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by Mădălina Gatu, Tax Manager Voicu & Filipescu Tax Advisers

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cover article

Split payment of VAT

by Mădălina Gatu, Tax Manager Voicu & Filipescu Tax Advisers

NAFA issued the order 23/2017 published in the Official Gazette no. 706 of 31.08.2017 regulating the split payment of VAT.

Under the new regulations, as of January 1, 2018, every taxable person or public institution registered for VAT purposes has the obligation to own and use at least one VAT account for the collection and payment of VAT.

Who applies split payment?

All taxable persons and public institutions are required to pay the VAT afferent to the purchases of goods and services in a VAT account of the supplier/ service provider.

Exception: taxable natural persons who are not registered and are not required to register.

To which operations does the split payment apply?

To all deliveries of goods and provision of services that have the place of taxation established in Romania, including for advances.

Exception: the operations for which the beneficiary is liable to pay VAT and the operations to which the special regimes apply

What account is VAT paid from?

Persons registered for VAT purposes shall pay exclusively from VAT accounts.

Exception: the rule does not apply for payments in cash, by card or by using cash substitutes.

How is the VAT afferent amount established?

According to the invoices issued by the suppliers or, in the case of partial payments by applying the increased amount (extracting the VAT amount from the total payment), covering with priority the amounts with higher quotas.

Where can VAT account be opened?

With treasury units or credit institutions observing the restrictions imposed by Order 23/2017.

How are VAT accounts opened?

VAT accounts can be automatically opened by credit institutions (if they opt for automatic opening), and then they shall notify the holders on the account, the conditions and the costs attached while giving them the opportunity to opt out of the VAT account at no additional cost, within 90 days, if no transactions have been made in that account. VAT accounts will also be opened automatically by the State Treasury units within the competent tax authority in their administration, based on the List of Economic Operators registered for VAT purposes prepared and transmitted in the IT system by the competent tax authorities of NAFA. Within 90 days, taxable persons will decide whether to maintain the VAT account (and provide the necessary documents to open the account) or decline it (at no extra cost). In the event that an automatic account is not opened for them, taxable persons may address opening applications to either the Treasury or a credit institution.

Where are VAT account listed?

VAT accounts opened with treasury units are published on the website of the Ministry of Public Finance or NAFA and are periodically updated (the list will include the holder, fiscal code, IBAN and treasury unit).

Which operations are permitted in the VAT accounts?

Only the operations described in Order 23/2017 are permitted. No other uses / withdrawals from the VAT account are accepted. VAT reimbursement is made in a different account than the VAT account, unless otherwise required by the taxable person. For transfers from VAT accounts other than payments to suppliers, verification and approval by the tax authority is required (the transfer is approved within 3 working days of the submission of the application).

What are the obligations of taxable persons regarding collected VAT?

Here are some of the obligations of taxable persons:

- to notify to the suppliers / providers and beneficiaries the VAT account (s);
- to transfer/ deposit within 7 working days from collection in the VAT account the VAT amounts afferent to card payments;
- to transfer/ deposit within 7 working days of receipt in the VAT account the VAT amounts that were not paid by the beneficiaries into the VAT account;
- to pay/ deposit within 7 working days of receipt in the VAT account the VAT amounts afferent to proceeds by credit instruments issued prior to January 1, 2018;
- to pay/ deposit within 7 working days of receipt in the VAT account the difference between the VAT afferent to cash proceeds and the VAT afferent to cash payment made in one day;

- to pay/ deposit within 7 working days of receipt in the VAT account the VAT amounts afferent to proceeds from invoices issued before January 1, 2018.

Can the VAT account be foreclosed?

The VAT account can be foreclosed only for the payment of VAT owed to the state budget and for the payment of other outstanding budgetary obligations or on the basis of certain writs of enforcement, according to the law, for the VAT afferent to certain acquisitions of goods and / or services.

Can split payment of VAT take effect before January 1, 2018?

It is possible to opt for the application of the split payment of VAT starting October 1, 2018. The persons opting in might benefit from certain facilities (a 5% reduction of the fourth quarter income tax/ income tax on the microenterprise, the cancellation of the delay penalties for the main tax obligations representing VAT, outstanding on September 30, 2017, inclusively) if the conditions set out in Order 23/2017 are met.

Minor offences and sanctions

The sanctions provided by Order 23/2017 can be substantial, and thus it is necessary to correctly understand and apply the split payment of VAT and the obligations resulting from this system. Here are some of the sanctions:

- failure to pay the amount in the supplier's VAT account can lead to a penalty of 0,06%/day (up to 30 days) or 50% of the VAT amount (over 30 days);
- failure to pay the amount from the payer's VAT account can lead to a penalty of 0,06%/day (up to 30 days) or 10% of the VAT amount (over 30 days)
- failure to notify the VAT account can lead to a fine between lei 2000 and 4000 lei;
- failure to transfer/deposit the mandatory amount within 7 business days in the VAT account according to Order 23/2017 can lead to a penalty of 0,06%/day (up to 30 days) or 10% of the VAT amount (over 30 days).

**Source: Order 23/2017 on split payment of VAT*

employment - legal changes published in August 2017

Government Emergency Ordinance no. 53/2017 for amending and completing Law no. 53/2003 - Labor Code was published in the Official Gazette of Romania, Part I, no. 644 of August 7, 2017.

The Emergency Ordinance amends, supplements and repeals provisions of the Labor Code, the most important amendments to the provisions of the Labor Code being the following:

- Par. (1) of art. 16 of the Labor Code no longer stipulates that the written form is mandatory for the valid conclusion of the individual labor contract; it also adds the provision that the individual employment contract is concluded before the start of the activity by the employee;
- Article 16 of the Labor Code is complemented by a new paragraph (4), according to which the employer is obliged to keep a copy of the individual labor contract for the employees who work in that place;
- Par. (5) of art. 17 stipulates that any change during the individual employment contract of one of the elements regarding the information of the person selected for employment requires the conclusion of an addendum to the contract before the change is made (it previously stipulated a term of 20 working days from the date of the occurrence of the amendment in which the addendum could have been concluded), unless such amendment is expressly provided for by law or the applicable collective bargaining agreement;
- Art. 119 stipulates that the employer has the obligation to keep at the work place the record of the hours worked daily by each employee, highlighting the starting and ending hours of the work program (the old regulation did not provide the obligation to highlight the starting and the end time of the work program);
- Lit. e) of art. 260 is amended in the sense that the employment of a person without the conclusion of an individual labor contract, according to art. 16 par. (1) shall be sanctioned with a fine of 20,000 lei for each identified person; the previous regulation provided that the recruitment of up to five persons without the conclusion of an individual employment contract constitutes a criminal offense and is punishable by a fine;
- Par. (2) of art. 265 is supplemented, providing that the admission to work of a person in a situation of illegal stay in Romania, knowing that they are a victim of human trafficking, constitutes a crime and is sanctioned by imprisonment from 3 months to 2 years or by a fine;

Here are some of the new provisions:

- Art. 15¹, defining undeclared work, establishes the cases considered as instances of such;
- Art. 260 contains 3 new minor offences, punished as follows:
 - (i) the admission to work of a person without transferring the employment relationship in the General Register of Employees no later than the day before the start of the activity, with a fine of 20,000 lei for each identified person;
 - (ii) the admission to work of an employee when their contract is suspended, by a fine of 20.000 lei for each person;
 - (iii) the admission to work of an employee outside working hours set in the part-time contract, by fine of 10.000 for each person.

Art. 260 also provides that the breach of the obligation to keep a copy of the individual employment contract for the employees performing the activity in that place is a minor offence and is sanctioned with a fine of 10,000 lei.

For a part of the newly introduced minor offences, the possibility of the offender to pay half of the fine within 48 hours from the date of conclusion of the citation was also established, as well as the intervention of the additional sanction to stop the activity of the organized work place ordered by the labor inspector.

Government Emergency Ordinance no. 55/2017 amending and supplementing Government Emergency Ordinance no. 111/2010 on parental leave and allowance was published in the Official Gazette of Romania, Part I, no. 644 of August 7, 2017.

The new act concerns the insertion of a cap of the monthly allowance: 8,500 lei. This provision shall apply starting with the rights afferent to September 2017.

Also, the Emergency Ordinance determines the time limit by the insertion incentive is granted under Art. 7 par. (2), namely: (i) until the child reaches the age of 3; or (ii) until the child reaches the age of 4 in the case of the disabled child, clarifying that the situation provided by art. 7 par. (2) is an exception to the termination of the right to the insertion incentive provided by art. 17 par. (1) let. a). These clarifications do not affect the establishment and payment of the insertion incentive, these taking place as before.

energy - legal changes published in August 2017

Order no. 2469/2017 for the approval of the simplified procedure for carrying out the archaeological research, issuing the necessary authorizations, and issuing the archaeological discharge certificate in the case of the implementation of projects of national importance in the field of natural gas issued by the Ministry of Culture and National Identity, was published in the Official Gazette of Romania, Part I, no. 626 of August 2, 2017.

The New Order approves the Simplified Procedure for carrying out the archaeological research, issuing the necessary permits and issuing the archaeological discharge certificate in the case of the implementation of projects of national importance in the field of natural gas.

The procedure establishes inter alia that:

- the permits for archaeological research, regardless of its stages, are issued by the Department for Cultural Heritage of the Ministry of Culture and National Identity and are valid during the project of archaeological research required to implement a project of national importance in the field of natural gas;
- in case of fulfillment of the legal conditions of the permit, the issuance of the archaeological research permits necessary for the implementation of the projects in the field of natural gas, regardless of the stages of the archaeological research, is made within 15 working days, but the term can be extended, once, by 5 working days, if it is found that the submitted documentation is incomplete or if the quorum necessary for holding the meeting of the National Archeology Commission was not met;
- all archaeological research reports, regardless of its stages, must be submitted by the beneficiary or by its representatives to the decentralized public services of the Ministry of Culture and National Identity.

Date of entry into force: 02 August 2017.

Order no. 74/2017 on the approval of regulated revenue, total revenue and transmission fees for the transmission of natural gas through the National Transmission System, issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 639 of August 4, 2017.

The Order establishes the manner in which the transport fees for the natural gas transmission activity are established by the National Transmission System, carried out between 1 October 2017-30 September 2017, as follows:

- (a) the capacity reservation fee per entry / exit points group for firm / interruptible transport services according to Annex 1 of the Order;
- (b) volumetric fee for the quantity of natural gas transmitted to the distribution systems: 2,45lei / MWh;
- (c) volumetric rate for the amount of natural gas transmitted through the National Transmission System: 3,20lei / MWh.

The fees set out in points (b) and (c) above also contain the amount of monopoly tax.

The fees for the natural gas transport service do not include VAT.

The Order also establishes the regulated income and the total income for the period between 1 October 2017-30 September 2018 for the natural gas transmission activity through the National Transmission System operated by the National Gas Transmission Company Transgaz SA (Annex 2 to the Order).

Date of entry into force: 04 August 2017.

Order no. 64/2017 amending and supplementing the Order of the President of the National Regulatory Authority for Energy no. 118/2016 on the approval of fees and money contributions collected by the NRAE in 2017 issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 644 of August 7, 2017.

The Order amends and supplements the Order of the President of the National Regulatory Authority for Energy no. 118/2016 regarding the approval of fees and cash contributions charged by the NRAE in 2017, setting the fee for the authorization of legal persons and natural persons as energy auditors, the fee for the certification of energy managers and the fee for the approval / authorization of the companies providing energy services.

Date of entry into force: 07 August 2017.

Emergency Ordinance no. 61/2017 for the approval of certain measures regarding the mandate of the Ministry of Energy for the transfer of some of the shares owed by the Romanian government in companies producing heating agent to the local public administration units with a view to setting up and organizing the public power supply system in a centralized system, issued by the Romanian Government, was published in the Official Gazette of Romania, Part I, no. 648 of August 7, 2017.

According to the Ordinance, the transfer of shares held by the Romanian state in companies producing heat to local government units to establish and organize the public service of heat supply in a centralized system is made onerously and provided the following cumulative conditions:

- the administrative-territorial unit requested, on the basis of the decision of the local council or the General Council of Bucharest Municipality, the transfer of the stake held by the Romanian state through the Ministry of Energy in companies producing heating agent;
- the territorial public administration units for which the insolvency procedure has not been opened under the law may request the transfer of the share packages;
- conducting a technical and economic analysis that includes the justification of the operation and its effects;
- the transfer is carried out in compliance with the national and European rules on state aid and competition;
- the creditors' agreement should be expressed if the shares transferred are encumbered by guarantees and if the credit contracts made by the company issuing the shares indicates the need for such an agreement in the case of the transfer of the shares;
- takeover by the territorial-administrative units of any financial obligations from loans contracted or guaranteed by the state to the heat producing company.

The offer price for the stake will be determined on the basis of a valuation report carried out by an independent auditor, certified according to the law, whose services are purchased by the Ministry of Energy in accordance with the applicable laws.

Selling the stake is carried out at the higher of the values resulting from the evaluation report and the nominal value of the stake resulting from the application of the nominal value to the number of shares.

The main elements of the sale-purchase agreement through which the transfer is made shall be approved by Government decision.

Date of entry into force: 07 August 2017.

Decision no. 562/2017 on declaring the project "Expanding the Capacity of the National Transmission System to ensure natural gas flow on the axis Romania-Republic of Moldova" as a project of national importance in the field of natural gas, issued by the Government, was published in the Official Gazette, Part I, no. 654 of August 9, 2017.

The Decision aims to declare the project "Expanding the Capacity of the National Transmission System to ensure natural gas flow on the axis Romania-Republic of Moldova" as a project of national importance in the field of natural gas, and the Energy Ministry is designated as the competent authority responsible for facilitating and coordinating the procedure of authorization for the project.

Date of entry into force: 09 August 2017.

Decision no. 563/2017 regarding the declaration of the project "New developments of the National Transmission System for collecting gas from the Black Sea shore - Extension of the National Transmission System by building natural gas Transmission pipeline from the Black Sea gas collection point - Vadu to the Transit 1 pipeline - Gradina city area" as a project of national importance in the field of natural gas, issued by the Government, was published in the Official Gazette of Romania, Part I, no. 654 of August 9, 2017.

Through the Decision, the project "New developments of the National Transmission System for collecting gas from the Black Sea shore - Extension of the National Transmission System by building natural gas Transmission pipeline from the Black Sea gas collection point - Vadu to the Transit 1 pipeline - Gradina city area" is declared a project of national importance in the field of natural gas.

The Ministry of Energy is designated as competent authority responsible for facilitating and coordinating the authorization procedure for the project.

Date of entry into force: 09 August 2017.

Decision no. 1111/2017 amending and supplementing the Decision of the Head of the Energy Efficiency Department no. 2.794 / 2014 approving the Regulation for certifying energy managers and authorizing energy service providing companies and the Regulation for licensing energy auditors in the industry, issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 655 of August 9, 2017.

According to the Decision, the Regulation for certifying energy managers and authorizing companies providing energy services is amended as follows:

- it provides that the syllabus of specialized courses is approved by NRAE-DEE after consulting Society of and energy managers and auditors of Romania and published on the NRAE website;
- it changes a number of documents for granting the certificate of energy manager in the industry;
- it establishes that appeal results are published on the website of the NRAE-DEE and communicated to the applicant;

- it amends the list of documents required to obtain authorization for companies providing energy services to businesses;
- it amends and supplements chapters on: the granting of energy manager certificate and authorization of energy services company; modifying and prolonging the validity of the energy manager certificate; paying the energy manager certification fee; suspension and withdrawal of the energy manager certificate.

The decision amends and supplements the Regulation for licensing energy auditors in the industry, relevant being the following:

- it provides that the extension of energy auditor authorizations is granted to individuals, including PFAs, which on the basis of assessment forms on the energy audit quality obtain a score of at least 10 points and legal persons who obtain a minimum score of 50 points;
- it establishes that where a natural or legal person energy auditor no longer wishes to pursue the authorized activity, they shall require in writing from NRAE-DEE the withdrawal of authorization; NRAE-DEE withdraws said authorization within 30 days from the date of registration of the notification to NRAE;
- it amends Annexes 7-11.

Date of entry into force: 09 August 2017

Order no. 75/2017 amending the Regulation on the organization and running of simultaneous auctions with decreasing price on the centralized market for universal service, approved by the Order of the President of the National Regulatory Authority for Energy no. 65/2014, and for amending and supplementing the calculation of the fees applied by last instance suppliers to final customers, approved by the Order of the President of the National Regulatory Authority for Energy no. 92/2015, issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 656 of August 9, 2017.

The regulation for the organization and running of simultaneous auctions with decreasing price on the centralized market for universal service, approved by the Order of the President of the NRAE no. 65/2014 is amended, relevant being the fact that the condition applicable to the quantities related to the purchase offers of a FUI has changed, as well as the fact that the situations in which a tender session can be canceled by a decision of the NRAE President have been established.

The calculation methodology of the fee applied by last instance suppliers to final customers, approved by the Order of the President of the NRAE no. 92/2015 is amended, establishing the formula for the average purchase price of electricity supplied to CPC rates.

Date of entry into force: 09 August 2017.

Order no. 79/2017 for amending and supplementing the Regulation for the issuance of green certificates, approved by the Order of the President of the National Regulatory Authority for Energy no. 4/2015 issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 683 of 23 August 2017.

The normative act amends and supplements the Regulation for the issue of green certificates, approved by the Order of the President of the NRAE no. 4/2015. Of these modifications and additions, we mention:

- defining unwarranted GCs as being those GCs issued by the transmission system operator of a producer of electricity from renewable sources accredited for the green certificate promotion system, which represents unfair state aid to be recovered once it has been found;
- supplements the definition of additional GCs offered, in the sense that these can be GCs provided under art. 6 par. (5) of Law no. 220/2008, republished, as amended and supplemented, for the quantities of E-RES produced in power plants using energy crops;
- setting TSO's obligation, as issuer of the GC to submit to NRAE quarterly monitoring reports on certificates of origin submitted by accredited manufacturers for biomass used in own power plants.

Date of entry into force: 23 August 2017.

Order no. 78/2017 approving the methodology for determining the static annual quantity of green certificates and annual mandatory quota of green certificates issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 686 of 24 August 2017.

The order approves the Methodology for determining the annual static quantity of green certificates and the mandatory annual quota for the acquisition of green certificates, provided in the annex which is an integral part of the Order.

The methodology for establishing the annual static quantity of green certificates and the mandatory annual quota for the acquisition of green certificates takes into account:

- (a) the calculation of the static annual quantity of green certificates in accordance with Art. 4 par. (61) of Law no. 220/2008 establishing the system for promoting the production of energy from renewable energy sources, republished, as subsequently amended and supplemented;
- (b) the calculation of the static annual quantity of green certificates;
- (c) the calculation of the mandatory annual quota for green certificates;

- (d) the calculation of the number of green certificates related to the non-fulfillment of the estimated annual quota of green certificates for each quarter of analysis by economic operators obliged to purchase green certificates;
- (e) the calculation of the number of green certificates related to the non-fulfillment of the mandatory quota for the acquisition of green certificates for the year of analysis by economic operators obliged to purchase green certificates;
- (f) the calculation of the amount of money related to fulfill the annual mandatory quota of green certificates.

The act repeals the Order of the President of the NRAE no. 41/2016 for the approval of the Methodology for setting the mandatory annual quota of electricity produced from renewable energy sources benefiting from the green certificate promotion and green certificate acquisition system, published in the Official Gazette of Romania, Part I, no. . 734 of 22 September 2016.

Date of entry into force: 24 August 2017.

Order no. 72/2017 approving the technical norms on technical requirements for connection to the public interest electricity networks for synchronous generator units, issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 688 of August 24, 2017.

The normative act approves the Technical Norm regarding the technical requirements for connection to the public electricity networks of synchronous generating units, set out in the annex which is an integral part of the Order, published in the Official Gazette of Romania, Part I, no. 688 bis.

The standard establishes the minimum technical requirements for the connection of the synchronous generating units to the public electricity networks, which is the scope of these requirements, as well as the general conditions for the synchronous generating units of category A, B, C and D.

Upon the entry into force of the Order, the following are repealed:

- (i) Article 40, Chapter 5.4.1. "Dispatchable generating units connected to public interest electricity networks", provisions of chapter 5.4.2. "Requirements for telecommunication equipment", with the exception of Article 176, and the provisions of Chapter 5.4.4. "Telecommunication and Data Acquisition and Telemetry Systems", with the exception of Article 187 of the Technical Code of the Electric Transmission Network, Part I - Basic General Rules, approved by the Order of the President of the NRAE no. 20/2004, published in the Official Gazette of Romania, Part I, no. 828 of September 8, 2004, as amended;

- (ii) provisions of Chapters 4.4.1. " Dispatchable generating units", 4.4.2. "Installations of other RED Users" and 4.4.3. "Telecommunication and data acquisition systems", excluding points 4.4.3.1. and 4.4.3.2., of the Technical Code of the Distribution Networks, approved by the Order of the President of the NRAE no. 128/2008, published in the Official Gazette of Romania, Part I, no. 43 of 26 January 2009.

Date of entry into force: 27 April 2019.

Order no. 77/2017 for the approval of the organization and functioning of the green certificates market issued by NRAE, was published in the Official Gazette of Romania, Part I, no. 697 of 29 August 2017.

This Order approves the Regulation for the organization and functioning of the green certificates market.

The organization and functioning of the green certificates market sets out:

- how to organize and operate the green certificates market;
- stakeholders and their responsibilities in the organization and operation of the green certificates market;
- how to record and manage information about green certificates trading;
- information necessary to monitor the functioning of the green certificates market.

Date of entry into force: 01 September 2017.

Ordinance no. 17/2017 for amending art. 8 of the Law no. 165/2016 on safety of offshore oil operations, issued by the Government, was published in the Official Gazette of Romania, Part I, no. 703 of 30 August 2017.

The Ordinance provides a single article, which states that Article 8 of Law no. 165/2016 regarding the safety of offshore oil operations, published in the Official Gazette of Romania, Part I, no. 572 of July 28, 2016, as amended and supplemented, paragraphs (14), (15) and the introductory part of paragraph (16) shall be amended to read as follows:

"(14) The competent authority is headed by a president having state secretary rank and two vice-presidents acting having deputy state secretary ranks, appointed by the Prime Minister for a period of five years. The president is the competent authority in relation to third parties. In absence of the President, its duties shall be exercised by the Vice-President designated in this respect by order of the President.

(15) Being president and vice president is incompatible with public office, except for teaching, according to the law. The president and vice president are forbidden to exercise, directly or through intermediaries, trading activities and participate in the administration or management of companies under the Companies Act no. 31/1990, republished, as subsequently amended and supplemented, autonomous government business entities or cooperative organizations.

(16) The powers of the president and vice-president end on:".

Date of entry into force: 02 September 2017.

public procurement - legal changes published in August 2017

Instruction of the National Agency for Public Procurement no. 3/2017 on amendments to the public procurement / sector procurement / framework agreement and the classification of these changes as substantial or non-substantial was published in the Official Gazette of Romania, Part I, no. 673 of 17 August 2017.

The Instruction regulates how to resolve situations where, during a public procurement / sector / framework agreement, a change in the conditions of implementation set out in the initial terms of the contract appears necessary. The contracting authority / entity will establish, prior to the approval and implementation of this amendment, whether the envisaged change is, in relation to the specific circumstances of the contract, or the direct application of the contractual clauses, which does not require interpretation according to the factual situation found in the implementation, either a change in exceptional circumstances, either a non-substantial or a substantial one. Thus, the following aspects are provided:

- in order not to represent a change to the original contract but merely to apply its provisions, the changes: (a) must be anticipated by the contracting authority / entity in the original contract by "review clauses" and (b) result solely from direct application of the "review clauses" of the original contract, excluding any other changes to its requirements.
- the non-substantial changes to the public procurement / sectoral / framework agreements in progress are not a new assignment and do not require a new award procedure to be implemented, being of two kinds: a) non-substantial contractual changes - adaptations to the practical context ", regulated by the provisions of art. 221 par. (1) let. e) of Law no. 98/2016, with subsequent amendments, and by the provisions of art. 240 par. (2) of the Law no. 99/2016 and b) "non-material - value threshold" contract changes, regulated by the provisions of art. 221 par. (1) let. f) of Law no. 98/2016, with subsequent amendments, and by the provisions of art. 241 par. (1) of Law no. 99/2016.
- modifications in exceptional circumstances should be considered as stand-alone changes, independent of non-substantial changes, consisting in (i) the "impossibility of changing the original contractor", as it results from the provisions of Art. 221 par. (1) let. b) of Law no. 98/2016, with subsequent amendments, and of art. 237 of the Law no. 99/2016 and (ii) the occurrence of "unforeseeable circumstances for a diligent contracting authority / entity", as it results from the provisions of Art. 221 par. (1) let. c) of Law no. 98/2016, with subsequent amendments, and of art. 238 of Law no. 99/2016.
- any substantial change to the terms of the original contract is assimilated to a new contract which must be subject to a new award procedure in order to avoid the initial conditions of the competition being affected. In the event of a substantial change, the contracting authority / entity is required to award a new contract for the remaining work to be performed (or, as the case may be, only for the works / services / products related to the substantial change, provided that they can be executed independently of the initial contract) through an award procedure.

employment - draft laws published in August 2017

Draft laws on regulating telework was registered with the Senate for debate under no. B362 on 16 August 2017.

The draft regulates the way work is carried out by the employee through teleworking, taking into account the modernization of the labor market at European level. For the job categories in which information and communication technology is used, the draft establishes a right and not an obligation, in the sense of the parties agreeing on the place of the employee's activity.

According to the draft, telework is defined as a form of work organization where an activity that could be carried out within the work place provided by the employer is carried out by an employee remotely, on a regular and voluntary basis, using information and communication technology, on the basis of an individual full-time employment agreement or an addendum thereto, subject to the following conditions:

- a) the activity takes place outside of the work place provided by the employer, by using IT&C means, such as the internet, smartphone, or other;
- b) telework takes place at least a day a month;
- c) the employee gave their approval on this work organization upon signing the individual employment agreement or an addendum thereof, as applicable;

Also, the draft provides that tele-employees organize the working hours in agreement with the employer, and overtime is forbidden. It also stipulates the elements that the individual labor agreement must contain, besides those provided in art. 17, par. (3) of the Labor Code.

It also takes into account the employer's obligations to ensure occupational health and safety in the telework locations, providing certain obligation in this respect.

The draft's purpose is the following:

- to achieve flexibility and adaptability of work relations to the current social-economic relations, in relation to the dynamic evolution of the labor market;
- benefits will be established for both the employee and the employer. More specifically, the employer will reduce administrative costs for renting space, utilities, fuel consumption, and car fleet. As far as the employee is concerned, the benefits consist in eliminating the cost of money and time from traveling to and from the employer's place of work, as well as the freedom to choose the job and the use of working time, in order to improve the balance between work and personal life.

The draft law has received a favorable opinion from the Legislative Council and the Economic and Social Council, currently pending review with the standing committees of the Senate.

energy - draft laws published in August 2017

Draft Order for the approval of the Procedure on the composition and pressures of gaseous fuels used in Romania was published on the website of the National Regulatory Authority for Energy on 1 August 2017.

The draft order is addressed to natural gas producers, to the transmission system operator, to natural gas distribution system operators and biogas / biomethane, LNG, GNC and LPG license holders. It aims at centralizing the information on the composition and specifications of the types of gaseous fuels as well as their pressures used within Romania.

The draft was based on the provisions of art. 4 par. (1) of Regulation (EU) 2016/426 of the European Parliament and Council of 9 March 2016 on appliances burning gaseous fuels and repealing Directive 2009/142 / EC according to which by 21 October 2017 Member States communicate to the Commission and other Member States, the types of gas and the corresponding supply pressures of the gaseous fuels used in their territories.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq1%2FhA%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

Draft Order for amending and supplementing the Regulation for the authorization of economic operators carrying out activities in the field of natural gas and the framework conditions for validity of the permits, approved by the Order of the President of the National Regulatory Authority for Energy no. 98/2015 was published on the website of the National Regulatory Authority for Energy on 22 August 2017.

The draft is aimed at economic operators requesting granting, extending, equating, modifying, suspending or withdrawing permits for the design, execution and operation of the natural gas systems facilities, systems or installations.

The draft proposes:

- its correlation to the provisions of applicable laws;
- removing the barriers on necessary documents for authorization, and the lists of technical equipment, personnel structure, the permit from the country of origin if the authorization system is missing, etc;
- clarifying the types of permits for the afferent biogas/biomethane production/storage installations.
- clarifying requirements on welders and welding coordinator;
- establishing criteria on suspension/withdrawal of permits.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq2ChA%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

Draft Order for the approval of the Regulation on the monitoring by the National Regulatory Authority for Energy of the compliance programs established by the natural gas distribution operator and the storage operator was published on the website of the National Regulatory Authority for Energy on 24 August 2017.

The draft order is addressed to the economic operators holding permits for operation of the natural gas distribution system, the operation of the natural gas storage system, as well as the compliance agents designated by them.

The draft mainly proposes:

- establishing the rules on drafting the compliance programs containing the measures ordered by the natural gas distribution operators and the storage operators to guarantee the exclusion of discriminatory practices and the establishment of the specific obligations imposed on the employees in order to achieve the objective of independence;
- designating the compliance agents, ensuring the adequate monitoring of the compliance program;

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq2Chg%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

Draft Order amending the Annex to the Order of the President of the National Regulatory Authority for Energy no. 37/2013 approving the Methodology regarding the drafting of feasibility studies and requesting the opinion of NRAE in order to initiate the process of awarding the concession for the public service of gas distribution was published on the website of the National Regulatory Authority for Energy on 24 August 2017.

The draft proposes amendment of the annex with regard to:

- introducing the possibility to perform the feasibility study for the extension of the concession area for the provision of the natural gas public distribution service, according to the provisions of art. 104 par. (2) - (6) of the Law on Electricity and Natural Gas no. 123/2012;
- the necessity of presenting the expert opinion report for situations in which facilities / pipelines related to natural gas distribution systems have been built but have not been technically accepted and / or commissioned as of the time of filing the documentation for approval;
- the cost-benefit analysis method;

- removing the obligation to draft layout plans and zonal situation plans at certain scales, etc.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq2CiA%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

The Draft Order approving the Methodology regarding the allocation to network users of the difference between the expenses and the revenues registered 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 was published on the website of the National Regulatory Authority for Energy on August 4, 2017.

The Draft Order is aimed at fulfilment of the obligations incumbent on the Authority regarding the balancing of the natural gas transmission network, stipulated in the EU Regulation no. 312/2014 of the European Commission and the Order of NRAE President no. 16/2013 on the approval of the Network Code for the Natural Gas National Transmission System.

The draft mainly includes these principles:

- the transmission system operator must not register income or loss after actions taken in order to balance the transmission system;
- the transmission operator shall transfer to users the difference between the income and costs linked directly to the balancing actions;
- costs directly related to the transmission system balancing actions will be included in the neutrality fee and will not be taken into account when determining the costs that will be used for the calculation of the fees related to natural gas transportation services except those stipulated in the Methodology approved by Order of NRAE President no. 32/2014.
- the neutrality fees paid by or to the UR will be proportional to the amount of gas transmitted by the UR during the settlement period;

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq2AiA%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

Draft Order for amending and supplementing the Procedure for calculation of electricity use in case of erroneous registration and in a lump-sum system, approved by the Order of the President of the National Regulatory Authority for Energy no. 121/2015 was published on the website of the National Regulatory Authority for Energy on 8 August 2017.

The main amendments and additions are aimed at:

- extending the scope with the possibility of using the Procedure in determining the damage, in the amicable settlement of disputes in cases of suspicion of electricity theft through the mediation procedure or by reconciliation of the parties;
- introducing certain clarification no the duration for which the erroneously recorded electricity use is recalculated, in case of a faulty meter;
- introducing some clarifications on the way of settling the corrected / settled electricity use within the lump sum payment system, and for settling the payments between the end user, the network operator, the electricity supplier and the other parties depending on the intervals for which, according to of the wholesale electricity market rules, the approved measured values were/were not transmitted to the wholesale market operator.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq2AiQ%3D%3D&t=wOutwdHbn8%2BcmLPfrrrV5ps%3D>

Draft Order for repealing the Order of the President of the National Regulatory Authority for Energy no. 19/2007 regarding the approval of the Methodology of Establishing, Implementation and Use of the Technological Capacity Reserve System Service, with the subsequent modifications was published on the website of the National Regulatory Authority for Energy on 3 August 2017.

The draft was issued because the Methodology for Establishing, Implementing and Using the system technology service of reserve capacity became unnecessary for the following reasons:

- the legal provisions underlying NRAE Order no. 19/2007, and the Electricity Law no. 13/2007, as amended and supplemented, have been repealed;
- the methodology approved by the NRAE Order no. 19/2007 has not been applied since 1 April 2011, when the support scheme for the promotion of high efficiency cogeneration based on the useful heat demand was implemented;
- in a relatively short time the operation rules of the electricity transmission system and the functioning of the balancing market will be harmonized with European regulations, based on the provisions of the System Operation Guideline and the Network Code on electricity balancing, developed by ENTSO-E according to EC Regulation no. 714/2009, close to completing the approval process.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq2Agw%3D%3D&t=wOutwdHbn8%2BcmLPfrrrV5ps%3D>

Draft Order on approving the Procedure for invoicing green certificates was published on the website of the National Regulatory Authority for Energy on 18 August 2017.

The project concerns electricity suppliers in the invoicing/ regularization of green certificates to end clients, energy producers who supply electricity to consumers connected by direct power lines to their power plant, and end clients.

The procedure mainly provides:

- the invoicing method of green certificates for end clients;
- the regularization methodology of green certificates for end clients;
- reporting templates on the invoicing/regularization of green certificates afferent to electricity invoiced/provided to end clients by suppliers and producers to users connected by direct lines to the power plant they own.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq2BiQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

public procurement - draft laws published in August 2017

The draft law on the award documentation for the execution of works that includes the work contract template was published on the NAPP website on August 31, 2017.

The award documentation for the execution of works includes templates afferent to the following documents:

- catalogue of the works assessment factors;
- data sheets, forms, technical specifications, technical and financial proposal;
- forms on the turnover, professional risk, similar experience, access to technicians or technical bodies, technical facilities, management system, educational and professional qualifications, environmental management standards, quality assurance standards;
- template of the Works Contract, General and Special Conditions.

The draft can be viewed at <http://www.achizitiipublice.gov.ro/> or by accessing: <https://achizitiipublice.gov.ro/matrix/cell/72/1>.

Those interested in submitting proposals and / or observations on the content of the draft can do so to the e-mail address: transparenta.decizionala@anap.gov.ro, within 10 days from publication of the notice on the website.

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

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