, according to the provisions of Annex no. 3 to the Government Decision no. 766/1997 for the approval of some regulations regarding the quality in constructions, as importance class D – "reduced", as well as in the case of intervention works regarding these categories of constructions.

From an organizational perspective, the handover commission can only function if at least 2/3 of its appointed members are present, whereas the commission can only make decision upon the majority of its members. As a novelty, the representatives of the public administration authorities and of the institutions which are in charge with supervision duties have *de veto* rights, and in case they propose that the handover should be rejected, such needs to be motivated in writing.

The new regulations shall come into effect on June 30, 2017, and the provisions thereof shall not apply to the constructions for which the handover procedures upon finalization of the works or, as the case may be, final handover procedures, are ongoing on this Government Decision's effective date.

Government Decision no. 343/2017 on amending Government Decision no. 273/1994 on the approval of the Regulation regarding the reception of construction works and related installations was published in the Official Gazette of Romania, Part I, no. 406 of May 30, 2017.

The act has as object the approval of a new Regulation regarding the reception of construction works, with the purpose of a strict enforcement of the reception procedure, of improving the quality of construction works, as well as enhancing the responsibilities of investors, builders and of those involved in the reception process.

As such, according to the most important amendment, the reception committee of constructions cannot recommend delaying the reception, only approving or rejecting it. Also, in continuation of the aforesaid norms, the reception may be admitted only without any objections presented with regard to the construction quality.

Additionally, in order to facilitate the process of reception of construction works, the investor or, if be the case, the owner may obtain part of the construction, on execution stages differing from a physical and functional point of view, before finalizing the entire construction as specified in the building permit, after concluding a building status protocol. The building status protocol may be used to register the ownership rights over the building on different stages in the land book.

Moreover, the new regulation expressly details the cases in which the representatives of the State Inspectorate in Constructions take part, mandatorily, as members of the reception committee and their prerogatives as members. Therefore, they shall take part in the reception committee:

- for investment objectives, regardless of the financing source, which represent buildings registered, according to the provisions of Schedule 3 of the Government Decision no. 766/1997 on approving several regulations regarding construction quality, in the importance category A – 'exceptional', B – 'important' and C – 'normal', as well as in the situation intervention works are performed on these buildings;
- for public or social investment objectives or social partially or totally finances from public funds, which represent the building of constructions newly registered, according to the provisions of Schedule 3 of the Government Decision no. 766/1997, in the importance category D – 'reduced', as well as in the situation intervention works are performed on these buildings.

From an organizational perspective, the reception committee may function only in the presence of at least two thirds of its appointed members, and the decision of the committee is adopted with a majority vote. As an innovation, the representatives of the public administrative authorities and of the institutions with control powers in the reception committee have a veto right, and when they propose the rejection of a reception, such must be argued in writing.

The new regulation is enforceable from July 30, 2017, and its provisions do not apply to construction works for which the reception, as well as the final reception, is underway at the date it becomes enforceable.

corporate - legal changes of immediate impact

As we informed on the date when said legal provisions were first published (in our newsletter available here), **the provisions of Law no. 152/2015 for amending and supplementing certain enactments regarding Trade Registry registration**, published in the Official Gazette of Romania, Part I, no. 519, dated July 13, 2015, **regarding the introduction of the European unique identifier (EUID) shall come into effect on July 7, 2017**.

According to the indicated legal provisions, EUID shall be allocated to the individuals and legal entities registered with the Trade Registry and shall allow for the non-equivocal identification of a trading entity in their communications with various commercial registries by means of the interconnection system organized on the European Union level. EUID shall include (i) Romania's identification element, (ii) the national registry's identification element, (iii) the entity's registry number and, if necessary, (iv) other elements for eliminating identification errors.

In the case of new registrations (following the date of July 7, 2017), EUID shall be automatically mentioned on the registration certificate issued by the Trade Registry upon incorporation/ registration of the applicants in said register.

The structure of EUID shall be approved by order of the minister of justice. Nevertheless, until this date there have not been adopted any additional regulations that would clarify the structure of EUID or other information regarding modality in which the current registration certificates shall be changed (if such amendments proves necessary). In this context, it still remains to be clarified the modality for obtaining EUID, whereas it is estimated that more information to this extent will become available as of the date of July 7, 2017, once this measure is effectively applied or in the period preceding that date. We shall further detail this matter as soon as more information are available.

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dispute resolution - legal changes published in May 2017

Court Decision no. 23/03.04.2017 ruled by the High Court of Cassation and Justice for the clarification of certain questions of law was published in the Official Gazette of Romania, Part I, no. 365/17.05.2017. In connection with the application of Art. 1279 para. (3) point I and Art. 1669 (1) of the Civil Code, the High Court of Cassation and Justice ruled that, in order for the promise to sell a real estate to be concluded, for the purpose of ruling a court decision that would replace a notarized document, the notarized form thereof is not mandatory.

Court Decision no. 5/2017 ruled by the Sections of the High Court of Cassation and Justice for the clarification of certain questions of law was published in the Official Gazette of Romania, Part I, no. 375/19.05.2017. The High Court of Cassation and Justice ruled that, as regards the construal and application of the provisions of Art. 485 para. (1) letter b) point I of the Criminal Proceedings Code, the withdrawal by the perpetrator in front of the court of law of his/her consent which has been validly expressed in the course of the criminal investigations as per the provisions of Art. 482 letter g) of the Criminal Proceedings Code does not represent grounds for the guilt admission agreement to be rejected, whereas admitting the possibility for the consent to be withdrawn equals to an inefficient procedure for guilt admission, as such is lawfully stipulated, and in the same times represents the usefulness thereof in terms of the opportunity to render the criminal legal file shorter, for which purpose the concept of negotiated justice has actually been regulated, as a derogation from the common law, allowing the perpetrator to make use or not of the guilt admission procedure, while the lawgiver has not stipulated the possibility for the agreement to be rejected grounded on the perpetrator's no longer admitting his/her offences or withdrawing his/her consent.

Court Decision no. 28/24.04.2017 ruled by the Sections of the High Court of Cassation and Justice for the clarification of certain questions of law was published in the Official Gazette of Romania, Part I, no. 378/22.05.2017. The High Court of Cassation and Justice ruled that the term of "public body", as such is defined by the provisions of Art. 2 para. (1) letter b) of the Administrative Contentious Law no. 554/2004 is not similar to the one of "public institution" as such is defined by the provisions of Art. 2 para. (1) item 39 of Law no. 273/2006 on local public finance.

Court Decision no. 6/2017 ruled by the Sections of the High Court of Cassation and Justice for the resolution of appeals on points of law was published in the Official Gazette of Romania, Part I, no. 381/22.05.2017. The appeal on points of law filed by the Romanian Ombudsman refers to the application of the provisions of Art. 7 para. (4) of the Government Ordinance no. 105/1999 regarding the granting of certain rights to persons persecuted for ethnical reasons by the regimes governing Romania between September 6, 1940 and March 6, 1945, namely calling for a resolution on whether or not the court decisions ruled in the legal files regarding the refusal to grant the rights stipulated by said legal act are subject to appeal, according to the Administrative Contentious Law no. 554/2004.

The High Court of Cassation and Justice, by systematically interpreting the legal provisions and considering the lawgiver's express intent to correlate the entire civil proceedings legislation with the provisions of the new Civil Proceedings Code, has reached the decision that the provisions of Art. 7 para. (4) of the Government Decision no. 105/1999 shall be interpreted in the sense that the court decisions ruled in the legal files regarding claims against decisions issued by committees within county pensions houses or within the Bucharest Pensions House are not subject to appeal, whereas the court decision ruled by the first procedural court is final.

Court Decision no. 45/12.12.2016 ruled by the Sections of the High Court of Cassation and Justice for the clarification of certain questions of law was published in the Official Gazette of Romania, Part I, no. 386/23.05.2017. By said decision resolutions have been given to the following questions of law:

- on the interpretation and application of the provisions of Art. 21 para. (2) section I of the Administrative Contentious Law no. 554/2004, the claim for review is admissible based on a decision from the EU Court of Justice, irrespective of the moment when such is ruled and of whether or not in the main litigation there are invoked or not provisions of European law which had previously existed, breached by the decision the review of which is claimed, and
- the term within which a claim for review can be filed grounded on the provisions of Art. 21 para. (2) of Law no. 554/2004 is of one month and starts as of the date when the final decision is communicated, which is subject to review.

Court Decision no. 10/2017 ruled by the Sections of the High Court of Cassation and Justice for the clarification of certain questions of law was published in the Official Gazette of Romania, Part I, no. 392/25.05.2017. The High Court of Cassation and Justice has decided that for the interpreting and application of Art. 426 letter b) of the Criminal Proceedings Code, the court in charge with solving the annulment claim cannot reanalyze a cause for termination of the criminal legal file, in case the court of appeal debated and analyzed the incidence of said cause for termination of the criminal legal file, whereas a claim for annulment can be filed grounded on the provisions of Art. 456 letter b) only when the court rules a condemnation verdict, although evidences exist that a cause for terminating the criminal legal file exist. Moreover, any aspect subjected to the parties' debate by the court of appeal and in regard to which said rules a final decision represents a matter covered by the power of already trialed matter, therefore such cannot be invoked as case of claim for annulment.

Court Decision no. 34/15.05.2017ruled by the Sections of the High Court of Cassation and Justice for the clarification of certain questions of law, pending publication in the Official Gazette of Romania. According to this decision, for the interpreting and application of Art. 182 and 183 of the Civil Proceedings Code, the procedural act filed by facsimile or e-mail on the last date of the term calculated by days, after the hour when the activity of the court closes, is not considered submitted in due time. The provisions of this decision are yet inapplicable, whereas the date is relevant of their publication in the Official Gazette of Romania, Part I.

The Decision no. 2/2017 ruled by the Constitutional Court on the admissibility of the unconstitutionality exception regarding the provisions of Art. 453 para. (3) and (4) section one and of Art. 457 para. (2) of the Criminal Proceedings Code was published in the Official Gazette of Romania, Part I, no. 324/2.05.2017. According to the legal provisions subject to criticism, the cases for review stipulated at para. (1) letter a) and f) – namely if (i) facts or circumstances are unrevealed which were not known when the legal file was resolved and which render the court decision ruled in the legal file ungrounded and if (ii) the court decision is based on a legal provision which, after the court decision became final, was declared unconstitutional in result of an exception in said case being ruled – can be invoked as reasons for review only in favor of the prosecuted individual or in favor of the person regarding whom a waiver to apply a punishment or a decision to postpone the application of a punishment were ruled. The provisions of Art. 453 para. (3) of the Criminal Proceedings Code regarding the case for review stipulated at para. (1) letter a), as well as the legislative solution included in the provisions of Art. 453 para. (4) section one of same code, excluding the possibility to review an acquittal decision for the case stipulated at para. (1) letter a) breaches the constitutional provisions of Art. 16 regarding the equality of rights, of Art. 21 regarding the free access to justice and of Art. 131

regarding the role of the Public Ministry, whereas in such case the civil party lacks the possibility to have its lawful rights and interests defended, and respectively the prosecutor lacks the necessary leverage for putting into practice his/her specific role in the criminal trial.

The court acknowledged that in case facts or circumstances are unrevealed which were not known when the legal file was resolved and which render the acquittal decision ungrounded, then both the civil party as well as the prosecutor need to be given the possibility to claim and to obtain the reinstatement of the judicial truth, by withdrawing the court decision ruled in that case. Thus, the unconstitutionality decision has been ruled, whereas ascertaining that:

- the provisions of Art. 453 para. (3) of the Criminal Proceedings Code are unconstitutional regarding the review case stipulated at para. (1) letter a);
- the provisions of Art. 453 para. (4) section one of the Criminal Proceedings Code, which exclude the possibility for the acquittal decision to be reviewed for the case stipulated at para. (1) letter a) are unconstitutional;
- the legislative solution stipulated by Art. 457 para. (2) of the Criminal Proceedings Code, which excludes the review case stipulated at Art. 453 para. (1) letter a) is unconstitutional.

The Decision no. 372/30.05.2017 ruled by the Constitutional Court, pending publication in the Official Gazette of Romania, by which the unconstitutionality exception was admitted regarding the provisions of Art. XVIII para. (2) of Law no. 2/2013 regarding some measures for easing the workload of the courts of justice, as well as for preparing the implementation of Law no. 134/2010 regarding the Civil Proceedings Code by comparing such against the provisions of Art. 483 para. (2) of Law no. 134/2010, by ascertaining that the wording "as well as in other claims which can be measured in money with a value of up to lei 1 million inclusively" is unconstitutional. Although the decision of the Constitutional Court is pending publication, the press release issued on May 30, 2017 by the External Affairs, Media Relations and Protocol Department of the Constitutional Court mentions that by accepting the mentioned value threshold the principle of equality in rights had been breached, whereas citizens would no longer be equal in their right to make use of the extraordinary means of appeal. The provisions of this decision are not applicable yet, whereas the date is relevant of their publication in the Official Gazette of Romania, Part I.

employment - legal changes published in May 2017

Order of the Minister of Labor and Social Justice no. 625/2017 for establishing the nominal indexed value of a meal ticket for the first semester of the year 2017 was published in the Official Gazette of Romania, Part I, no. 316 of May 3, 2017. The order establishes that the nominal value of a meal ticket cannot exceed the amount of lei 15.09 for the first semester of the year 2017, starting May this year.

Order of the Minister of Labor and Social Justice no. 626/2017 for establishing the value of the indexed monthly amount granted in the form of nursery tickets for the first semester of the year 2017 was published in the Official Gazette of Romania, Part I, no. 316 of May 3, 2017. The order stipulates that the value of the monthly amount granted in the form of nursery tickets if of lei 440, for the first semester of the year 2017, starting May this year.

Law no. 105/2017 for the amendment and supplementing of Law no. 52/2011 on the carrying out of occasional activities by daily workers was published in the Official Gazette of Romania, Part I, no. 376 of May 19, 2017.

The law amends and supplements Law no. 52/2011 on the carrying out of occasional activities by daily workers and it provides, among others, that:

- no daily worker can carry out activities for the same beneficiary for a period longer than 90 days cumulated throughout a calendar year, except for the daily workers which work in the animal farming sector in extensive system by season-related pasture farming of sheep, cattle, horses, as well as those who perform season-related activities in botanical gardens within licensed universities; in the case of the last mentioned ones, the period cannot exceed 180 days cumulated throughout a calendar year;
- for the daily workers who perform activities in the field of extensive animal farming by season-related pasture farming of sheep, cattle, horses, the daily workers Register shall be filled in on a weekly basis.

Law no. 106/2017 on certain measures for improving the implementation on Romanian territory of the rights granted as part of the free movement of workers within the EU was published in the Official Gazette of Romania, Part I, no. 381 of May 22, 2017.

This new Law applies to the citizens of the European Union member states, others than Romania, exercising their rights stipulated by Art. 45 of the Treaty on the Functioning of the European Union on Romanian territory, for work purposes, as well as to their family members, referred to in the following as EU workers and their family members. The law applies to the following aspects regarding the free movement of workers within the EU:

- the access to job positions;
- the working conditions and employment conditions, especially regarding the compensation, dismissal, health and safety and, in the case when EU workers remain unemployed, their professional reintegration and re-employment;
- access to social and tax advantages;
- memberships in trade unions and the right to be elected as employees representative;
- access to professional training;
- access to houses;
- access to education, to apprenticeship courses and professional training for the children of EU workers;

- assistance through the county/Bucharest employment agencies.

According to the law, the EU workers and their family members benefit of *protection against any citizenship or nationality discrimination*. To this end, they can take measures in jurisdictional or judicial administrative procedures in case they feel they have been or are harmed by unreasonable limitations or obstacles or in case they feel they are subject to injustice by failure in the application of the nondiscrimination principle based on citizenship or nationality criterion.

Also, the associations, professional organizations, non-governmental organizations, including employers' unions and trade unions or other legal entities which, under national legislation, statutes and applicable collective bargaining agreement, have a lawful interest in ensuring the compliance with EU workers' and their family members' rights, based on this law, *can provide information and legal assistance and can act on behalf of the EU workers and their family members, upon the written consent thereof*, for taking the necessary judicial or administrative measures.

The National Council for Combating Discrimination is the state authority in charge with the prevention and fight against discrimination, and is designated as the authority in charge with the promotion, monitoring and upholding of the equal treatment for all EU members and their family members exercising their rights on Romanian territory, without any discrimination for citizenship reasons.

Government Decision no. 337/2017 for the approval of the Methodological norms for seconding employees as part of the cross-border delivery of services on Romanian territory

Government Decision no. 337/2017 for the approval of the Methodological norms for seconding employees as part of the cross-border delivery of services on Romanian territory was published in the Official Gazette of Romania, Part I, no. 411 of May 31, 2017.

The Decision approves the methodological norms for seconding employees as part of the cross-border delivery of services on Romanian territory, based on the provisions Law no. 16/2017 for seconding employees as part of the cross-border delivery of services.

According to the methodological norms, in order to establish whether or not a company effectively performs significant activities, others than the internal ones for management and/or administration, in the state member where it has been established, other than Romania, then the Labor Inspectorate shall conduct an assessment of all facts which are characteristic for a cross-border secondment.

Also, it is stipulated that, in case on the occasion of the inspection, the labor inspectors cannot obtain the information and documentation regarding the facts mentioned at para. (1) and (2), then the Labor Inspectorate shall be requested to obtain such by means of the internal market information system (IMI). In the case that, following the overall assessment of all factual elements, the labor inspectors ascertain that the conditions for cross-border secondment as stipulated by this law are not met, then they shall take the measures provided by the national legislation which apply to the identified situation.

The companies stipulated at Art. 3 letter a) of the Law are under the obligation to file with the territorial labor inspectorate where the activity is to be carried out a statement regarding the cross-border secondment of employees, as per the statement template provided in the appendix to the order.

Also, the secondment of an employee as per the conditions stipulated at Art. 5 para. (1) letter c) of Law no. 16/2017 shall be made based on the employee secondment contract concluded in writing between the temporary agent and the company active on Romanian territory and using the services of that employee. The company using the services of the employee is under the obligation to provide the labor inspectors, upon their request, with the secondment contract.

The law also regulates the facts which represent minor offence and the modality in which such facts are sanctioned by the labor inspectors.

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public procurement - legal changes published in May 2017

Law no. 80/2017 for the approval of the Government Emergency Ordinance no. 80/2016 for the adoption of certain measures in the field of central public administration, for the prorogation of the term stipulated at Art. 136 of Law no. 304/2004 on judicial organization and for the amendment and supplementing of certain normative acts was published in the Official Gazette of Romania, Part I, no. 313 of May 2, 2017.

This law amends, amongst others, the provisions of Law no. 98/2016 on public procurement. Thus, the general and specific contractual conditions for certain categories of public procurement contracts afferent to investments objectives financed out of public funds shall no longer be established by order issued jointly by the minister of European funds, the minister of public finance and the president of the National Agency for Public Procurement (as stipulated by Art. 235, para. (4) of Law no. 98/2016), but by Government decision.

On the date when the above mentioned Government decision enters into force, there shall be repealed the Government Decision no. 1405/2010 for the approval of the use of certain contractual conditions of the International Federation of Consulting Engineers (FIDIC) for investments objectives in transport infrastructure of national interest, financed out of public funds, published in the Official Gazette of Romania, Part I, no. 51 and 51bis of January 20, 2011.

Order no. 121/2017 issued by the National Agency for Public Procurement on the provision of methodological counseling was published in the Official Gazette of Romania, Part I, no. 399 of May 26, 2017.

The normative act establishes the framework by which there are achieved the interpretations given by the General Directorate for Regulation, Methodological Coordination and Operational Support (in Romanian DGRCMSO) within the National Agency for Public Procurement for the contracting authorities/entities and/or legal entities which are not contracting authorities, and which are under the obligation to put into practice the legal provisions in the governing areas and which are subject matter to: (i) Law no. 98/2016 on public procurement, as further amended and supplemented; (ii) Law no. 99/2016 on sectorial procurement; (iii) Law no. 100/2016 on works concessions and services concessions; (iv) Law no. 101/2016 on remedies and means of appeals in the field of awarding public procurement contracts, sectorial procurement, works concession contracts and services concession contracts, as well as for the organizing and functioning of the National Council for Solving Complaints.

Thus, said interpretations are achieved by means of:

- their publication, within 7 working days, in the specific section of the "Precedents library/Frequently asked questions" on the National Agency for Public Procurement website and in the online tool accessible at the link www.achizitiipublice.gov.ro, by collecting and summarizing the aspects indicated to the National Agency for Public Procurement, as well as the answers/opinions from the current activity and categorizing such by topics of interest;
- *ex officio* issuance of notices/guidelines regarding good practices and/or other horizontal aspects which might have a significant impact on said regulation areas and the publication thereof in the online tool mentioned at letter a) above;
- providing answers to contracting authorities/entities and/or legal entities which are not contracting authorities or other legal entities, in case such answer is not already included in the online tool mentioned at letter a) above, and also by including such answer in the online tool.

The answers issued by DGRCMSO to the requests for methodological counseling sent to the National Agency for Public Procurement shall be achieved as follows:

- in the case of the requests of generally applicable nature by reporting such against the typology of a certain case, state of facts/legal status and/or a certain context met in practice for which a correspondent exists according to the provisions of letter a) above, then the answer shall include a referral to the interpretation/interpretations included in the topics of interest available in the online tools;
- in the case of the requests which are not covered by letter a) above or which, although they are covered by such situation they also include additional particular elements which exceed those covered by the topics of interest available in the specific sections of the online tools mentioned at letter a) above, then the response is compared against the described situation and, once such is issued, it shall be included in the afferent specific section.

Moreover, the documentation/acts which are issued by other public institutions, authorities or other specialized bodies and the form and contents of which are similar to those issued by the National Agency for Public Procurement under this order or by which the application is imposed of a rule which exceeds the legal obligations created by legislative provisions in the regulation fields covered by the contracting authorities/entities and/or legal entities which are not contracting authorities do not represent interpretations of the public procurement/sectorial procurement or concessions related legislation.

Also, it is stipulated that in the sense of the provisions of the Order under discussion, the provisions of Law no. 98/2016, as further amended and supplemented, are not applicable to the legal entities which are not contracting authorities and which are not included in one of the situations explicitly stipulated at Art. 6 of Law no. 98/2016 in connection with the award of public procurement contracts.

employment - draft laws published in May 2017

Draft law for amendment of the Labor Code was registered with the Senate for debate purposes under no. B183 of May 10, 2017.

The draft law aims at supplementing the legal provisions regarding the normal work time for the full-time employees, and to the work time repartition throughout the week, respectively. It is intended for a provision to be introduced stipulating that it is allowed for the work time for full time employees to be of 10 hours a day, providing the 40 hours a week time is complied with. Furthermore, in regard to the work time repartition throughout the week, such is proposed to be decided by mutual agreement between the employer and the employee, with the possibility for such to reach 10 hours a day for four days, with three days of rest.

The reasons grounding the draft law consider a precedent established on an international level (a research has revealed that increasingly more companies allow their employees to work for four days a week, with 10 or 11 hours a day) regarding the employees' productivity in multinational companies, as well as in various public institutions. The initiators of the draft law claim that such work time repartition would create a boost for increased consume and, implicitly, increased sales and profit in the areas of public food, services and tourism, due to this prolonged weekend.

Draft law for the amendment of paragraph (1) of Article 145 of the Labor Code was registered with the Senate under no. B184 of May 10, 2017.

By the said draft law it is aimed for the amendment of Art. 145 of the Labor Code regarding the annual leave, so as for the provision to be included that the minimum duration of the annual leave period to be of 25 working days, out of which one day for celebrating the employee's birthday, based on an agreement between the employee and the employer.

The draft law has been structured so as to create the possibility of motivation by increasing the annual leave period which is necessary to diminish the psychological, psychical and intellectual effects of the job related overloading, effects which will be devastating on the long run for the employees, as well as for the labor costs of the employer.

Draft law for the amendment of Art. 2, para. (2), Art. 3 of Law no. 186/2016 on some measures for insuring some categories of individuals in the public pensions system and for the amendment of Art. 2, para. (1) and Art. 5, para. (3) of Annex: Social Securities Contract was registered with the Senate under no. B189 of May 16, 2017.

The draft law proposes the extension of the period regarding the conclusion of the social security agreement in which the individuals who are not retired pay social securities contribution for the time periods in which they were not insured in the public pensions system or in a social securities system which is not integrated thereof. Also, a proposal is made that the time period to be extended during which the payment of social securities contribution can be made.

By this draft law it is aimed for an opportunity to be created for the individuals who are not retired and who have not been insured in the public pensions system to conclude a social security contract with the territorial jurisdictional house of pensions, for a period of maximum 5 years calculated for the period 2000-2015 and to pay the relevant social securities contribution afferent to normal working conditions.

Draft law for the amendment of paragraph (7) of Article 15 of Law no. 416/2001 regarding the minimum guaranteed income was registered with the Senate under no. B223 of May 30, 2017.

By this draft law, it is proposed that it should be provided that by refusing an offered job position and/or by refusing to participate to services aimed at stimulating labor force employment and professional training, an individual loses its right for social indemnity. The current legal provisions stipulate that said right for social indemnity is lost following the 3 times repeated refusal to enter an offered job position and/or to participate to services aimed at stimulating labor force employment and professional training.

This proposal is grounded on the idea that, in practice, it has been noticed that the individuals who obtain a minimum guaranteed income in the form of social indemnity refuse to work, whereas they prefer to stay unemployed and live on the state's money. Also, the proposal comes to support local authorities who are in need of work force.

public procurement - draft laws published in May 2017

Draft Government Emergency Ordinance for the amendment and supplementing of some legal acts regulating the field of public procurement, sectorial procurement, concessions, as well as remedies and appeals was published on the website of the National Agency for Public Procurement on May 3, 2017.

The draft law aims at correlating the provisions of the various laws included in the legislative package regarding public procurement and concessions, and also it introduces more clarity in the wording of these legal acts and increased correlation with the sense intended by the European legislation in the field of public procurement.

This new draft law proposes the repeal of Government Emergency Ordinance no. 30/2006 on the duty of verifying the procedural aspects afferent to the award of public procurement contracts, public works concession contracts and services concession contracts, as such was approved with amendments and completions by Law no. 228/2007. The need to repealing the above mentioned legal norm has been generated by the need to avoid overlapping legislative provisions in said legal norm, the Government Emergency Ordinance no. 13/2015, Law no. 98/2016 and Law no. 99/2016.

As regards Law no. 98/2016, the Project provides the following:

- The clarification of the concept of "public law body" by introducing the explanations given by the European provisions;
- The clarifications regarding the conditions and modalities for applying the simplified procedure, by correlating such with Art. 7 para. (2) and Art. 113 para. (1) of the law, stipulating that such applies to the award of public procurement contracts, framework agreements and solutions contests the estimated value of which is below the legally provided thresholds;
- The clarification of the exceptional situation provided by Art. 19 to be clarified, according to which the contracting authority can apply the simplified procedure or, as the case may be, direct acquisition regarding individual lots, when the lawful conditions are complied with;
- The stipulation of the right for the contracting authority to request to the legal entities which participate with joint offers in the procurement procedure to adopt or establish a particular legal form only once their offer is declared the winning bid and under the limitation that such condition is stipulated either in the tender description or in the participation notice;
- The obligation of the contracting authority to request to the bidder/candidate to mention in their offer or in the participation request the identification data of proposed subcontractors, only if said are known when the offer or participation request are submitted;
- The stipulation of the contracting authorities' right to also apply the negotiation procedure without prior publication of a procurement notice in the case when during a simplified procedure organized for the award of the respective products, services or works no offer has been submitted or only discarded or non-compliant offers have been submitted, providing that the initial conditions of the procurement are not substantially altered and that, upon request from the European Commission, said institution is provided with a report (for a better correlation with the text of the European directive);
- The clarification of the limitation of contracting authorities' obligations– in the case of awarding public procurement contracts/framework agreements having as object social services and other specific services exclusively to those expressly mentioned;

- The clarification of the regulation according to which there are excluded from the awarding procedure the bidders/tenderers which, during the market consultation phase, provided the contracting authority with opinions, suggestions, recommendations regarding the public procurement procedure, either as part of consultancy services or by participating in other ways to preparing the procurement procedure;
- The repealing of the provisions according to which it is excluded from the public procurement procedure the legal entity or one of the individuals stipulated at Art. 164 para. (2) which are subject to a judicial investigation procedure for having committed one/more of the offences stipulated at Art. 164 para. (1), because such restrict the participation to the public procurement procedure of the bidders which have not been finally convicted for having committed a criminal offence;
- The clarification of the fact that the right to submit alternative offers or to bid for more distinct lots is excepted from the provision according to which the contracting authority can consider that the legal entity has concluded with other legal entities contracts which refer to rendering competition unfair;
- The clarification of the fact that, in the case of procedures carried out for the purpose of concluding a framework agreement, the requirement regarding the minimum level of the yearly turnover/the minimum turnover in the field of the framework-agreement object refers to the estimated value of the largest subsequent agreement;
- The mention that there cannot be applied the criterion *the lowest price/cost* in the case of public procurement agreements/design and execution framework agreements, in order to clarify the sense pursued by the lawgiver when adopting the normative act;
- The explicit stipulation that DUAE has to be filled in by the supporting third party/parties, as well as by the subcontractor/subcontractors;
- The establishment of the term of 3 business days in which the contracting authority's decision of annulling the awarding procedure can be made public;
- The introduction of a new provision according to which the public procurement agreement/framework agreement can be amended when the contractor with which the contracting authority has initially concluded the public procurement agreement/framework agreement is replaced by a new contractor can operate between an imminent early termination of the public procurement agreement/framework agreement, in the case when the contracting authority undertakes the obligations of the main contractor towards the subcontractors thereof;
- The exact regulation of the law applicable to subsequent contracts afferent to a framework agreement: subsequent contracts concluded throughout the duration of a framework agreement shall be governed by the law in force on the date of concluding such;
- The express mention that the amendment of the main elements of a public procurement agreement needs to be governed by the law in force on the date of concluding such amendments;
- The clarification of the actual modality in which the support of the supporting third party can be taken into account in regard to the requirement regarding experience.

As regards Law no. 99/2016 the following aspects are aimed:

- The clarification of the term "contracting authority", as well as the differentiation between "contracting authorities" and "contracting entities";
- The establishment of the right of the contracting entity to apply the negotiation procedure without a prior invitation to a competitive bidding procedure also in the case when during a simplified procedure no offer/participation request has been submitted or only discarded or non-compliant offers/participation

requests have been submitted, providing that the initial conditions of the sector acquisition are not substantially altered;

- The stipulation of the right of the contracting entity to decide upon organizing a final electronic tender phase in the case of simplified procedures;
- The express mention of the right to request the legal entity to replace the supporting third party/parties only once, in order to clarify the sense pursued by the lawgiver in the text of the normative act.

As regards Law no. 101/2016, it is proposed that the law text should be clarified so as the party which considers itself damaged to be able to file complaints either with the National Council for Solving Complaints aor with the court of justice, as well as for the shortening of the term for solving the complaint, whereas the express provision would be that such term is of 20 working days as of the date when the complaint is received (and not as of the date when the procurement procedure file is received, as provided by the current legislation), so as to avoid the artificial extension of the complaint solving term.

The draft law can be viewed at the following link:

http://anap.gov.ro/web/wp-content/uploads/2017/05/pOUG_modif_legi_rev2.pdf

Draft Government Decision for the approval of the general and specific contractual conditions for certain categories of public procurement agreements afferent to the investments objectives financed out of public funds was published on the website of the National Agency for Public Procurement on May 29, 2017.

The draft Government Decision proposes that three types of general and specific contractual conditions should be approved for certain categories of public procurement agreements afferent to the investments objectives financed out of public funds, namely those referring to (i) design, (ii) build and (iii) design and build. These types of contracts shall be used both for investments financed out of national as well as European public funds, which fact is aimed at ensuring a unitary practice on the level of contracting authorities in implementing this type of agreements.

In the context of implementing the Operational Programs for which the managerial authority is the Ministry of Regional Development, Public Administration and European Funds and which refer to the financing of infrastructure works, namely the Large Infrastructure Operational Program (a program with a total allocation of funds to be invested of Euro 11.88 billion and a non-refundable financial allocation of over 41% of the structural and investments funds allocated to Romania for the programs period 2014-2020) and the Regional Operational Program, there have been repeated requests from the representatives of the beneficiaries, constructors, consultants and professional associations represented on a national and international level for the use to be extended of certain standardized contractual conditions, especially in the case of significant investments, considering that such include the best international practices and the best risk allocation models so as to achieve the lowest costs on a long run.

The draft law can be viewed at the following link:

http://anap.gov.ro/web/wp-content/uploads/2017/05/Proiect-de-hotarare-pentru-aprobarea-conditiilor-contractuale-generale-si-specifice.pdf

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