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News in Laws – Legal Monthly Newsletter
October 2017

Cover article: "Recent and future changes in the field of labor law. How to interpret them and what to expect next"

by Raluca Mihai, Partener Voicu & Filipescu

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Currently, there is a discussion on a law on the approval with amendments of GEO no. 53/2017 to clarify certain aspects for employers.

Legal Changes of September 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:

- Dispute resolution
- Employment
- Energy

Drafts in Laws of September 2017

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

- Employment
- Energy
- PPP and Concessions
- Public Procurement

VF News

Article "Split payment of VAT" by Voicu & Filipescu Tax Advisers, Tax Manager Mădălina Gatu published on CEE Legal Matters. Click here to read the article.

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cover article

Recent and future changes in the field of labor law. How to interpret them and what to expect next

by Raluca Mihai, Partener Voicu & Filipescu

Amendment of Labor Code by GEO 53/2017. What future changes we might expect

Upon the entry into effect on August 7, 2017 of Government Emergency Ordinance no. 53/2017 which amended and supplemented the Labor Code, numerous discussions and problems arose in practice on trying to identify a realistic way of complying with these new legal requirements.

Currently, there is a discussion on a law on the approval with amendments of GEO no. 53/2017 to clarify certain aspects for employers

A first discussion appeared in practice as to how to keep a copy of the individual employment contract at the employee's workplace. The Law amending GEO no. 53/2017 will make clear that the employee's workplace is where the employee actually carries out their activity. As for the way the copy of the individual labor contract is kept, there were contradictory opinions from the Labor Inspection representatives, some inspectors saying that printouts should be provided in paper format, not accepting the electronic version of the documents. However, the changes currently under discussion will expressly allow for the employer the possibility of keeping copies of individual employment contracts either in paper format or in electronic format, obviously even in both ways.

If you have asked yourself as employers whether you have to keep the individual employment contract in the workplace, with or without all the addenda, the answer is the following: as long as the addenda have modified the essential elements of the individual employment contract, they must be made available to the control bodies so that they can form a general overview of the terms and conditions of the work relationship.

The issue of maintaining daily records of work hours has generated many questions among employers who have been put in a position to look for ways to document this evidence in order to be able to submit it for control of labor inspectors, starting with the classical attendance sheet to the collective attendance sheet and the electronic timekeeping.

The purpose of this regulation was the easier discovery by labor inspectors of those situations when employees under a suspended employment contract come to the workplace and carry out work in the employer's benefit or when part-time employees carry out overtime in a way unlawfully, finding themselves in the workplace outside the work schedule previously established with the employer.

Labor inspectors are interested in checking a real record of the hours of work, starting and ending hours, the electronic timekeeping being the most conclusive in this respect.

Complications arise in the case of mobile workers, ones who work at home or even teleworkers when the law on teleworking enters into force. The law amending GEO 53/2017 will regulate this situation by giving employers the opportunity to keep records of the hours worked by employees of these special categories on a daily basis under the conditions established with them, according to the specific activity carried out by them. This openness of the legislator will allow employers to choose the most convenient and affordable ways to highlight working time. One can customize procedures such as the use of log-in and log-off software to start or end work schedules, electronically, e-mailing the start time and end time of the work day, checking server access in the case of the employees working from home or the teleworkers, the daily transmission of the travel sheet for the mobile employees

A fairly high risk generated by this real record of the work program is the provision of additional voluntary work by employees without a direct or indirect request from the employer to do so. To prevent situations where employees who provide such additional voluntary work for various reasons (achievement of performance goals, desire to promote within the company) or simply stay after hours because they were not efficient during working hours due to their own fault, or dealt with personal problems, they come to ask the employer to pay these extra hours in the form of overtime, employers have to apply a series of measures, such as: (i) drafting an internal policy for soliciting and rewarding overtime, which clearly shows that the overtime recognized by the employer is only the one specifically requested by the employer, the employee having the obligation to fill in and submit a documented request for payment; (ii) regularly supervising employees who systematically stay after the work program and guiding them to work efficiently and respect the work schedule; (iii) periodic employee performance appraisal at the workplace based on objective criteria tailored to the specificity of each employee's work to sanction or adopt corrective measures for the inefficient employees; (iv) eventually inserting a column in the collective attendance time sheet in which to differentiate between the individual employee time and the hours of overtime.

On a case-by-case basis, taking into account the specifics of its activity and the current practice of employees to approach the work program set by the employer, one can find the easiest way for the employer not to be in the situation of being ordered by the court pay overtime to an employee who has not worked after the work program for the employer's benefit.

Teleworking. A solution for the future to regulate labor relations

The draft law on teleworking was registered with the Senate under no. B362 on August 16, 2017, currently pending for approval with amendments in the form of Law no. 215/2017.

The Committee on Labor, Family and Social Security issued a favorable report on the draft law on October 12, 2017, but proposed amendments to the initial draft.

Thus, the notion of teleworking instead of tele-working will be used, this being more clearly defined as the form of work organization by which the employee, on a regular and voluntary basis, fulfills its job duties in a place other than the workplace organized by the employer, at least one day a month, using information and communications technology.

Given the extremely flexible nature of teleworking, which will give the opportunity to work in so-called "unconventional" places, the employer will no longer be required to check the workplaces from the perspective of health and safety at work, as proposed in the initial draft. Obviously, the employer will have a number of specific

obligations in this respect, especially from the point of view of instructing the teleworker not to subject itself to personal injury or occupational disease, as well as any other persons who may be affected by its actions or omissions during the work process.

The teleworking activity will have to be based on the consent of the parties and must be expressly stipulated in the individual employment contract. Obviously, the employee will not be obliged to perform teleworking, its refusal being unable to trigger disciplinary sanctioning from the employer.

Overtime can be performed at the employer's request and with the written agreement of the full-time teleworker. The work schedule will be determined by the employer and the employees in accordance with the provisions of the individual employment contract, the internal regulations and/or the applicable collective employment contract, and under the conditions established by them, the employer being entitled to check the activity of the teleworkers.

In the case of teleworking, the individual employer contract will contain, in addition to the standard elements provided by art. 17 al. 3 of the Labor Code, the following elements: (i) express mentioning that the employee works by teleworking; (ii) the period and / or the days in which the telework performs work at a workplace organized by the employer; (iii) the place / places used for performance of teleworking, as agreed by the parties; (iv) the schedule during which the employer is entitled to check the work of the teleworker and the concrete way of carrying out the control; (v) the procedure used for documenting the hours worked by the employees; (vi) the responsibilities of the parties agreed upon depending on the place / places used for performance of the teleworking activity, including responsibilities in the field of labor health and safety; (vii) the obligation of the employer to ensure the transport to and from the place where the teleworking activity is performed or the materials used by the company in its activity, as the case may be; (viii) the employer's obligation to inform the teleworkers about the provisions of the legal regulations, the applicable collective labor contract and / or the internal regulations regarding personal data protection, as well as the obligation of the employee to comply with these provisions; (ix) the measures taken by the employer to ensure that the teleworker is not isolated from the rest of the employees and provide it with the opportunity to meet its colleagues on a regular basis; and (x) the conditions under which the employer bears the expenses afferent to teleworking.

The reasons for adopting this law are various, including the most important: necessity to adapt the labor market to European and international trends, increase labor productivity and lower costs for the employer, adding flexibility in working relationships, finding more employment opportunities for a number of workers who are often excluded from the labor market, such as women, the elderly or people with disabilities, the improvement of the relationship between professional and personal life, etc.

We therefore eagerly await the passing of this law, hoping that it will be used confidently by the employers and will thus generate a wave of satisfaction in their midst.

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litigation and arbitration – legal changes published in September 2017

Appeal in the interest of law no. 11/2017 was published in the Official Gazette of Romania, Part I, no. 750 of 19 September 2017, being applicable from that date, regarding "*the interpretation and application of the provisions of Article 39 of the Government Emergency Ordinance No. 195/2002 regarding traffic on public roads*".

The High Court examined the complaint filed by the Ombudsman in order to determine the functional competence of the fine issuing officers - from the local police or the traffic police - to require the owner or the mandated user of a vehicle to communicate the identity of the person to whom they entrusted the vehicle for driving on public roads, as well as to apply the minor offense sanctions provided by the law, in the case of refusal to communicate the requested information. In line with the case-law, some courts rejected the lawsuits filed against the fines, considering that the local police citations complied with the legal provisions and acknowledging the functional competence of the local police officers to identify the minor offences and apply sanctions. However, other courts established that the local police do not have the functional competence to request the identification data of the persons guilty of breaching the legal norms, considering that the minor offense sanction can be applied only by the traffic police within the General Inspectorate of the Romanian Police. The High Court admitted the appeal in the interest of the law and established that in the interpretation and application of the provisions of Art. 39, art. 102 par. (1) point 14 and art. 105 point 10 of the Government Emergency Ordinance no. 195/2002 regarding traffic on public roads, referring to the provisions of art. 7 lit. h) of the Local Police Law no. 155/2010, only the investigating police officer has the competence to request the owner or mandated user of a vehicle to communicate the identity of the person to whom the vehicle has been entrusted for driving on public roads and to apply the minor offense sanctions provided for by law for refusal to communicate the requested information.

The ECHR judgment in Gutău v. Romania was published in the Official Gazette of Romania, Part I, no. 755 of September 21, 2017. The case originated from a trial brought against Romania by a Romanian citizen who denounces a violation of the right to a fair trial: he accused the High Court of having sentenced him to a criminal conviction without direct administration of the evidence on which he was acquitted by lower grade courts. In this case, the Court finds that the Alba County Court and the Alba Iulia Court of Appeals considered that the documents in the file, including the statements of several witnesses, justified the applicant's acquittal. It points out that the High Court did not have any new evidences to replace his acquittal with a criminal conviction for bribery and that the supreme court relied solely on the documents in the file, implicitly on the written statements obtained during the investigation stage and on the minutes drawn up by the court, containing the testimony of the witnesses. The Court notes that the Romania High Court strongly based its conviction for bribery, among other things, on witness statements filed with the lower courts, and without hearing the witnesses in question. The second appeal court had the power to assess the various information's obtained and the relevance of what the applicant wanted to present, but the applicant was found guilty based on testimonies that the first instance court had found insufficient to condemn. Under these circumstances, the refusal of the supreme court to hear witnesses before declaring the applicant guilty considerably limited the right to present a defense. The Court therefore consider that the conviction of the applicant for bribery given without hearing

the aforementioned witnesses, and although the two lower courts considered that the constituent elements of the offense were not fulfil, is contrary to the requirements of a fair trial within the meaning of Art. 6 § 1 of the Convention.

Decision of the Constitutional Court no. 518/2017 was published in the Official Gazette of Romania, Part I, no. 765 of September 26, 2017, applicable on the same date. It concerns the admissibility of the unconstitutionality exception of the provisions of art. 249 par. 1 of the Criminal Code of 1969 and of Art. 298 of the Criminal Code. The exception of unconstitutionality concerns the provisions of art. 249 par. 1 of the Criminal Code of 1969 and of Art. 298 of the Criminal Code on negligence at work, its authors asserting that the criticized provisions contain ambiguous provisions, which violates the constitutional principle of legality. The Court finds that the new criminal law greatly extended the scope of the negligence at work, and does not foresee that the loss or damage to the legitimate rights or interests of a natural person or a legal person is of some value, and that the injury has a certain intensity, which is such as to make it impossible to distinguish between disciplinary misconduct or inherent professional misconduct and negligence at work. Thus, the Court finds that the existing negligence at work allows the inclusion in its contents of any wrongdoing if the minimum prejudice to the rights or legitimate interests of a natural person or a legal person has been met. In those circumstances, the Court notes that the task of applying the 'ultima ratio' principle lies, first, with the legislature and, on the other hand, with the judicial bodies called upon to enforce the law. Thus, the responsibility to regulate and apply the provisions on negligence at work lies with both the primary/ delegated legislative authority (Parliament / Government) and the judicial bodies (the Public Ministry and the Courts). In other words, the Court finds the need for the legislator to comply with the legal omission ascertained in terms of the amount of damage or intensity / severity of the damage to the legitimate rights or interests of a natural or legal person to ensure the clarity and predictability of the criminal rule under examination. The Court also considered that "damage to legitimate rights or interests" implies the impairment, damage to a natural or legal person in its desire / concern to satisfy a law / interest protected by law. It has been argued that harm to a person's legal interests implies any violation, any physical, moral, or material harm to the interests protected by the Constitution and the laws in force, according to the Universal Declaration of Human Rights. The Court therefore accepted the objection of unconstitutionality and found that the provisions of Art. 249 par. 1 of the Criminal Code of 1969 and of Art. 298 of the Criminal Code are constitutional insofar as the phrase "its faulty fulfillment" in their content is understood as "by the violation of the law".

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employment – legal changes published in September 2017

Government Decision no. 618/2017 amending the Methodological Norms for the application of the provisions of Law no. 279/2005 on apprenticeship in the workplace, approved by the Government Decision no. 855/2013 was published in the Official Gazette of Romania, Part I, no. 714 of September 4, 2017.

The decision brings the following amendments to the Methodological Norms for the application of the provisions of Law no. 279/2005 on apprenticeship at the workplace:

- it provides that the phrase "the necessary time for theoretical and practical training through apprenticeship at the work place" means the minimum duration of the program of apprenticeship at work, expressed in training hours, for theoretical and practical training, by qualification levels, namely: (i) 360 hours for qualification level 2; (ii) 720 hours for Level 3 qualification; (iii) 1,080 hours for qualification level 4;
- it establishes that the financing of apprenticeship training from European structural and investment funds shall be made in accordance with the provisions of the Applicant's Guide and the eligibility rules in force on the date of conclusion of the apprenticeship contract, in compliance with the conditions of the financing party;
- Annex 7 on the Register of Apprentice Employers is replaced.

energy – legal changes published in September 2017

Order no. 80/2017 amending and supplementing the Regulation on setting the method of collecting the contribution for high efficiency cogeneration and paying the bonus for the electricity produced in high efficiency cogeneration approved by the Order of the President of the National Regulatory Authority for Energy no. 116/2013, issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 721 of September 6, 2017.

The Order amends and supplements the Regulation on the collection of the contribution for high efficiency cogeneration and the payment of the bonus for electricity produced in high-efficiency cogeneration, establishing inter alia that:

- Contribution payers are required to send to the support scheme administrator monthly, by the 10th of each month, the total amount of electricity invoiced to consumers - including energy consumed at their own locations sites in the previous month;
- Contributors must pay the bills submitted by the support scheme administrator within 7 days of their receipt but no later than the 20th of each month following the month of usage;
- NRAE decisions on the amount of overcompensation and / or undue bonus are mandatory for producers and are implemented for recovery by issuing a decision by the support scheme administrator;
- the contribution for cogeneration left unpaid by electricity suppliers to Romanian consumers to the support scheme manager, for which all legal steps have been taken, will be recovered by including it in the cogeneration contribution adjustment analysis.

Date of entry into effect: 6 September 2017.

Order no. 81/2017 regarding the modification of the Regulation for the qualification of the production of electricity in high efficiency cogeneration and for the verification and monitoring of the fuel consumption and the production of electricity and useful thermal energy in high efficiency cogeneration approved by the Order of the President of the National Authority of the Energy Regulation no. 114/2013, issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 721 of 06 September 2017.

The Order amends and supplements the qualification Regulation for the production of electricity in high efficiency cogeneration and the verification and monitoring of the fuel consumption and the production of electricity and useful heat in high efficiency cogeneration:

- the Regulation applies to CHP producers, to the support scheme administrator, as well as to the suppliers of household customers who own cogeneration units;

- Regulating the difference between the total amount of electricity produced in high-efficiency cogeneration and delivered from the plant that was entitled to benefit from the support scheme in year n and the total amount of electricity delivered from the plant that actually benefited from the support scheme in year n is made at the end of the first quarter of year n + 1, based on the qualification decision issued in year n + 1;

- For a cogeneration production configuration that qualified the EEE as the electricity produced in high efficiency cogeneration, the amount of electricity benefiting from the ESS support scheme is determined using the following formula: ESS = min (Edelivered, EEEC) [MWh]

Date of entry into effect: 6 September 2017

Order no. 82/2017 approving the Regulation on connection to natural gas transmission systems issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 739 of 14 September 2017.

The regulation on the connection to the natural gas transmission systems is addressed to the economic operators holding the license for operation of the natural gas transmission systems (TSO), NRAE authorized economic operators for the design and execution of natural gas transmission systems, type PT and ET, as well as applicants seeking connection to natural gas transmission systems and establishes the stages and conditions for connection to natural gas transmission systems.

According to the regulation, the connection to natural gas transmission systems is a process that takes place after the access to transport systems and is addressed to applicants who have an annual consumption at least equal to the average annual flow rate for a point of exit to the system transport of natural gas.

The Regulation contains regulations on the process of connection to the natural gas transmission system, the operator of which is a transmission system operator licensed by NRAE, as well as rules on information and communication channels.

Order no. 84/2017 approving the Procedure for the submission to the National Regulatory Authority for Energy of the information regarding the composition and pressures of gaseous fuels used on the territory of Romania, issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 744 of 15 September 2017.

The act approves the procedure for submitting to the National Regulatory Authority for Energy information regarding the composition and pressures of the gaseous fuels used in the territory of Romania, provided in the annex that is an integral part of the order.

The procedure provides, inter alia:

- Persons applying the procedure: (a) natural gas producers; (b) natural gas storage operators; (c) transmission system operators; (d) operators of natural gas distribution systems; (e) holders of biogas / biomethane licenses; (f) holders of LNG supply licenses; (g) holders of LNG supply licenses; (h) the holders of the LPG supply licenses.

- Mentioning that this procedure does not apply to the composition and pressures of gaseous fuels relating to appliances specifically designed for: (a) use in industrial processes carried out in industrial premises; (b) use on aircraft and railways; (c) for research purposes for temporary use in laboratories.

The obligation of the PNG (the natural gas producer who is a natural or legal person that has as its specific activity the production of natural gas, biogas / biomethane or other types of gas), the SO (the natural gas storage operator), the TSO transport and system operator), DSO (the operator of the natural gas distribution system) and biogas / biomethane, LNG (liquid natural gas) and LPG (liquefied petroleum gas) to communicate to NRAE the following information by 2 October 2017: a) the upper calorific value and the Wobbe index, as set out in Annex no. one; (b) the composition of the gaseous fuel, as set out in Annex II. 2; (c) the toxic components contained in the gaseous fuel, expressed as a percentage by volume of the total content. PNG, SO, TSO and DSO shall communicate by the same date the following values: a) Gaseous fuel pressure at the point of delivery, expressed in mbar (nominal, minimum and maximum); b) loss of permissible pressure in end-use facility, expressed in mbar (nominal, minimum and maximum).

Date of entry into effect: 15 September 2017

Order no. 83/2017 for repealing the Order of the President of the National Regulatory Authority for Energy no. 19/2007 regarding the approval of the Methodology for Establishing, Implementation and Utilization of the Technological Reserve Capacity System, issued by NRAE was published in the Official Gazette of Romania, Part I, no. 746 of 18 September 2017.

The act repeals the Order of the President of the National Regulatory Authority for Energy no. 19/2007 regarding the approval of the Methodology for Establishing, Implementing and Using the Technological Capacity Reserve System Technology Service, published in the Official Gazette of Romania, Part I, no. 507 of July 30, 2007, as amended.

Date of entry into effect: 18 September 2017

Order no. 85/2017 for the approval of the Methodology for calculating the neutrality fees for balancing, including their distribution among the users of the natural gas transmission network, issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 769 of 28 September 2017.

The act approves the Methodology for calculating the neutrality fees for balancing, including their distribution among the users of the natural gas transmission network.

The methodology aims at allocating to the network users the difference between the expenses and revenues recorded by the National Transmission System Operator as a result of the activity carried out in order to fulfill the obligations

regarding the balancing of the natural gas transmission network obligations under Regulation (EU) no. 312/2014 establishing a network code for the balancing of gas transmission networks and in the Network Code for the National Gas Transmission System, approved by the Order of the President of the National Energy Regulatory Authority no. 16/2013.

Date of entry into effect: 28 September 2017.

Order no. 86/2017 amending and supplementing the Methodology for establishing and monitoring the overcompensation of the production of electricity and heat in high efficiency cogeneration benefiting from the bonus support scheme approved by the Order of the President of the National Regulatory Authority for Energy no. 84/2013, issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 769 of 28 September 2017.

The Order amends the Methodology for establishing and monitoring the overcompensation of the production of electricity and heat in high efficiency cogeneration benefiting from the bonus support scheme.

According to the amendments, the fixed costs of amortization related to assets made from financial contributions received free of charge from donations or purchased from the Energy Development Fund or other non-reimbursable funds as well as those related to fixed assets are not taken into account establishing the overcompensation.

Date of entry into effect: 28 September 2017

employment - draft laws published in September 2017

The draft law for amending and supplementing the Law no. 416/2001 on Minimum Guaranteed Income was registered with the Senate for debate under no. B390 on September 5, 2017.

The draft law starts from the idea that, although Law no. 416/2001 on Minimum Guaranteed Income mainly regulates the right of families and single persons to a minimum guaranteed income as a form of social aid, in the latter case it should also have a role to play in stimulating employment.

The legislative proposal aims to empower assisted persons by engaging in community-based activities. The initiative introduces a major amendment according to which, for the amounts granted as social aid, each of the adult working people in the beneficiary family has the obligation to provide monthly, at the request of the mayor, 5 days of work for local actions or works, without exceedung the normal working regime and in observance of the rules of work safety and hygiene, unlike the law in force which establishes this obligation in the charge of only one person in the beneficiary family.

The initiative also provides concrete obligations for mayors to plan actions or work of local interest in order to monitor and streamline these activities.

In order to empower individuals and institutions involved in granting and managing rights, the initiative also amends the sanctioning regime by means of real sanctions, which will no longer allow ignoring of legal provisions.

The draft law for amending and supplementing the Law no. 416/2001 on Minimum Guaranteed Income was registered with the Senate for debate under no. B391 on September 5, 2017.

The draft proposes the inclusion of a new article stipulating that, if the persons receiving social assistance in the form of the guaranteed minimum income opt for the seasonal work regulated by Law no. 52/2011 regarding the exercise of occasional activities performed by the day-laborers, the minimum guaranteed income in the form of the social aid is cumulated with the income obtained from the day work.

In support of this idea, the draft's promoters consider that this form of social support regulated by Law no. 416/2001 is not sufficient in the light of the material needs of a family who, in the desire not to lose the minimum guaranteed income, do not opt for seasonal work that brings income for a definite period and not for an indefinite period.

The draft law for supplementing the Law no. 76/2002 on the unemployment insurance system and the stimulation of employment was registered with the Senate for debate under no. B396 on September 5, 2017.

The draft aims to include measures to encourage employers to hire people who have served a prison sentence, considering that a new approach is needed to continue and materialize the social inclusion measures initiated since the period of detention, through the contribution of the institutions, central and local public authorities and non-governmental organizations that activate or have the vocation to work in the field of post-detention assistance.

The Draft law for amending and supplementing Art. 13 par. (1) of the Law no. 52/2011 regarding the exercise of occasional activities performed by the day-laborers was registered with the Senate for debate under no. B410 on September 7, 2017.

The draft seeks to amend letter p) of art. 13, par. (1) of the Law no. 52/2011 on carrying out of occasional activities by day-laborers, for the purpose of introducing class 5510 - Hotels and other accommodation facilities, as well as the introduction of three other areas where unqualified work can be done, namely: Restaurants - NACE code 5610 , Other caterers - NACE code 5629 and Bars and other beverages - NACE code 5630.

The wording of the draft took into account the fact that there are periods of the year, especially the summer season, when seasonal activity also involves the use of unskilled labor.

Draft law on the possibility of entirely private companies to grant the 13th and 14th salary was registered with the Senate for debate under no. B423 on September 14, 2017.

The purpose of the draft is to adopt the Law on the possibility of entirely private companies to grant the 13th and 14th salary, which provides that entirely private companies may grant the 13th and 14th salaries under the following conditions:

- the company registered profit in the current fiscal year;
- the salary expenditures for the 13th and 14th salary are deductible from the income tax according to the provisions of Law no. 227/2015 on the Fiscal Code;
- the salary costs incurred in the application of the provisions of this law must not exceed (i) 20% of the total income tax payable and (ii) 0.5% of the turnover;

It is expected that the introduction of the 13th and 14th salary will produce several positive effects, such as:

- increasing the purchasing power and, implicitly, the quality of life of employees in the real economy;
- increasing the interest of the employees towards the workplace;
- increasing the interest of the Romanian employees to work on the basis of a labor contract and to avoid undocumented work;
- increasing the salary incomes will reduce the exodus of well trained work force obtained with effort from the family and the Romanian state;
- companies will have a new product with which they can stimulate economic activity;
- the company's expenditure budget will not be affected;

- the consolidated general budget will not suffer, on the contrary, the amounts collected from the taxes on salaries, social contributions, health contributions and, by additional consumption, from sales tax (VAT, excises) will increase;

- 20% of the proposed profit tax as the maximum threshold for granting this salary income is currently regulated in the Fiscal Code.

The draft for amending and supplementing the Law no. 53/2003 - Labor Code was registered with the Senate for debate under no. B453 on September 27, 2017.

The draft seeks to introduce a series of obligations regarding the liquidation note. Thus, it is proposed to introduce an obligation for the employer to disclose to the employee the notice of liquidation, within 3 calendar days from the date of termination of the individual employment contract. The employer shall state in the liquidation note the name and address of the creditor, the nature of the debit, the amount owed at the date of issue of the liquidation note, the nature, the number, date and issuer of the writ of enforcement, as well as information on the duration of the paid, unpaid and medical leaves. It is proposed that the employer's breach of this obligation be sanctioned with a fine from 1.500 lei to 3.000 lei

It is also proposed to insert the provision according to which, in the case of persons who have been employed, within 30 calendar days from the conclusion of the individual labor contract, the employee is obliged to submit to the employer the liquidation note issued by the employer at the previous workplace.

The draft takes into account the fact that, at the moment of termination of the individual employment contract, there is no legal basis for the employer to issue the liquidation note to the employee. However, it is found that this document is used in practice, but occasionally, on a case-by-case basis, which creates the conditions for arbitrary decisions in the field of labor relations. Thus, there are situations in which some employers do not issue liquidation notes, while other employers do not conclude individual employment contracts in the absence of said note from the former employers, which is a real impediment to employment.

energy - draft laws published in September 2017

Draft Order for supplementing the Regulation on the organization and functioning of the Committee for the settlement of disputes on the wholesale and retail market between the participants in the electricity and natural gas market approved by the Order of the President of the National Regulatory Authority for Energy no. 61/2013 was published on the website of the National Regulatory Authority for Energy on 1 September 2017.

The draft order brings the following changes:

- In the event that the Commission's mandate ends, the time limits set in Chap. III are extended until a new Commission is appointed;
- the applications submitted to the authority and not solved until the date of entry into force of the present order, shall be considered to have their time limit reset as stipulated in Chap. III

The draft can be viewed at:

http://www.anre.ro/download.php?f=fq2DgQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

Draft order for amending the methodology for setting and adjusting prices for electricity and heat produced and delivered from cogeneration plants benefiting from the support scheme, namely the bonus for high efficiency cogeneration approved by the Order of the President of the National Regulatory Authority for Energy no. 15/2015 was published on the website of the National Regulatory Authority for Energy on 5 September 2017.

The Draft Order proposes to modify the Methodology in the sense that for the approval of the reference bonuses and regulated / reference prices of heat applicable in 2018, the minimum values between the average prices resulting from the NRAE monitoring of the gas market and those reported by producers for the second quarter of 2017 for gas from the transport and the distribution network, **taking into account an average percentage of gas storage / import insurance reported by producers for the first semester of 2017.**

Currently, the Methodology does not provide for the storage / import percentage to be taken into account when determining the reference prices for heat and reference bonuses in the case of natural gas.

The draft can be viewed at:

http://www.anre.ro/download.php?f=fq2Dgw%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

Draft Order amending and supplementing the Methodology for establishing and monitoring of overcompensation for the production of electricity and heat in high efficiency cogeneration benefiting from the bonus support scheme approved by the Order of the President of the National Regulatory Authority for Energy no. 84/2013, was published on the website of the National Regulatory Authority for Energy on 5 September 2017.

The draft amends the Methodology regarding the following aspects:

- regulating the exception provided in point 1 of GD no. 925/2016 as regards the definition of overcompensation, where cogeneration units are taken over under public service delegation contracts for the supply of heat;
- determination of over-compensation for 2017;
- regulating the case where the producer fails to pay within the time limit set by the legislation the value of the overcompensation and does not comply with the debt clearing agreements concluded with the Support Scheme Administrator;
- settling the case of non-payment or late payment of the value of overcompensation;
- regulating the mandatory character of decisions to approve overcompensation.

The draft can be viewed at:

http://www.anre.ro/download.php?f=fq2DhQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

Draft Order on amending 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 National Regulatory Authority for Energy no. 111/2014 was published on the website of the National Regulatory Authority for Energy on 8 September 2017.

The Draft Order proposes to modify the Methodology in the sense that for the approval of the reference bonuses and regulated / reference prices of heat applicable in 2018, the minimum values between the average prices resulting from the NRAE monitoring of the gas market and those reported by producers for the second quarter of 2017 for gas from the transport and the distribution network, **taking into account an average percentage of gas storage / import insurance reported by producers for the first semester of 2017.**

Currently, the Methodology does not provide for the storage / import percentage to be taken into account when determining the reference prices for heat and reference bonuses in the case of natural gas.

The draft can be viewed at:

http://www.anre.ro/download.php?f=fq2Dhw%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

Draft Order for the approval of the sale prices of electricity produced in power plants from renewable sources with installed capacity below 100 kW belonging to natural persons, to the distribution operators leaseholders was published on the website of the National Regulatory Authority for Energy on 21 September 2017.

On August 18, 2017 NRAE published the draft Order for the approval of the sale prices of electricity produced in power plants from renewable sources with installed capacity below 100 kW belonging to natural persons, to the distribution operators leaseholders.

Considering the Ministry of Public Finance's failure to fulfill the obligations regarding the creation of the legal framework necessary to ensure the trade of electricity produced and delivered to the electricity grid by the natural persons' power plants, NRAE created this version of the draft order according to which the payment of electricity produced from renewable sources and delivered to the electricity network by individuals will be paid to them by the distribution operators through the electricity suppliers, while the accounting documents of the parties involved will be kept in accordance with the applicable tax rules.

The draft can be viewed at:

http://www.anre.ro/download.php?f=fq2EiQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

Draft Order for amending and supplementing the Methodology for establishing and monitoring the contribution for High Efficiency Cogeneration approved by the Order of the President of the National Regulatory Authority for Energy no. 117/2013 was published on the website of the National Regulatory Authority for Energy on 29 September 2017.

The draft amends the Methodology regarding the following aspects:

- exemption of export from the contribution for high efficiency cogeneration;
- recovery through the inclusion in the contribution for cogeneration of the contribution of cogeneration left unpaid by electricity suppliers to Romanian consumers;
- inclusion in the cogeneration contribution of the overcompensation and / or the undue bonus unpaid by the electricity and heat cogeneration producers accessing the support scheme and for which all legal steps have been taken will be recovered by including them in the contribution for CHP.

The draft can be viewed at:

http://www.anre.ro/download.php?f=fq57iQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D

PPP & concessions - draft laws published in September 2017

The draft law for amending and supplementing the Law no. 100/2016 on works and service concessions was registered with the Senate for debate under no. B403 on September 5, 2017.

The draft concerns the prohibition of the award of the concession of works or services to economic operators issuing bearer shares or other equity whose value is less than the value threshold provided by Law 100/2016 at art. 11 par. (1).

The draft starts from the idea that the current form of Law no. 100/2016 does not contain any provision to ensure transparency in terms of knowing the identity of the natural or legal persons holding the shares of the companies involved in the award procedures, which is why a number of companies with unknown shareholders have repeatedly won contracts with the State in the amount of tens of hundreds of millions of euros, money that contracting authorities pay from public funds without any possibility of finding out who the real beneficiaries of these amounts are.

It is emphasized that another important element for the proper conduct of award procedures is avoidance of conflict of interest. However, in the case of bearer shares, it is not possible to certify the veracity of these statements of lack of conflict of interest due to the anonymity of the equity.

For this reason, it is proposed to forbid the access of bearer shares companies in the concession award procedure governed by Law 100/2016 so as to restrict access to public money for entities with secret shareholding.

The consequence of adopting this draft will be that, in order to meet the new eligibility conditions, the holders of the companies concerned will have to convert bearer shares to into nominative shares, according to the provisions of Law no. 31/1990, thus revealing their identity.

public procurement - draft laws published in September 2017

Draft law for amending and supplementing the Law no. 98/2016 on public procurement and on completing the Law no. 99/2016 on sector acquisitions was registered with the Senate for debate under no. B401 on September 5, 2017.

The draft law aims to solve problems raised by public administration authorities. It is intended to define a threshold for direct purchases, given the countless unforeseen situations when setting up the annual procurement plan, such as relatively minor damage to installations, machinery, equipment, furniture, etc. where the purchase would eventually involve both repair services and products or materials, spare parts, etc. It is believed that during a calendar year many such situations may occur, each of them different; if for each case of repairing or exchanging small-value items there should be a public procurement of separate services and products, the local authorities would do nothing but carry out dozens of contracts in various phases of the procedure with the involvement of the whole apparatus of the local council.

It is also proposed to eliminate the lowest price criterion provided by Law 98/2016 as the current wording is ambiguous and the idea that public money is best used if goods and services are purchased at the lowest prices is no longer up to date. It is underlined that the experience of more than a decade of the implementation of Directive no. 18/2004 has shown over time that complex work, major investments, have in fact proved much more expensive by accepting the lowest price bids because it was not possible to take into account more important factors such as the quality of the works, their sustainability, impact on the environment or other aspects that raise the cost of realization, but ultimately citizens and society benefit exponentially more.

In addition, the draft envisages the repeal of the provisions on the mandatory use of electronic catalogs, this decision being for the time being under the exclusive competence of the contracting authorities, the legislator being the one who should regulate such an obligation.

Draft law amending and supplementing the Law no. 99/2016 on sector acquisitions was registered with the Senate for debate under no. B404 on September 5, 2017.

The draft is aimed at forbidding the awarding of sectoral agreements / framework agreements by means of the simplified procedure or own procedure, as well as the direct purchase of products or services from economic operators issuing bearer shares or other equity. Also, it is envisaged to prohibit the participation in the tenders of solutions organized by the contracting entities of the economic entities that issue bearer shares.

In support of the proposal, it is emphasized that the current form of the law does not contain any provision ensuring the transparency of sectoral acquisitions in terms of knowing the identity of the natural and/or legal persons owning the shares of the companies participating in the award procedures, which is why a number of companies with unknown shareholders have repeatedly won contracts with the state of hundreds of millions of euros, money that contracting authorities pay from public funds, without any possibility to find out who the real beneficiaries of these sums.

It is emphasized that another important element for the proper conduct of award procedures is avoidance of conflict of interest. However, in the case of bearer shares, it is not possible to certify the veracity of these statements of lack of conflict of interest due to the anonymity of the equity.

For this reason, it is proposed to forbid the access of bearer shares companies in the concession award procedure governed by Law 100/2016 so as to restrict access to public money for entities with secret shareholding.

The consequence of adopting this draft will be that, in order to meet the new eligibility conditions, the holders of the companies concerned will have to convert bearer shares into nominative shares, according to the provisions of Law no. 31/1990, thus revealing their identity.

Draft law amending and supplementing the Law no. 98/2016 on public procurement was registered with the Senate for debate under no. B405 on September 5, 2017.

The draft law seeks to ensure greater transparency, starting with the obligation imposed on contracting authorities to allow interested persons access to the information contained in the procurement file after the award procedure has been completed, in compliance with the legal provisions guaranteeing free access to public information . According to the law, public access to these documents can only be restricted when the information is confidential, classified or protected by an intellectual property right.

However, the current form of the law does not contain any provision to ensure the transparency of sectoral acquisitions in terms of knowing the identity of the natural and / or legal persons owning the shares of the companies participating in the award procedures. For this reason, it is proposed in the draft law to ban the access of bearer share companies to the award of public procurement contracts and / or framework agreements regulated by Law 98/2016 so as to restrict the access of public money to companies with secret shareholders. As a consequence of this amendment, holders of bearer shares will be required to convert them into nominative shares to meet the eligibility conditions.

Therefore, it is proposed to introduce the following provisions in Law no. 98/2016:

- Prohibition of simplified procedures for the award of public procurement contracts / framework agreements to economic operators issuing bearer shares, as well as the access of these operators to solution contests through a simplified procedure;
- Prohibition of the direct purchase of products or services from economic operators issuing bearer shares;
- Exclusion from the award procedures of economic operators issuing bearer shares;

Draft law amending and supplementing the Law no. 98/2016 on public procurement was registered with the Senate for debate under no. B429 on September 14, 2017.

The draft takes into account the fact that, despite the modernization of the Romanian public procurement legislation, a number of important issues continue to persist, one of them being the award of public procurement contracts under conditions of profound lack of transparency. Thus, since Companies Law 31/1990 still permits the organization of joint stock companies with the share capital represented by bearer shares, it is impossible to determine whether the

procedures for the bidding and awarding of public procurement contracts are carried out under conditions of economic efficiency and public transparency. Under these circumstances, the current legislative context does not allow conflict of interest to be determined when a contracting authority assigns a public procurement contract to a company whose shareholding can not be identified because the shares of that company are not nominative.

Thus, at art. 53 of Law 98/2016 it is proposed to introduce a new paragraph stipulating that, in order to comply with the principles of transparency and equal treatment, the contracting authority has the right to request and the operator has the obligation to present the holder / beneficiary of the bearer shares in the situation in which the form of organization of the bidder / candidate / third party supporter or subcontractor to the procedure is a joint stock company with share capital represented by bearer shares. It is also intended to introduce the provision that, in the absence of the holder of these actions, the contracting authority has the obligation to exclude the candidate / bidder from the procedure.

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