

Cover article: “ A practical analysis of the latest amendments to public procurement legislation”

by Raluca Mihai, Partner Voicu & Filipescu

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cover article

A practical analysis of the latest amendments to public procurement legislation

by Raluca Mihai – Partner Voicu & Filipescu

The end of 2017 brought us a number of important changes in the field of public procurement, following the legislator's motivation to refine and streamline the public procurement system, and to reform the ex-ante control function of the award of public procurement contracts / framework agreements, of sector contracts / framework agreements and works concession and service concession contracts.

Thus, the Government of Romania has adopted the **Emergency Ordinance no. 98/2017 on the ex-ante control function of award of public procurement contracts / framework agreements, of sector contracts / framework agreements and works concession and service concession contracts**, which was published in the Official Gazette of Romania, Part I, no. 1022 of 22 December 2017, slated to enter into force on March 15, 2018, as well as **Emergency Ordinance no. 107/2017 for the amendment and supplementation of some normative acts with impact in the field of public procurement**, which was published in the Official Gazette of Romania, Part I, no. 1022 of 22 December 2017, with effect from that date.

As regards GEO no. 107/2017, the amendments are largely aimed at correcting some legal inconsistencies with European directives, correcting some omissions / drafting errors, clarifying some important concepts / aspects of primary legislation.

Ex-ante control

GEO 98/2017 will repeal upon its entry into force, on March 15, 2018, GEO no. 30/2006, which regulates a much lighter form of ex-ante control of public procurement procedures, initially exercised through the UCVAP Observers of the Ministry of Finance.

Under GEO 98/2017, the National Agency for Public Procurement (NAPP) is the public institution responsible for fulfilling the ex-ante control function of the contract awarding process and amendments to such contracts. In fulfilling the ex-ante control function, NAPP will perform quality and compliance control throughout the entire public procurement award procedure starting with the publication of the awarding documentation in SEAP and until the communications on the outcome of the award procedure remains final, but also on the amendments to the contracts included in the verification as a result of the application of a selection methodology.

It is important to note that NAPP will also verify the contracting authority's proposals for answers to the clarification requests made by the economic operators, as well as the entire bid assessment process. NAPP will perform the quality and compliance control of the conclusions of the critical phases of this process as follows: a) the composition of the assessment commission and the conclusions of said commission regarding the fulfillment of the formal conditions related to the submission of the bids/ applicants and the qualification / selection criteria by the bidders / applicants; b) the conclusions of the assessment committee on the technical proposals and their compliance; c) conclusions of the assessment committee on the financial proposals and their compliance; and d) the conclusions of the assessment committee regarding the analysis of the supporting documents for the fulfillment of the qualification / selection criteria submitted by the applicants to be selected according to the rules stipulated in the award documentation in the procedures stipulating the pre-selection stage, namely by the bidder(s) who shall be declared to be the winner(s) following the application of the award criterion, as well as the conclusions included in the award procedure report.

The entire verification process appears to be designed to remove as much as possible the objections of economic operators against any irregularities and unlawful acts in public procurement procedures and to facilitate the fast award of contracts. In fact, the legislator also mentions in the preamble to GEO no. 98/2017 that the absorption of structural

funds amounting to approximately EUR 43 billion is a priority public interest given their importance in the overall national economy and the effects of the absorption of structural funds on the potential for the development of the national economy. However, all these measures can not be implemented quickly and efficiently unless the award procedures are carried out much faster and in compliance with the legislation in force, and the reform of the ex-ante control will certainly help to achieve this goal.

Subcontractors and third party supporters

In the previous version of Law no. 98/2016, in Section 8 on the European Procurement Document (DUAE), art. 193 par. 2, it was provided that if the economic operator demonstrates that the criteria relating to the economic and financial situation or to the technical and professional capacity have been met by invoking the support of a third party, the DUAE must also include the information referred to in Art. 193 al. (1) with respect to the supporting third party. However, it is not specified that the supporting third party should present a completed DUAE form, separate from the bidder.

Instead, in the official version of the DUAE form, Part C - Information on capabilities of other entities, in Part II - Information on the economic operator states that the bidder must provide a separate DUAE form containing the information required in Sections A and B of this Part and of Part III for each supporting third party, duly filled in and duly signed by that party. In practice, it is obvious that this DUAE form is separately requested and filled in and signed by the supporting third party in the award procedures, the requirements of the DUAE standard form being in practice supplementary to the law.

Therefore, GEO no. 98/2017, art. 193 par. 2 has been amended and supplemented with the express request that, for the supporting third party, the bidder should present, in addition to the supporting commitment, the separate DUAE form. Actually, the amendment of the legislator is intended to cover a legislative gap for a logical requirement already used in practice.

Another interesting change with regard to supporting third parties is the repeal of the provision that if the third party's support for non-transferable resources (e.g. similar experience) was used, the third party's commitment was to ensure before the contracting authority the fulfilment of the obligations assumed by it, should the contractor encounter difficulties during the course of the contract. The reason stems from the fact that the provision is not found in the text of the European Directive no. 2014/24 / EU and becomes unnecessary in the context of the amendment of Art. 182 par. 2, namely ensuring the faithful transposition of art. 63, paragraph (1) of the Directive, thus clarifying the concrete way in which the third party's support can be taken into account in relation to the requirement of experience. Thus, art. 182 al. 2 stipulates that, as far as the fulfillment of the criteria regarding the educational and professional qualifications stipulated in art. 179 lit. g) of Law no. 98/2016 or to the relevant professional experience, the economic operator may rely on the capacity of the supporting third party only when it actually carries out the works or services in relation to which those qualifications are required.

As far as subcontractors are concerned, Art. 193 al. 3 of the previous version of Law no. 98/2016 stated that if the economic operator intends to subcontract part(s) of the contract, the DUAE also includes the required information on subcontractors. As in the case of the supporting third party, it is also not specified here that a DUAE form should be filled-in separately.

On the other hand, the official version of the DUAE form in Part D - Information on subcontractors whose capacities the economic operator does not rely on Part II - Information on the economic operator requires the bidder to indicate certain information concerning the subcontractors if so requested by the contracting authority. These could only be indicated by filling in a separate DUAE form.

Art. 193 al. 3 as amended by Government Emergency Ordinance no. 107/2017 includes the obligation to prepare a separate DUAE, but also differentiates between subcontractors whose capacity the economic operator relies on and those on whose capacities it does not. Actually, the legislator regulates more clearly now the three categories of

entities on which the bidder relies/ which will be used in the performance of the contract: the supporting third party, the subcontractor whose capabilities the bidder relies on and the subcontractor whose capabilities it does not rely on, this categorization not being evident wither from the previous wording of the legislative texts or from the official version of the DUAE form, but in any case resulting from European legislation and the practice of public procurement in Romania.

In addition, as far as subcontractors are concerned, the idea is that only those who are known at the time of submitting the bid will be declared in it with identification data. From the current wording of the legal text, however, it would appear that somehow the parts intended to be subcontracted or the percentage of them should be declared, without necessarily indicating the subcontractors, on which they could decide later. It remains to be seen whether, in practice, contracting authorities will understand and apply the current legal provision.

Clear deadlines for answer to clarification requests

The exact establishment of the deadlines for requesting and responding to clarifications to the procurement documents was necessary because the previous provision caused uncertainties in practice and gave rise to abuse by the contracting authorities and also by the economic operators participating in an award procedure.

The new provisions amend the procedure whereby the contracting authority must respond to requests for clarification from economic operators regarding the award documentation as follows: the contracting authority must set a deadline (or two) for responding to the clarification requests in the contract/award/simplified notice (the old regulation provided a 3-day recommended term from the receipt of such a request until the contracting authority's answer), and the deadline for the contracting authority to respond to requests clarifications prior to the deadline for submitting bids is increased to 10 days from 6 days and 5 days from 4 days for emergency situations.

Inadequate bid – a new concept

EGO no. 107/2017 clarifies, in line with the European Directives, the notion of admissible, unacceptable and non-compliant bids and introduces the new notion of inadequate bid.

The bid is considered unacceptable if it does not meet the formal requirements for its preparation and presentation, has been submitted by a bidder who does not have the necessary qualifications or whose price exceeds the estimated value as established and documented prior to the initiation of the award procedure, and this value can not be supplemented; the bid is considered non-compliant if it does not meet the requirements of the procurement documents, has been submitted late, shows evidence of anti-competitive or corrupt practices or was considered by the contracting authority to be unusually low.

The new concept of inadequate bid is defined as being irrelevant to the subject matter of the contract and which obviously can not satisfy the needs and requirements of the contracting authority indicated in the award documents without substantial modifications. We shall have to see how this way of rejecting a bid as inadequate will be used and interpreted in practice, especially since it can overlap relatively easily with the notion of non-compliance.

All these clarifications and amendments were absolutely necessary from the perspective of the Romanian legislator, which adopted them in order to avoid the initiation of infringement procedures by the European Commission against Romania, but also to comply with the provisions of the Partnership concluded between the Government of Romania and the European Commission on 6 August 2014 regarding the development and implementation of the National Public Procurement Strategy, provided by GD no. 901/2015 which will lead to ensuring financing from structural funds for projects of public interest.

Administrative law - legal changes published in December 2017

The law on the prevention of misdemeanors no. 270/2017 published in the Official Gazette of Romania, Part I, no. 1037 of December 28, 2017, applicable from January 17, 2018,

regulating a series of instruments to ensure the prevention of misdemeanors. In this respect, all the public authorities / institutions with powers of control, detection and sanctioning of misdemeanors have the obligation, according to the areas under their responsibility, to elaborate and, within 3 months from the date of coming into force of this law, to disseminate documentary materials and guides and allocate sections dedicated to public information on the website with respect to:

- (i) the applicable law regarding the detection and sanctioning of misdemeanors;
- (ii) the rights and obligations of these public authorities / institutions in conducting misdemeanor sanctioning activities, as well as the rights and obligations of persons who are subject to these activities;
- (iii) a distinct indication of misdemeanors for which the public authority / institution has powers to find and enforce sanctions and / or other applicable measures.

The law establishes that in case of finding a misdemeanor which would be subsequently provided by a Government decision, the investigating officer shall conclude a misdemeanor report by which the warning sanction is applied and to which a correction plan will be annexed, according to the provisions of this law. In this situation, no additional sanctions shall be applied. The model of the remedial plan will also be adopted by government decision.

Within a maximum of 10 working days from the expiration date of the remedial period, the public authority / institution with control duties is required to resume control and complete part II of the remedial plan annexed to the misdemeanor report.

If, upon the resumption of control, the offender fails to comply with the legal obligations according to the established remedial measures, within the time limit, the investigating agent shall conclude another report, which establishes the misdemeanor committed and sanctions, other than warning, in compliance with the legislation establishing and sanctioning misdemeanors.

corporate - legal changes published in December 2017

SMM

Emergency Ordinance no. 110/2017 regarding the Small and Medium Enterprises Support Program - IMM INVEST ROMANIA, issued by the Romanian Government, was published in the Official Gazette of Romania, Part I, no. 1029 of December 27, 2017.

The Ordinance approves the Small and Medium Enterprises Support Program - IMM INVEST ROMANIA, which aims to grant state-guaranteed facilities for loans to small and medium enterprises, from credit institutions.

The program consists in granting state guarantees in favor of each beneficiary participating in the program for one of the following categories of loans, as follows:

- (a) a single loan for investments, guaranteed by the State, through the Ministry of Public Finance, up to 80% of the amount of funding for development / establishment of leisure centers, excluding interest, commissions and bank charges related to the guaranteed loan. The maximum amount of state guaranteed financing is of 1,250,000 lei; or
- (b) one or more investment loans and / or one or more working capital lines of credit/loans, guaranteed by the State, through the Ministry of Public Finance, up to 50% of the amount of the grant, exclusive interest, commissions and bank charges related to the guaranteed loan. The maximum cumulative amount of state-guaranteed financing that may be granted to a beneficiary under this facility is 10,000,000 lei and the maximum amount of each grant granted to a beneficiary may not exceed MDL 5,000,000 for loans / lines of credit for capital financing work, respectively 10,000,000 lei for investment loans.

The annual ceiling of the guarantees is fixed by Government Decision and the conditions for granting State guarantees as well as the rules for the management of annual ceilings and guarantees are established by methodological application norms.

The Ordinance provides the eligibility conditions to be met by beneficiaries as well as the domains that are not eligible for guarantees under the program, namely: financial and insurance brokerage, real estate transactions, gambling and betting activities, production or sale of arms, ammunition, explosives, tobacco, alcohol, substances under national control, herbal and psychotropic substances and preparations, rental and leasing activities, investigation and protection activities.

Date of entry into force: 27 December 2017.

INDUSTRIAL PARKS

Law no. 244/2017 for the amendment of the Law no. 186/2013 regarding the establishment and operation of industrial parks, issued by the Romanian Parliament, was published in the Official Gazette of Romania, Part I, no. 981 of 11 December 2017.

The law amends and supplements Law no. 186/2013 on the establishment and operation of industrial parks.

According to the amendments, the common maintenance expenses are defined as the sums of money due to the park manager by the park's residents, on a monthly basis, based on the management contract and the related services or, according to the law, as the case may be, representing the equivalent of the proportionate share of the monthly expenses incurred by the Park Manager for the maintenance, repair and / or upgrading works and services, as the case may be, of the common infrastructure calculated and invoiced by the Park Manager.

At the same time, economic operators, Romanian and / or foreign legal entities, which operate according to the law and performs economic activities, scientific research, exploitation of scientific research and / or technological development, agro-industrial, logistics and innovative, industrial and other activities, within the industrial park as the owner or tenant, will no longer acquire the status of residents of the park, or as the case may be, of a real estate property located within the perimeter of the established industrial park, which is not the property of the park manager.

Date of entry into force: 14 December 2017

litigation and arbitration - legal changes published in December 2017

Decision of the High Court of Cassation and Justice no. 19/2017 regarding the examination of the appeal in the interest of the law formulated by the Brasov Court of Appeals regarding the compulsoriness of taking the precautionary measures in the criminal cases during the trial, when the investigations made showed that the defendant has no assets in his property,

published in the Official Gazette of Romania, Part I, no. 953 of 4 December 2017, applicable from the same date. The High Court considered that, in the absence of a law providing such an additional obligation for the judiciary body, it is not possible to support the obligation to perform prior investigations at the time of the establishment of the precautionary measure in order to determine the existence and identification of the assets in the patrimony of the person concerned by the measure in question, because it would be unacceptable to extend the law and it would be contrary to the principle of the lawfulness of the criminal proceedings.

In conclusion, the High Court admitted the appeal in the interest of the law declared by the Brasov Court of Appeal and established that when the precautionary measures are instituted in the criminal proceedings, it is not necessary to indicate or prove or individualize the assets on which the protective measure is established.

Decision of the High Court of Cassation and Justice no. 66/2017 on the examination of the petition formulated by the Bacau Court – 2nd Department of Civil, administrative and fiscal litigation regarding the pronouncement of a preliminary ruling concerning a matter of law, published in the Official Gazette of Romania, Part I, no. 969 of 07 December 2017, applicable from the same date.

The HCCJ has been notified to give a preliminary ruling on the following matter of law: how to interpret and apply the provisions of Art. 623 of the Civil Procedure Code related to Art. 220 para. (3) and (5) and Art. 226 par. (3) of the Law no. 207/2015 on the Fiscal Procedure Code, as subsequently amended and supplemented, art. 3 par. (1) of the Law no. 273/2006 on local public finances, as subsequently amended and supplemented, and art. 3 point 18 of the Fiscal-Budgetary Responsibility Act no. 69/2010. In the interpretation of the aforementioned provisions, The HCCJ stated that the enforced execution of enforceable titles such as rulings on budgetary debts owed on the basis of contractual legal relationships that are earned to consolidate the state budget is performed by tax bailiffs as enforcing bodies of the state.

Decision of the Constitutional Court no. 671/2017 regarding the objection of the unconstitutionality of the provisions of Art. 21 par. (4) and Art. 41 par. (5) of the Law no. 165/2013 regarding the measures for completing the restitution in kind or equivalent of the properties abusively taken over during the communist regime in Romania, published in the Official Gazette of Romania, Part I, no. 1015 of 21 December 2017, applicable from the same date.

With regard to the provisions of Art. 21 par. (4) of the Law no. 165/2013, the Court notices that there is always the premise of impossibility to fulfill the orders within a final / irrevocable court decision, which is contrary to art. 1 par. (4) of the Constitution regarding the principle of the separation of powers in the state. As such, the Court states that

the provisions of Art. 21 par. (4) of the Law no. 165/2013 are regulating a condition for the enforcement of the rulings pronounced prior to the entry into force of Law no. 165/2013. However, a law subsequent to the moment when a ruling becomes final / irrevocable cannot provide an obstacle to its enforcement, just procedural rules regarding its enforcement, but not prejudicial to its binding force. Thus, the Constitutional Court upheld the objection of unconstitutionality and stated that the phrase "*only after the depletion of the plots of agricultural land assigned to in kind restitution identified locally*" provided in Art. 21 par. (4) of the Law no. 165/2013 regarding the measures for completing the restitution in kind or equivalent of the properties abusively taken over during the communist regime in Romania is constitutional insofar as it does not apply to the existence of final / irrevocable rulings whereby the courts ordered compensations in cash equivalent.

Decision of the High Court of Cassation and Justice no. 21/2017 published in the Official Gazette of Romania, Part I, no. 1024 of 27 December 2017, applicable from the same date.

The High Court of Cassation and Justice accepted the appeal in the interest of the law and established that the act of highlighting in the accounting documents or other legal documents the expenses that are not based on actual operations or showing other fictitious operations by using fake invoices and receipts, for the purpose of circumventing tax obligations, constitutes the offense of tax evasion provided by art. 9 par. (1) let. c) of Law no. 241/2005 for the prevention and combating of tax evasion.

Decision of the Management Board of the Chamber of Commerce and Industry of Romania no. 5/2017 for the approval of the Regulation on the organization and functioning of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, published in the Official Gazette of Romania, Part I, no. 1017 of 21 December 2017, applicable from the same date.

The normative approves the Regulation on the organization and operation of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania. Thus, the Decision of the Management Board of the Chamber of Commerce and Industry of Romania no. 7/2016 approving the previous version of the Regulation is repealed.

Decision of the Chamber of Commerce and Industry of Romania (CCIR) no. 27/2017 regarding the adoption of the Arbitration Procedure Rules of the Court of International Commercial Arbitration attached to the Romanian Chamber of Commerce and Industry, published in the Official Gazette of Romania, Part I, no. 1025 of 27 December 2017, applicable from the same date.

The decision approves the rules of arbitration procedure of the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania which establish the principles and rules for solving internal and international disputes subject to institutionalized arbitration organized by the Court of International Commercial Arbitration with The Chamber of Commerce and Industry of Romania, their application in time and space, the request for arbitration, the commencement and performance of the procedure before the arbitral tribunal, the assembly of the arbitral court, the rules of evidence management before the Arbitral Court and the simplified arbitral procedure.

employment - legal changes published in December 2017

Government Emergency Ordinance no. 95/2017 for amending and supplementing the Law no. 76/2002 on the unemployment insurance system and the stimulation of employment and amending Law no. 200/2006 on the establishment and use of the Guarantee Fund for the payment of salary receivables was published in the Official Gazette of Romania, Part I, no. 991 of 13 December 2017, with effect from January 1, 2018.

It was considered necessary to amend the Law no. 76/2002 on the unemployment insurance system and the stimulation of employment as a result of amendments to the Fiscal Code by the Government Emergency Ordinance no. 79/2017, as follows:

- "Insured" is considered to be a natural person who earns income under the law and is compulsorily insured under the unemployment insurance scheme as well as the person who voluntarily assures the conclusion of an unemployment insurance contract and the payment under this insurance contract of a contribution to the unemployment insurance budget;
- it is stipulated that the insured persons may be: (i) Romanian citizens working abroad, under the law, with the exception of persons who have the status of pensioners; and (ii) foreign citizens or stateless persons who, during the period of their domicile or residence in Romania, are employed or earn incomes, under the conditions of the law, except for persons who have the status of pensioners;
- the provision that insured persons are required to pay unemployment insurance contributions, i.e. the provision according to which employers have the obligation to calculate and to retain monthly, and to pay the individual contribution to the unemployment insurance budget, is removed;
- the scope of the compulsorily insured persons, by law, in the unemployment insurance system, is extended;
- it is established that the persons compulsorily insured under the unemployment insurance contract have the obligation to pay monthly to the unemployment insurance budget a contribution whose share stipulated in art. 20 par. (2) shall apply to the monthly income declared in the unemployment insurance contract;
- it is stipulated that unemployed persons who, at the time of applying for the right, have been admitted or attended a course of education, organized and / or accredited, as the case may be, under the law;
- new categories of people who can not benefit from the mobility bonus are introduced.

Law no. 200/2006 regarding the establishment and use of the Guarantee Fund for the payment of salary claims is modified accordingly, provided that employers have the obligation to pay, according to the provisions of Law no. 227/2015, the insurance contribution for work. The activity regarding the fiscal registration, the declaration, the establishment, the verification, the collection and the settlement of the complaints for the labor insurance

contribution are performed by the central fiscal body defined according to the Law no. 207/2015 on the Fiscal Procedure Code.

Emergency Ordinance no. 95/2017 also contains transitional provisions regulating the situation of persons claiming unemployment benefits after the date of its entry into force, namely persons whose entitlement to unemployment benefit was established before the date of its entry into force. The amount of the activation premium is different depending on the time of request (before or after the date of entry into force of the Emergency Ordinance).

In addition, starting with the fiscal year 2018, the amounts due for employment incentives funded by the unemployment insurance budget, for which it is provided, in accordance with the legal provisions, the conclusion of conventions with the county or Bucharest employment agencies shall no longer be deducted by the employer in accordance with the legal provisions in force until 1 January 2018 and the corresponding provisions of the conventions concluded and granted by the territorial employment agencies under the conditions established by the Decision Government no. 174/2002 approving the Methodological Norms for the application of Law no. 76/2002 on the unemployment insurance system and stimulation of employment.

Government Emergency Ordinance no. 99/2017 for amending and supplementing the Government Emergency Ordinance no. 158/2005 on sickness leave and healthcare indemnities was published in the Official Gazette of Romania, Part I, no. 1005 of December 19, 2017, applicable from the January 2018 income.

The new ordinance brings a series of additions and amendments to Government Emergency Ordinance no. 158/2005, the following being relevant:

- it is stipulated that persons insured for leaves and health insurance allowances in the healthcare insurance system are entitled, during the period of their domicile or residence on the territory of Romania, to sick leaves and benefits if: (i) they earn income from an activity based on an individual employment contract, a posting or a special legal status, as well as other income assimilated to salaries; (ii) they earn in Romania the income referred to in point (i) from employers from countries not subject to applicable European legislation in the field of social security, as well as agreements on social security systems to which Romania is a party; or (iii) is entitled to unemployment benefit, according to the law;
- it is important to note that individuals other than those mentioned above, based on insurance contract for leave and health insurance indemnities, can enroll in the system of healthcare insurance to benefit from leave and health insurance indemnity;
- it is established that the right to sickness leave and health insurance indemnities to which insured persons are entitled is subject to the payment of the labor insurance contribution intended to cover these allowances regulated by the Fiscal Code;
- it provides that the amount intended exclusively to finance expenditures stipulated by the emergency ordinance are ensured from the amounts distributed to the fund from the insurers' labor insurance

contribution, according to art. 220⁶ par. (4) lit. d) of the Fiscal Code, from the contribution stipulated in art. 3 par. (3) as well as from the state budget, as the case may be;

- the minimum insurance period for granting the rights provided in GEO 158/2005 is 6 months during the last 12 months preceding the month for which the sick leave is granted;
- the provisions of Government Emergency Ordinance 158/2005 also apply to persons working in the ministries and institutions of the defense, public order and national security sectors, except for military personnel, policemen and civil servants with special status;
- individuals who, on 31 December 2017, are insured under the healthcare insurance scheme for sickness leave and benefits on the basis of a statement of insurance for leave and allowances in order to benefit from health insurance, starting with 1 January 2018, are obliged to conclude the insurance contract provided for in art. 1 par. (2) of GEO 158/2005.

Government Decision no. 905/2017 on the general registry of employees was published in the Official Gazette of Romania, Part I, no. 1005 of 19 December 2017, entering into force on this date and repealing Government Decision no. 500/2011.

The act establishes the methodology for setting up the general registry of employees, hereinafter referred to as the registry, and supplementing and submitting in the registry the elements of the employment relationship (called data) by the following categories of employers:

- a) natural or legal persons of private law, whether or not they have public utility status;
- b) institutions / public authorities / other legal entities employing personnel on the basis of an individual employment contract.

According to the Decision, each of the above mentioned employers has the obligation to send the data in the registry, to the territorial labor inspectorate in whose territorial range they are headquartered / reside, in the order of employment. The liability for the correctness of the data transmitted to the registry lies solely with the employer.

Employers may contract the service of filling in and sending the data in the registry by concluding service contracts with providers operating under the legal provisions in force, including the provisions on personal data protection.

The Government decision determines which is the data to be filled in, the list not being exhaustive. The time when the registry should be sent to the territorial labor inspectorate is also provided, depending on the data categories.

Employers or, as the case may be, service providers, have the obligation to send the data to the territorial labor inspectorate in whose territorial jurisdiction the employer's headquarters / residence is located, no later than the day before the start of the activity by the first employee.

The new normative act stipulates that the employers provided in art. 1 have the obligation to draw up a personal file for each of the employees with an individual employment contract, to keep it in good condition at the employer's

headquarters or, where appropriate, at the secondary office if the competence of recruiting personnel is delegated through the conclusion of individual labor contracts, as well as to submit it to the labor inspectors at their request.

The personal file of the employee includes at least the following documents: the documents necessary for the employment, the individual employment contract, the addendums and other documents related to the modification, suspension and termination of the individual labor contracts, education related documents / qualification certificates and any other documents certifying the legality and accuracy of the data inserted in the registry.

In addition, it is provided that any change in the data on the gross monthly basic salary, allowances, bonuses, and other benefits, as provided in the individual employment contract or, as the case may be, in the collective labor contract from the date of entry into force of the provisions of the present decision and until March 31, 2018, shall be transmitted until 31 March 2018. Failure to send these amendments represents a misdemeanor and is sanctioned by a fine from Lei 5,000 to Lei 8,000.

Government Decision no. 940/2017 for the amendment and supplementation of the Methodological Norms regarding the granting of holiday vouchers, approved by the

Government Decision no. 215/2009 was published in the Official Gazette of Romania, Part I, no. 1026 of December 27, 2017, to enter into force on January 26, 2018.

The decision stipulates that, in the case of employees in public institutions and authorities, only one holiday allowance, in the form of vouchers, is paid in the amount of 1,450 lei per employee, within the limits of the budget allocated for this purpose.

Beneficiaries who have received nominal holiday vouchers are the only persons entitled to use holiday vouchers during the period mentioned therein and exclusively for the payment of the package of contracted travel services.

In the case of employees in public institutions and authorities with more than one employer, one holiday allowance, in the form of vouchers, in the amount of 1,450 lei per employee, is granted by the employer where the beneficiaries have their basic function, according to the law. If the basic function can not be established, the beneficiary of the holiday allowance shall choose in writing the unit granting the holiday vouchers, having the obligation to notify, within a maximum of 10 working days, to the other employers the option selected.

Government Decision no. 924/2017 for establishing the procedure of re-evaluation of the jobs under special conditions, re-evaluated according to the provisions of art. 30 par. (2) of

the Law no. 263/2010 on the unitary pension system was published in the Official Gazette of Romania, Part I, no. 1039 of 29 December 2017 and is applicable from that date.

The decision applies only to workplaces under special conditions provided by art. 30 par. (1) lit. e) of Law no. 263/2010 on the unitary pension system (in particular, point e) contains a list of activities in which there are special employment places, as well as a number of units that obtained the opinion for the fulfillment of the procedures and criteria for classification special conditions), from the units who have obtained a decision to maintain the approval for special conditions under the Government Decision no. 1284/2011.

According to the act, the methodology for reassessment of jobs in special conditions includes the following steps in the chronological order indicated:

- (a) designating jobs for reassessment, by the employer, together with the existing trade unions and / or the designated employee / internal prevention and protection service, or the workers' representatives with specific responsibilities in the field of health and safety at work, priority being given to workers' representatives from the jobs for which re-evaluation is requested, and the occupational health physician who has supervised the health status of workers in the targeted workplaces;
- (b) performing a technical expertise to reassess jobs in special conditions (involving verification of risk factors);
- (c) performing a medical check-up for job reassessment under special conditions (involves assessing the health status of workers in relation to the risk factors existing at the workplace under special conditions compared to the conditions existing at the time of previous re-classification of jobs in special conditions, based on the report of the medical practitioner who supervises the health status of the workers and the morbidity due to occupational diseases, diseases related to the occupation, also taking into account the occupational safety and health measures).

In order to reassess the jobs in special conditions, within a period of 60 days from the date of publication of the Decision in the Official Gazette of Romania, a joint order of the minister of labor and social justice and of the minister of health shall establish the Commission for the reassessment of the jobs under special conditions, which will be established within the Labor Inspectorate.

For reassessment of employment under special conditions, the employer must submit to the Commission's secretary a series of documents (including a written request for job reassessment under special conditions, technical expertise, medical expertise).

After examining the application for job reassessment in special conditions, the Commission will decide whether to maintain or reject the approval of employment in special conditions. The decision issued by the Commission may be challenged in accordance with the Administrative Litigation Law no. 554/2004.

Expenditure related to the process of job reassessment under special conditions shall be paid by the applicant employer.

On the date of the Decision's entry into force, the Government Decision no. 1.284 / 2011 on the establishment of the procedure for reassessment of the jobs under special conditions provided by art. 30 par. (1) lit. e) of Law no. 263/2010 on the unitary pension system, published in the Official Gazette of Romania, Part I, no. 935 of December 29, 2011 is repealed.

Government Decision no. 946/2017 regarding the establishment of the quota by types of workers admitted to the labor market in 2018 was published in the Official Gazette of Romania, Part I, no. 1040 of 29 December 2017, with effect from that date.

The Decision established the numbers by types of newly admitted workers on the Romanian labor market for the year 2018, as follows:

- (a) permanent workers - 4.000;
- (b) posted workers - 1,200;
- (c) persons transferred within the same company - 700;
- (d) highly qualified workers - 500;
- (e) seasonal workers - 400;
- (f) trainees - 100;
- (g) cross - border workers – 100.

energy - legal changes published in December 2017

NRAE Order no. 119/2017 for the designation of suppliers of last resort was published in the Official Gazette of Romania, Part I, no. 1004 of December 18, 2017.

Until the implementation of a competitive selection mechanism of the suppliers of last resort and their appointment based on this mechanism, the following licensees for electricity supply are designated as suppliers of last resort:

- (a) ELECTRICA FURNIZARE - S.A.;
- (b) ENEL ENERGIE MUNTENIA - S.A.;
- (c) ENEL ENERGIE - S.A.;
- (d) E.ON ENERGIE ROMÂNIA - S.A.;
- (e) CEZ VÂNZARE - S.A.

Each license holder referred to above is required to ensure the supply of electricity as the supplier of last resort to the places of consumption located in the geographical area(s) foreseen under the specific conditions associated with the power supply license for which the license holder had the obligation to ensure the supply of electricity at regulated fees until the date of their elimination and which belong to the final customers in one of the following situations: they did not exercise their right of eligibility; they meet the conditions imposed by universal service law and, after having exercised their eligibility right, they request to benefit from universal service; they do not have an ensured supply of electricity from any other source, except for customers disconnected for electricity theft or failure to pay, in accordance with the legal provisions in force.

Date of entry into force: January 1, 2018.

NRAE Order no. 120/2017 for repealing the Order of the President of the National Regulatory Authority for Energy no. 83/2013 on the approval of the Pricing Methodology for the electricity sold by producers on the basis of regulated contracts and the quantities of electricity from the regulated contracts concluded by the producers with the suppliers of last resort, was published in the Official Gazette of Romania, Part I, no. 1004 of December 18, 2017.

On the date of entry into force of this Order, the Order of the President of the National Regulatory Authority for Energy no. 83/2013 regarding the approval of the methodology for setting the prices for electricity sold by producers on the basis of regulated contracts and the quantities of electricity from the regulated contracts concluded by the producers with the suppliers of last resort, published in the Official Gazette of Romania, Part I, no. 732 of November 28, 2013, is repealed.

Date of entry into force: January 1, 2018.

NRAE Order no. 121/2017 for the approval of the conditions of application of the competitive market component fee was published in the Official Gazette of Romania, Part I, no. 1004 of December 18, 2017.

In bills issued to end-users who benefit from the universal service, the CMC fee or the differentiated CMC fee, based on the customer's option, applies to all electricity consumption recorded by them after the effective date of this order.

At the written request of the end user benefiting from the change of universal CMC service fee into a differentiated CMC fee, the supplier of last resort shall ensure the change within 10 business days of the date of filing the request.

CMC Fees applied by providers of last resort approved by the National Energy Regulatory Authority do not include taxes such as green certificates, high efficiency cogeneration, statutory excise duties, value added tax. These fees will be highlighted separately in the invoice and will be included in the total amount for payment.

When calculating the invoice value, the CMC rates are used in the form approved by the National Regulatory Authority for Energy with four decimal places. Rounding to the minimum monetary unit (1/100 lei) is made at the invoice value before VAT is applied.

The order approves time zones specific to the differentiated CMC fee for household customers, as set out in the appendix that forms an integral part of this order.

The suppliers of last resort comply with the provisions of the hereby order and the specialized directorates within the National Energy Regulatory Authority are monitoring its application.

Date of entry into force: January 1, 2018.

NRAE Order no. 125/2017 for the approval of the regulated fee applied by the electricity market operator was published in the Official Gazette of Romania, Part I, no. 1016 of 21 December 2017.

The Order approves the regulated fee applied by the electricity market operator.

The act repeals the Order of the President of the National Regulatory Authority for Energy no. 106/2016 for the approval of the regulated fee applied by the electricity market operator.

Date of entry into force: January 1, 2018.

NRAE Order no. 126/2017 regarding the approval of fees and financial contributions collected by the National Regulatory Authority for Energy in 2018 was published in the Official Gazette of Romania, Part I, no. 1016 of 21 December 2017.

The act approves the fee pertaining to economic operators performing activities in the field of electricity, heat and natural gas sector for the granting of permits and licenses and the fee charged for issuance of permits and authorizations to economic operators providing design, execution, verification and exploitation services for power and natural gas installations.

The Order also approves:

- (a) the fee charged for the authorization of natural persons working in electricity, heating and natural gas, and
- (b) the fee and yearly contribution charged by the National Regulatory Authority for Energy from economic operators in the electricity, heat and natural gas sectors, which, according to the law, are within the competence of the National Regulatory Authority for Energy.

Date of entry into force: January 1, 2018.

Decision of the Government of Romania no. 925/2017 regarding the establishment for the year 2018 of the percentages stipulated in art. 177 par. (3⁶) and (3⁷) of the Law on Electricity and Natural Gas no. 123/2012 was published in the Official Gazette of Romania, Part I, no. 1018 of 22 December 2017.

The Decision sets out the following percentages for the minimum quantity of natural gas to be traded on the centralized market in Romania for the year 2018:

- (a) The percentage provided in Art. 177 par. (3⁶) of the Law on Electricity and Natural Gas no. 123/2012, as amended and supplemented for 2018, is 30%;
- (b) The percentage provided in Art. 177 par. (3⁷) let. a) of Law no. 123/2012, as amended and supplemented for 2018, is 20%;
- (c) The percentage provided in Art. 177 par. (3⁷) let. b) of Law no. 123/2012, as amended and supplemented for 2018, is 30%

Date of entry into force: December 22, 2017

NRAE Order no. 123/2017 regarding the approval of the contribution for high efficiency cogeneration and some provisions regarding its invoicing was published in the Official Gazette of Romania, Part I, no. 1023 of December 22, 2017.

Article 1 of this act approves the contribution for high efficiency cogeneration, at the value of 0,01194 lei / kWh, excluding VAT.

The suppliers of customers on the territory of Romania shall invoice the contribution provided for in art. 1 to consumers with whom they have concluded electricity supply / purchase contracts.

The Order defines the phrase "the suppliers of customers on the territory of Romania" as: (i) the electricity suppliers; (ii) producers with right to supply; (iii) suppliers / producers supplying their own consumption sites (self-supply).

The Order supplements the supply / purchase contracts for electricity concluded with end users.

Date of entry into force: January 1, 2018.

NRAE Order no. 127/2017 amending the Order of the President of the National Regulatory Authority for Energy no. 77/2017 for the approval of the Regulation on the organization and operation of the green certificates market was published in the Official Gazette of Romania, Part I, no. 1031 of December 28, 2017.

The act amends Order no. 77/2017 for the approval of the Regulation on the organization and operation of the green certificates market, as follows:

- (a) it is provided that OPCOM S.A., the Market Operator of the Electricity and Natural Gas Market ensures the necessary conditions for the allocation of green certificates resulting from transactions concluded in a trading session on the centralized anonymous green certificates spot market in proportion to green certificates for sale / purchase offerings starting January 1, 2019;
- (b) it is established that the provisions of Art. 28 par. (3) of the regulation set out in the Appendix to the Order for the correlation of green card sales / purchase bids from a trading session on the centralized anonymous green certificates spot market in relation to time mark expires on 31 December 2018;
- (c) it is foreseen that as from 1 January 2019, the allocation of green certificates resulting from transactions concluded in a trading session on the centralized anonymous green certificates spot market shall be made in proportion to the green certificates sale/purchase offers.

Date of entry into force: January 1, 2018.

PPP & concessions - legal changes published in December 2017

Government Emergency Ordinance no. 104/2017 for amending and supplementing the Law no. 233/2016 regarding public-private partnerships was published in the Official Gazette, Part I no. 1037 of 28 December 2017, entering into force on the same date.

The amendment of the Law on Public-Private Partnerships was considered necessary in the view of the introduction of new elements requiring an urgent correlation of certain provisions in the text of Law no. 233/2016 with public procurement law, seeking to include new concepts specific to public-private partnership contracts reflecting good international practices, as well as simplifying the steps to be taken by public authorities intending to implement projects in public-private partnership regime.

The main amendments and additions to the Public-Private Partnerships Law are as follows:

- the concept of "public-private partnership" is redefined, as having the subject of realization of an asset or, as the case may be, the carrying out of some interventions and / or expansion of an asset or assets belonging to the public partner's patrimony, destined for public service and / or operation of a public service; if the subject of the public-private partnership contract is the execution of intervention works and / or the extension of an asset, the work carried out must represent more than 50% of the value of the asset at the completion of the investment;
- it is established that the mechanism of the public-private partnership is characterized by the following elements: (i) cooperation between the public partner and the private partner, in order to implement a public project; (ii) the length of the contractual relationship sufficient to enable the private partner to recover the costs of the investment made, the operating costs and the realization of a reasonable profit; (iii) financing over 50% of the investment from private funds; (iv) sharing the risks between the public partner and the private partner, depending on the ability of the public partner to manage and control a certain risk;
- as regards the forms of public-private partnership, both the institutionalized and the contractual ones are defined as being made under long-term contracts (a non-existent mention in the previous form of Law No. 223/2016); in the case of both types of partnerships, if the public partner is subject to a reorganization measure, regulated by a normative act, the new entity that takes over its attributions and activity will also assume the quality of public partner in the public-private partnership contract;
- it regulates definitions of new terms such as "public project", "financial closure", "public-private partnership contract", "intervention works";
- the range of authorities that can be public partner is extended; thus, beside the contracting authorities / entities provided by the Laws no. 98/2016, 99/2016 and 100/2016, a public partner may also be authorities, institutions and entities referred to in art. 2 point 30 of the Law no. 500/2002 on public finances, respectively art. 2 point 39 of the Law no. 273/2006 on local public finance and art. 67 of Law no. 273/2006, as well as other entities classified in the public administration according to Chapter 20 of Annex A to Regulation (EU) No. 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European System of National

and Regional Accounts in the European Union, published in the Official Journal of the European Union, L series, no. 174 of June 26, 2013;

- it is stipulated that through the awarding documentation and subsequently through the public-private partnership contract, the public partner may transmit or establish, subject to the state aid rules, but without having to undertake a procedure other than the regulated procedure by Law no. 233/2016, in favor of the project company, the right to collect and use fees for the implementation of the project from the users of the public good or service which form the subject of the public-private partnership contract;
- the stages necessary for concluding and executing a public-private partnership contract are modified and detailed;
- the authorities responsible for the approval of the central public administration projects and the local public administration are provided;
- it is now possible that the public partner can contract legal, technical and financial consulting services in order to prepare the substantiation study;
- in the case of transport infrastructure projects, the award documentation made by the public partner for the award of the public-private partnership contract must be drawn up on the basis of the technical execution design, in accordance with art. 12 paragraph (1) of the Government Decision no. 907/2016 regarding the development stages and the framework content of the technical and economic documentation related to the public-financed investment objectives / projects;
- it is specified that upon assessing the submitted financial bids and, implicitly, the awarding documentation, the financing costs for the project will be taken into account;
- it is also envisaged to ensure the continuity of the project by regulating the situations of replacement of the private partner; in this context, some mechanisms are available to allow the replacement of the private partner in case of non-performance, without redoing the contract award procedures;
- the essential aspects that the public-private partnership contract should contain are extended;
- it is specified that the public partner may constitute, under the law, in compliance with the state aid regulations, but without having to undergo another award procedure than the one regulated by Law no. 233/2016, for the benefit of the project company, in respect of the assets intended for the realization of the project and to which it has the right to dispose of: (i) concession rights on public property or rights arising from the letting of public property; (ii) superficies, easement or usage rights over private property;
- a new chapter on misdemeanors and sanctions is introduced.

After the Emergency Ordinance enters into force, the Law on Public-Private Partnership will be republished, and the texts will be renumbered.

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Also, within 60 days from the date of entry into force of the hereby Ordinance, the methodological norms for the application of Law no. 233/2016 shall be drawn up.

public procurement - legal changes published in December 2017

Government Emergency Ordinance no. 98/2017 on the ex-ante control function of the award procedure of contracts/ framework agreements, sectorial contracts / framework agreements and works concession and service concession contracts was published in the Official Gazette of Romania, Part I, no. 1022 of December 22, 2017, to enter into force on March 15, 2018. On the same date, it will repeal Government Emergency Ordinance no. 30/2006 regarding the verification function of the procedural aspects related to the process of awarding the public procurement contracts, public works concession contracts and service concession contracts.

The Emergency Ordinance regulates how the ex-ante control of the procurement process for contracts / framework agreements, sectorial contracts / framework agreements and works concession contracts and services concession contracts respectively, and amendments thereof.

According to the Ordinance, the National Agency for Public Procurement (NAPP) is the public institution responsible for performing the ex-ante control function of the contract awarding process and the amendment of these contracts. In performing the ex-ante control function, NAPP performs the quality and conformity control over:

- (a) the process of awarding contracts, after posting the procedural documents in SEAP / sending the notice for the negotiating procedure without prior publication and until the communications on the outcome of the award procedure remain final; both the awarding documentation, together with the contracting strategy and other accompanying documents including the errata notice, as well as the contracting authority's response to the clarification requests made by the economic operators, will be verified; and
- (b) contract amendments included in the verification as a result of the application of a selection methodology.

Quality issues are understood to cover legal provisions in the area of procurement / concessions that are subject to extensive or restrictive interpretation in the specific context of an award procedure because they must be adapted to the particularities of the economic activity / sector encompassing the subject matter of the contract and/or the relevant practices of the market in which the potential economic operators / bidders are constantly operating, and, in terms of regularity, those issues which concern legal provisions in the field of procurement/ concessions for which a literal interpretation can be made or for which NAPP issues an official interpretation of the way of application in practice, including by orders or instructions of the President of NAPP and which, as a rule, apply as such, for all award procedures, irrespective of the economic sector of the scope of the contract and / or the relevant practices of the market in which the potential economic operators / bidders are constantly operating.

The selection methodology is based on the application of criteria relating to the contracting authority's history of performance in procurement and the aspects of the contracting strategy that accompany each award procedure, namely the value and complexity of a contractual change that is intended to be achieved.

The Emergency Ordinance also contains provisions on:

- creating and regulating a conciliation procedure between NAPP and contracting authorities, whether such contracting authority has objections on deviations from the quality aspects of the check lists identified by

- NAPP as a result of the ex-ante control activity over the award process and / or the measures ordered by NAPP to remedy those deviations;
- the regulation of the conditional or unconditional approval issued by NAPP; the findings of the ex-ante control activity and the measures ordered by the NAPP are subject to a favorable approval, which may be: a) unconditional, where no deviations are found regarding the quality and / or compliance aspects included in the checklists; or (b) conditional, where deviations are made with regard to the quality and / or compliance aspects of the checklists;
 - NAPP's obligation to request in court, within 3 months from the date of acknowledging the signing of the contract, the finding as null and void of the contracts concluded following an awarding procedure which was subject to ex-ante control and in which NAPP issued a conditional approval, and the contracting authority carried out and finalized the award procedure without remedying the irregularities found by NAPP;
 - introducing a new ex-ante control over the bidding process; NAPP conducts the quality and compliance of the conclusions of the critical phases of this process, as follows: a) the composition of the assessment commission and the conclusions of said commission regarding the fulfillment of the formal conditions related to the submission of the bids/ applicants and the qualification / selection criteria by the bidders / applicants; b) the conclusions of the assessment committee on the technical proposals and their compliance; c) the conclusions of the assessment committee on the financial proposals and their compliance; and d) the conclusions of the assessment committee regarding the analysis of the supporting documents for the fulfillment of the qualification / selection criteria submitted by the applicants to be selected according to the rules stipulated in the award documentation in the procedures stipulating the pre-selection stage, namely by the bidder(s) who shall be declared to be the winner(s) following the application of the award criterion, as well as the conclusions included in the award procedure report.

Government Emergency Ordinance no. 107/2017 for the amendment and supplementation of some acts with impact in the field of public procurement was published in the Official Gazette of Romania, Part I, no. 1022 of 22 December 2017, with effect from that date.

The act amends a considerable number of articles from Law no. 98/2016 on public procurement, Law no. 99/2016 on sectorial procurement, Law no. 100/2016 on concessions of works and concessions of services, as well as from Law no. 101/2016 on remedies in connection with the award of public procurement contracts, sectorial contracts and concession contracts for works and concessions of services, as well as for the organization and functioning of the National Council for Solving Complaints, as well as from Government Emergency Ordinance no. 13/2015 regarding the establishment, organization and functioning of the National Agency for Public Procurement, approved by Law no. 244/2015.

Of these changes, we mention the following:

(A) Regarding the Law no. 98/2016 on public procurement:

- it defines the concept of needs of general interest intended to be met by bodies governed by public law designated as contracting authorities within the meaning of the law;
- a threshold value of Lei 929.089 is introduced for public procurement contracts / framework agreements for products and services awarded by local contracting authorities as defined in art. 23 of the Local Public Administration Law no. 215/2001, as well as those under their control; contracts with an estimated value, exclusive of VAT, greater than or equal to this threshold shall be subject to the award procedures governed by Law no. 98/2016 and the publication of a contract notice in the Official Journal of the European Union;
- it is noted that the award procedures governed by Law 98/2016, for which publication of a contract notice and / or award is mandatory in the Official Journal of the European Union, apply in the case of the award of public procurement contracts / framework agreements estimated value, net of VAT, is equal to or higher than the thresholds referred to in art. 7 of Law 98/2016;
- it clarifies the exceptional situation of art. 19, according to which the contracting authority may apply the simplified procedure or, as the case may be, the direct purchase, for individual lots, when the legal conditions are met;
- it is established that Law 98/2016 does not apply to public procurement / framework agreements and solution contests which the contracting authority is obliged to award or organize in accordance with procurement procedures other than those provided for by law: (i) established by a legal instrument that creates international legal obligations, such as an international agreement concluded in accordance with the treaties between Romania and one or more third countries or subdivisions thereof, covering works, products or services for joint implementation or exploitation of a project by signatories or as a result of the application of a specific procedure under European law in the context of territorial cooperation programs and projects; (ii) established by an international organization.
- Article 53 establishes the right of the economic operator to participate in the award procedure as a bidder or applicant either individually or jointly with other economic operators, including in the form of temporary association established for the purpose of participating in the award procedure, under the conditions laid down by law, by deleting the reference to participation as a proposed subcontractor or a supporting third party;
- it substantiates the contracting authority's right to apply the negotiation procedure without the prior publication of a contract notice, and where during a simplified procedure for the purchase of products, services or works no bids or only inadequate bids have been submitted, provided that the initial conditions of the procurement are not substantially altered and, at the request of the European

Commission, a report (for better correlation with the text of the European Directive) is submitted to it;

- indicating in the bid the proposed sub-contractors data only if they are known at that time; the indication of the parts of the contract that have been decided to be subcontracted remains mandatory;
- it is stipulated that in the case of the simplified procedure organized in one stage, the contracting authority has the right to decide on the organization of a final stage of the electronic tender, in which case it has the obligation to specify this decision in the simplified notice and in the award documentation; for the same type of simplified procedure, the regulation that allowed economic operators to invoke the support of a third party for a maximum of 50% of the requirement for similar experience is eliminated;
- the procedure for the contracting authority to respond to requests for clarification from economic operators regarding the award documentation is modified as follows: the contracting authority shall set a deadline (or two) for responding to the clarification requests in the contract notice / simplified procedure/ competition; the old regulation provided for a 3-day recommended term from the receipt of such a request until the contracting authority's answer), and the deadline for the contracting authority to respond to requests clarifications prior to the deadline for submitting bids is increased to 10 days from 6 days and 5 days from 4 days for emergency situations;
- the provision that if third party support was to be used for non-transferable resources, the third party's commitment was to ensure to the contracting authority fulfilment of their obligations, if the contractor encounters difficulties during the course of the contract, is repealed;
- it is stipulated that if more than one economic operator participate jointly in the award procedure, the fulfillment of the technical and professional capacity criteria as well as the economic and financial situation (the latter absent in the previous regulation) is demonstrated by taking into account the resources of all the members of the group and the contracting authority requires them to jointly answer for the performance of the public procurement contract / framework agreement;
- it is expressly regulated that supporting third parties and subcontractors must fill in and submit a separate ESPD form in the award procedures, containing certain information;
- paragraphs 3, 4, 5, 51 and 6 of article 215 defining the admissible, unacceptable and non-compliant bids are modified. The bid is considered unacceptable if it does not meet the formal requirements for its preparation and presentation, has been submitted by a bidder who does not have the necessary qualifications or whose price exceeds the estimated value as established and documented prior to the initiation of the award procedure, and this value can not be supplemented; the bid is considered non-compliant if it does not meet the requirements of the procurement documents, has

been belatedly submitted, shows evidence of anti-competitive or corrupt practices or was considered by the contracting authority to be unusually low;

- a new concept of inadequate bid is introduced, defined as being a bid irrelevant to the subject matter of the contract and which obviously can not satisfy the needs and requirements of the contracting authority indicated in the award documents without substantial modifications.

(B) Regarding Law no. 99/2016 on sectorial procurement:

- a series of corrections of terms and errors are being implemented throughout the legislative text, most likely resulting from the translation of the European Directive;
- the notion of contracting entity as defined in art. 3 par. 1 let. e) is replaced by the notion of contracting authority;
- art. 67 paragraph (2) provides that the contracting entity is entitled to require joint economic operators participating in the award procedure, once they have been awarded the contract (in the earlier regulation it was mentioned once the bid has been designated the winner), to adopt or to establish a certain legal form, provided that this had been provided in the contract notice or the award documentation and in so far as such amendment is necessary for the proper performance of the sectoral procurement contract;
- indicating the proposed sub-contractor identification data in the bid will be made only if they are known at that time; the indication of the parts of the contract that have been decided to be subcontracted remains mandatory;
- it is stipulated that in the case of the simplified procedure organized in one stage, the contracting authority has the right to decide on the organization of a final stage of the electronic auction, in which case it has the obligation to specify this decision in the simplified notice and in the award documentation; for the same type of simplified procedure, the regulation that allows economic operators to invoke the support of a third party for a maximum of 50% of the requirement of similar experience is eliminated;
- the procedure and the deadlines for response to the clarifications made by the bidders, as in the case of Law no. 98/2016, is amended;
- it is expressly stated in art. 197 par. 2 of the Law that if the third party does not meet the relevant capacity criteria or falls within one of the grounds for exclusion provided in art. 177, 178 and 180 of the act, the contracting entity shall request only once that the economic operator replace the supporting third party, without prejudice to the principle of equal treatment set out in art. 2 par. (2) let. b);

- it is expressly regulated that supporting third parties and subcontractors must fill in and submit a separate ESPD form in the award procedures, containing certain information;
 - the admissible, unacceptable and non-compliant bid definitions are modified, as in the case of Law no. 98/2016, and the concept of inadequate bid is introduced.
- (C)** Within the scope of Law no. 100/2016 on concessions of works and the concessions of services, the letters d) - l) are added to par. (2) of art. 111, representing new cases of misdemeanors. Also, art. 112¹, according to which, by way of derogation from the provisions of art. 13 par. (1) of the Government Ordinance no. 2/2001 on the legal regime of misdemeanors, the application of the sanction by fine has a statute of limitations of 36 months from the date when the misdemeanor is committed.
- (D)** Regarding the Law no. 101/2016 on remedies in respect of the award of public procurement contracts, sectorial contracts and concession contracts for works and concessions of services, as well as for the organization and functioning of the National Council for Solving Complaints:
- it is stipulated that a person has or had an interest in an award procedure, if they have not yet been definitively excluded from that procedure; an exclusion is final if it has been notified to the applicant / bidder concerned and either it has been considered legal by the Council / court or it can no longer be the subject of an appeal;
 - it is stipulated that if several complaints are filed in the same procedure both before the National Council for Solving Complaints (NCSC) and before the court, the court can decide the connection of the appeals under the conditions of art. 139 of the Code of Civil Procedure (in the previous regulation, the connection was mandatory);
 - the deadline for resolving the complaints by NCSC is regulated to 20 working days from the date of receipt of the public procurement file, with the previous regulation being 20 calendar days;
 - in the procedure for settling complaints against NCSC decisions, it is stipulated that the court may order, by default, the provision of any evidence necessary to settle the case;
 - in case of a judicial appeal, the time limit within which the defendant shall file a statement of defense is changed from 3 working days (as stipulated by the old regulation) to 5 working days after the complaint was communicated by the court;
 - the court's ruling in the case of disputes that have been solved by court can be attacked by second appeal within 10 days from the date of the communication, instead of 30 days, the deadline from the previous regulation.

As transitional provisions, GEO 107/2017 stipulates that: (i) the award procedures in progress at the date of its entry into force (22 December 2017) remain subject to the legislation in force at the time of their initiation; (ii) the complaints, trials and requests pending before the NCSC or, as the case may be, before the courts at the date of its entry into force

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continue to be judged under the conditions and procedures provided by the law in force on the date on which they started ; and (iii) adjusting / reviewing the price of public procurement contracts / sectorial contracts concluded before the entry into force of Law no. 98/2016 , respectively of Law no. 99/2016 shall be carried out in accordance with the legal provisions in force at the time of their implementation.

constructions - draft laws published in December 2017

The legislative proposal for amending Law no. 50/1991 regarding the authorization of construction works and Law no. 350/2001 on land management and zoning was registered and published on the website of the Romanian Senate on 19 December 2017.

The legislative initiative came as a result of the rejection of land book extracts released in electronic form by some local public authorities in the applications for issuance of zoning certificates, as well as of the existence of a non-uniform practice regarding the content of the related documentation. In this respect, the proposed draft aims at simplifying the procedure for the issuance of zoning certificates and building permits by introducing obligations and sanctions on behalf of local public authorities.

Thus, according to the legislative initiative, the documentation requested by the public authorities for issuing the zoning certificate will be strictly limited by the methodological norms for the application of the Law no. 50/1991. Moreover, the request for additional documents upon the application for issuance of the zoning certificate will represent a misdemeanor on the part of the public authorities and such may be fined from RON 5,000 to 30,000.

Also, in order to reduce the time required to issue zoning certificates, if the methodological norms for applying Law no. 50/1991 stipulate the obligation to request documents issued by other public authorities or institutions, the authorities tasked with issuing zoning certificates will be obliged to accept the documents sent directly by the respective public authorities or institutions by electronic means of communication.

employment - draft laws published in December 2017

The legislative proposal for supplementing paragraph (1) of art. 139 of the Law no. 53/2003 - The Labor Code was registered at the Senate for debate under no. B634 on 8 December 2017.

The legislative initiative envisages setting the Day of Good Friday as a non-working legal holiday.

In addition to the importance of this religious day, the initiative highlights that Good Friday is an official holiday in most EU Member States, for example in Germany, the United Kingdom, Greece, Spain, Portugal, Sweden, Finland, Slovenia, Czech Republic, Denmark, Lithuania, Estonia, Malta, Cyprus, Luxembourg.

Moreover, in Romania, the Labor Code provides for 14 days of legal holidays, less compared to other European Union countries (Belgium, Lithuania, Cyprus) where there are 16 or 17 legal holidays.

The Draft Government Decision for determining the categories of persons with disabilities who receive, for the work carried out within the normal working hours, an increment of 15% to the basic salary / wage / function pay / hiring allowance was published on the website of the Labor Ministry on 11 December 2017.

The draft has its origin in the current regulation, according to which the 15% increase of the basic salary is granted to the blind with severe disability, for the work done within the normal work program, a situation that differentiates on the basis of disability, concerns salary earnings made by people with disabilities.

As a result, a draft Government decision is proposed to establish the categories of persons with disabilities who will benefit from the 15% increase of the basic salary / wage / function pay / hiring allowance provided in art. 2 of the Law no. 153/2017 on the remuneration of personnel paid from public funds.

Thus, the 15% increment provided in art. 22 of Law no. 153/2017 regarding the salaries of personnel paid from public funds will apply to all persons classified as severely disabled or having high degree of disability on the basis of and during the validity period of the document attesting to the disability degree, regardless of the type of disability, issued according to the law by the disability assessment commissions of the county, and the local sections of the Bucharest Municipality or the Higher Commission for Evaluation of the Adult Disabled Persons, based on the psycho-social criteria based on which the disability degree is established.

The Draft Decision is published on the Ministry of Labor website until January 25, 2018 and can be accessed at the following link: http://www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decizionala/5030-11122017_P_hg_spor_AI.pdf.

Draft for amending and supplementing Law no. 263/2010 on the unitary pension system was registered at the Senate for debate under no. B645 on 12 December 2017.

The proposal seeks to introduce the provision that persons who meet the standard retirement age limit and have a contribution period less than the minimum contribution period or in specialty, as the case may be, be entitled to a pension in proportion to the contribution period in relation to the minimum contribution period or the specialty period.

This provision is intended to eliminate inequality between those who have a minimum contribution period or in specialty and those who have a lower contribution period than that. The latter are entitled to receive a pension in proportion to the contribution period. It is considered unfair that the state does not grant them any money entitlements as a result of the work done and the payment of contributions to the state.

Draft Government Decision for amending Government Decision no. 1352/2010 on the approval of the Structure of Occupation Classification Romania - basic group level according to the International Standard Classification of Occupations - ISCO 08, republished, was published on the website of the Ministry of Labor on 14 December 2017.

The draft Government Decision aims to amend the structure of COR only as regards the renaming of the main group 9 from "Unskilled Workers" to "Basic Occupations".

In support of the draft, it is mentioned that in discussions with major players on adult vocational training and qualifications, it emerged that in COR main group 9, "Unskilled Workers", there are occupations that require the possession of some basic general knowledge and specific skills for practicing them.

Also, the Sectoral Committees, public social dialogue institutions, participating in the development of national and sectoral vocational training strategies, as well as in the developing and updating the qualifications of their respective sectors, identified in the main group 9 series of occupations for which skill levels 1 are required.

The Draft Decision is published on the Ministry of Labor website until 02 February 2018 and can be accessed at the following link: <http://www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decizionala/20171214-HG-clasificare-ocupatii-COR.pdf>.

The draft law on the approval of Government Emergency Ordinance no. 99/2017 for the amendment and supplementation of the Government Emergency Ordinance no. 158/2005 on sickness leave and healthcare insurance contributions was registered at the Senate for debate under no. B670 on December 18, 2017.

The promotion of the draft law is mainly determined by the need to:

- observing the implementation of some healthcare measures included in the Governance Program 2017-2020;
- alignment of the provisions of GEO no. 158/2005 on sickness leave and healthcare insurance contributions with the provisions of Law no. 227/2015 regarding the Fiscal Code, as amended and supplemented by GEO no. 79/2017, as regards the work insurance contribution;

- introducing measures to regulate the legal framework for the implementation of the IT solutions for administration of the electronic sick leave system, in the absence of which the prescribing physicians will not be able to fill in and submit to the employers / beneficiaries the electronic sick leave certificates in electronic form by remote transmission, with certified electronic signature;
- the implementation in the healthcare insurance system of fiscal measures related to the elimination of the contribution for holidays and health insurance allowances, starting with January 1, 2018, transposed into the Law no. 227/2015 regarding the Fiscal Code by GEO no. 79/2017;

Government Emergency Ordinance no. 99/2017 was published in the Official Gazette no. 1005 of 19 December 2017 and contains provisions relating to:

- increasing the age limit, from 7 to 16 years, in the case of serious illnesses of the sick child for which one of the parents or the insured who, under the law, adopted or has been appointed guardian, may be entitled to sick leave and allowance for the care of the sick child;
- the possibility of granting the maternity allowance calculated in relation to all the incomes on the basis of which the contribution for leave and health insurance indemnities was calculated and paid;
- the possibility of optional insurance in the healthcare insurance system of natural persons, other than those who earn salary or wages or unemployment benefits, in order to receive paid leave and healthcare insurance benefits, based on an insurance contract for leaves and healthcare insurance benefits;
- considering that through the Fiscal Code the contribution for leaves and healthcare insurance indemnities has been eliminated, provisions are introduced whereby persons who earn income from salaries and similar sources are insured in the healthcare system, under the conditions of payment to employers of the labor insurance contribution.

Draft Law amending and supplementing the Government Emergency Ordinance no. 194/2002 on the foreigners regime in Romania republished, with the subsequent amendments and completions and of the Government Ordinance no. 25/2014 on the employment and posting of foreigners on Romanian territory and on the amendment and supplementation of some normative acts regarding the foreigners regime in Romania, with subsequent amendments and completions, was registered at the Senate for debate under no. B677 on December 19, 2017

The legislative initiative aims at eliminating the need to obtain the employment permit for temporary cross-border workers for a period of up to 9 months in a calendar year. It is also proposed that for the extension of the temporary right of residence for work purposes, the cross-border employee's salary should be at least equal to the gross minimum wage.

In support of the initiative, it is mentioned that the changes are necessary in the context in which the local authorities in the border counties are developing closer ties with the neighboring states. Therefore, the provisions of the legislative proposal can only apply to neighboring countries that are not part of the European Union, namely the Republic of Moldova, Ukraine and Serbia.

The draft law to amend Law 62/2011 on social dialogue was registered at the Senate for debate under no. B681 on December 19, 2017.

The proposal aims to amend the Law on Social Dialogue by proposing the increase of the associativity level among employees and encouraging them to make trade unions easier.

The initiators of the proposal consider that the current legislative framework drastically limits the right of employees to associate in order to collectively defend their rights. The Law of Social Dialogue establishes in art. 3 par. (2) the number of members required to form a trade union, requiring 15 founding members for a trade union to be formed within an entity. It is argued that such provision does not take into account the structure of the Romanian economy, predominantly made up by small enterprises with a number of employees smaller than the threshold established by the law for the creation of a trade union. Therefore, it is proposed to reduce the number of members needed for a trade union to be set up, from 15 to 3, in order to give to employees more chances of organizing themselves in trade unions in order to defend their rights and interests effectively.

The draft law on the approval of Government Emergency Ordinance no. 103/2017 on the amendment and supplementation of some normative acts in the field of social security was registered at the Senate for debate under no. B682 on 19 December 2017.

Approving GEO no. 103/2017 proposed through this draft law is determined by the necessity of (i) correlating the provisions of Law no. 263/2010 on the unitary pension system and Law no. 346/2002 regarding the insurance against accidents at work and occupational illness with the recent amendments to the Fiscal Code; (ii) the unitary regulation and the removal of existing legislative parallelism.

Therefore, GEO no. 103/2017 published in the Official Gazette, Part I no. 1010 of 20 December 2017 provides that in the field of compulsory social contributions, Law no. 263/2010 will contain only regulations regarding voluntary insurance in the public pension system based on the social security contract, which is not managed by the National Agency for Fiscal Administration, but by the National House of Public Pensions. Also, in Law 263/2010:

- the phrase "monthly income from a professional activity" is clarified, the realization of these incomes being a condition for granting the survivor's pension for the surviving spouse;
- regulations are introduced regarding the conclusion of the social security contract, voluntary form of insurance in the public pension system;
- it clarifies the way in which a pension within the public pension system may be cumulated with a service pension regulated by other normative acts of a special nature.

As regards Law 346/2002 on insurance against accidents at work and occupational illness, GEO no. 103/2017 provides for changes to: the classification of persons entitled to benefit from the services covered by Law 346/2002, the revision of some benefits in terms of amount, the clarification of the settlement procedures with the clinics/ wards and the occupational medicine practices within the structure of hospitals and types of benefits granted.

Draft Government Decision for amending and supplementing the Decision no. 332/2014 on the establishment of a State aid scheme to support investments promoting regional development through job creation was published on the website of the Ministry of Labor on 20 December 2017.

The draft is aimed at amending and supplementing the Government Decision no. 332/2014, thus:

- establishing the Ministry of Labor and Social Justice as the authority managing the scheme, instead of the Ministry of Public Finance; Thus, the administration of the scheme at the level of the Ministry of Labor and Social Justice will be achieved through the specialized structure, which is organized and operates at the level of direction, under the direct subordination of the minister of labor and social justice;
- establishing the tasks of the specialized structure consisting in the evaluation, selection and issuance of financing agreements as well as in the provision, notification and reporting to the European Commission of the state aid established by the scheme;
- establishment of the administration of the state aid granted within the scheme for the investment drafts for which the financing agreement was approved, which are in progress at the date of publication of the Government Decision

The Draft Decision is published on the website of the Ministry of Labor by February 6, 2018 and can be accessed at the following link:

http://www.mmuncii.ro/j33/images/Documente/Transparenta/Dezbateri_publice/20171220-HG-modif-HG-332_2014.pdf.

The draft law for the approval of Government Emergency Ordinance no. 116/2017 regarding some budgetary measures and for amending the Law no. 263/2010 on the unitary pension system was registered at the Senate for debate under no. B714 on December 29, 2017

Applying GEO no. 116/2017 proposed by this draft law is determined by: (i) the need to increase the collection rate of the amounts to the general consolidated budget; and (ii) the unitary regulation of certain situations resulting from the implementation of Law no. 263/2010.

GEO no. 116/2017 (published in the Official Gazette, Part I No. 1043 of December 29, 2017) repeals para. (4) and (5) of art. 51 of Law no. 263/2010 on the impossibility of cumulating a pension within the public pension system with a service pension regulated by other normative acts of a special nature. At the same time, art. 36 by introducing a

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minimum threshold for the basis of calculating the social security contribution for insured persons under an insurance contract, namely 35% of the gross average earnings used to substantiate the social security budget.

energy - draft laws published in December 2017

Draft order on the approval of the Framework validity conditions associated to the natural gas supply license was published on the website of the National Regulatory Authority for Energy on 4 December 2017.

The draft terms of validity of the gas supply license was elaborated in order to update the regulatory framework for natural gas supply and was under debate as a discussion document by posting on NRAE's website in two stages - on 29.06.2015, with the deadline for receiving the observations on 31.07.2015, and 14.10.2016 with the deadline for receiving the observations on 26.10.2016.

After analyzing the observations, proposals and points of view received, as well as the amendment of the regulatory framework applicable to the natural gas sector, substantial changes were made to the draft "Framework conditions for the validity of the natural gas supply license", requiring the return to public consultation of this draft regulation. The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq97hA%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

Draft order for the approval of the methodology for setting the calculation method and the price endorsement conditions applied by last resort suppliers to final customers was published on the website of the National Regulatory Authority for Energy on 5 December 2017.

The draft order aims to establish milestones, deadlines and conditions for determining the final prices applied by suppliers of last resort in electricity bills issued to end customers.

The draft order mainly contains the following elements:

- (a) to use the notion of mandatory last resort provider and of the optional last resort supplier introduced by the draft Order for the approval of the Competition Selection Regulation to designate suppliers of last resort;
- (b) the prices approved by NRAE do not include charges for services, which will be included by SLR in final prices applied to final customers;
- (c) NRAE establishes for each mandatory SLR on a network area the maximum price for the universal service calculated as the sum of the average unit cost of electricity purchased from the centralized markets by the economic operators who also have the SLR quality and the unitary cost of supply determined on the basis of the realized values within a defined time period;
- (d) the price for universal service applied to final customers benefiting from universal service from mandatory SLR portfolio is determined by it in relation to the maximum price for the universal service;
- (e) the price for universal service applied to final customers benefiting from universal service from optional SLR portfolio is determined by applying a discount to the price for universal service applied by mandatory SLR;

- (f) the price applied by the suppliers of last resort to final customers who do not benefit from universal service and who have not chosen a competitor is established by applying a percentage increase in the price applied by the SLR to the customers that benefit from the universal service;
- (g) the price applied by the suppliers of last resort to final customers taken over because they remained without a supplier is determined on the basis of the purchase price made by the SLR during the billing period.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq98gQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D>

The draft order for the amendment of the General Conditions related to the license for the provision of the electricity distribution service by the economic operators who are not concessionaries of the power distribution service was published on the website of the National Regulatory Authority for Energy on 11 December 2017.

The Draft Order proposes to amend Art. 7 of the General Conditions attached to the license for the provision of the electricity distribution service by economic operators who are not concessionaries of the electricity distribution service with a view to eliminate the restriction imposed on the licensees of this type in the purchase of electricity for their own technological consumption, by eliminating the phrase "final client" in the article. The amendment is necessary in order to apply equal treatment to economic operators who are not concessionaries of the distribution service, in relation to those who are concessionaires of this service, regarding the possibilities of purchasing electricity for their technological consumption on the wholesale market, under the regulations in force.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq98hg%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D>

Draft Order on the approval of the Regulation on the functioning and settlement of the balancing market and the Regulation for calculation and settlement of imbalances between the parties responsible for balancing was published on the website of the National Regulatory Authority for Energy on 13 December 2017.

In July 2017, the Appendix to the order including the Compensation and Imbalances Settlement Regulation of Parties responsible for balancing in the modified version was again submitted to the public consultation. As a result of the observations received, the following significant changes were made:

- (a) rewriting the definition of the unplanned exchange definition and formula, mentioning the prior known emergency aids;
- (b) the addition of definitions for committed, final, canceled transactions used for resolving network and virtual restrictions that were introduced and explained in the market balancing and settlement regulation but lacked a definition in this regulation;

- (c) the view of a place of production and consumption as separate, one for production and one for consumption, depending on the flow direction, which makes it possible to keep the rule whereby a place of production / consumption must be under the responsibility of a PRE and only one;
- (d) the inclusion of the probation period between the exceptions to the requirement that each TL has one and only one PRE;
- (e) establishing the maximum duration of 6 months for the return of a PRE within the admitted size limits after it is found to have exceeded them;
- (f) added obligation for each PRE to send to the TSO the imbalances of each of its members, noted after measurement;
- (g) eliminating the additional verifications made by the TSO to the registration of a PRE compared to those made by NRAE upon licensing (knowledge, technical means, behavior);
- (h) providing a single procedure for all OR for aggregation of measured values;
- (i) checking the uniqueness of the PRE for one place is made by the OR and TSO;
- (j) the classification and notification of SBs (except the modification of the SB definition in RPUPCD) between the PREs of the suppliers supplying together a consumer, of the quantities corresponding to the consumption provided by the supplier who does not assume the responsibility for balancing and correlatively, the consumption assigned to this supplier being considered zero.
- (k) replacing the transmission of information notes with the uploading on the dedicated platform, under obligation to record the date of uploading.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq98iA%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D>

Draft Order for amending the Order of the President of the National Regulatory Authority for Energy no. 145/2014 on the implementation of smart metering systems was published on the website of the National Regulatory Authority for Energy on 19 December 2017.

NRAE Order no. 145/2014 as amended and supplemented contains provisions on investments in smart electricity metering systems made by electricity distribution operators only until 2017.

In order to ensure the continuity of the activities necessary for the implementation of smart metering systems, until the approval of a regulation on the implementation timetable and of the national implementation plans for the smart metering systems, this draft was published in view of the extension of the term of application of the NRAE Order no. 145/2014 and supplementing it with provisions regarding the possibility of electricity distribution concession

operators to achieve investments in smart metering systems in 2018, subject to certain specific conditions for their approval and inclusion in the regulated fees.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq9%2Bhw%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

Draft Order for the amendment and supplementation of the Procedure for the elaboration and approval of the investment programs of economic operators in the electricity distribution service, approved by the Order of the President of the National Regulatory Authority for Energy no. 8/2016, was published on the website of the National Regulatory Authority for Energy on 21 December 2017.

The draft order envisages modifying the procedure, mainly under the following aspects:

- (a) Clarifying Art. 17 for the purpose of establishing the obligation for operators to review the annual program submitted in accordance with NRAE's observations resulting from the analysis of the documents made available by them and the right of operators to modify the annual program originally submitted and revised as appropriate, upon observance of the conditions of the procedure.
- (b) Supplementing Art. 23, which requires the distribution operators to achieve annually investments amounting to at least 95% of the total amount of the annual investment program approved by NRAE for the respective year at the beginning of the regulatory period.
- (c) Supplementing Art. 24 paragraph (1) (b) with regard to the documents for completion of each investment, to be submitted by the operators for analysis by NRAE, in order to establish a centralizing unit for their follow-up.
- (d) Clarifying the deadlines for transmitting completion documents for each investment so that NRAE has the time to analyze it. Thus, these documents must be transmitted simultaneously with the monitoring template of August and December, even if these layouts can subsequently be revised, given that the documents exist and are available at the proposed deadlines.
- (e) Clarifying the provisions of art. 35 to avoid misinterpretation that the procedure would cease to apply during the fourth regulatory period.
- (f) The obligation to submit substantiation documents on both CD / DVD and USB support is introduced.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq9%2BiQ%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

Draft Order approving the green certificates billing Procedure was published on the website of the National Regulatory Authority for Energy on 22 December 2017.

The draft bill proposes the approval of the Green Certificates Billing Procedure, which establishes:

- (a) how to bill green certificates to end customers;
- (b) how to regularize green certificates to end customers;
- (c) Reporting obligations on invoicing / regularization of green certificate invoices delivered to final customers by electricity suppliers, distribution operators other than concession distributor operators who resell the electricity purchased from one or more energy suppliers electricity to final consumers of electricity connected to its electricity distribution network and by electricity producers supplying electricity to consumers connected by direct lines to power plants they own.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq9%2Fgg%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D>

Draft Order for the approval of the Regulation on the organization and conduct of auctions on the centralized market for universal service was published on the website of the National Regulatory Authority for Energy on 28 December 2017.

The draft order was published on the NRAE website, as a discussion paper, during the period November 20, 2017 - December 4, 2017, together with the Presentation Note, for the interested economic operators to submit their observations and proposals on the draft regulation subject to public consultation.

As a result of the observations received during the public consultation and during the public debate session, the second version of the draft order for the approval of the present Regulation was elaborated.

Regarding the previously published draft, amendments and additions are made to the following issues:

- (a) the trading mechanism has been changed in the sense that it is not traded through simultaneous auctioning with a decreasing price; it proposes a new trading mechanism consisting of two stages, namely an open auction stage and a continuous negotiation stage;
- (b) the timing of the pre-bidding stages changed and the auction scheduling timetable changed (auction sessions calendar will be published at the beginning of each year for the entire calendar year);
- (c) auctions are conducted bi-monthly (according to the auction sessions calendar) for standard trading products and annual, half-yearly and quarterly delivery times;
- (d) SLR will only be able to participate in a bidding session as buyers by auction;

- (e) the way of setting the starting price of the CMUS auctions has changed; the obligation to deposit the financial guarantee for participation was repealed;
- (f) the "Penalties" section has been inserted;
- (g) the CMUSO attributions chapter was modified and supplemented in accordance with the change of trading mechanism on the CMUS;
- (h) provisions regarding the rights and obligations of SLRs and bidders in view of changing the trading mechanism on the CMUS have been supplemented and amended.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq9%2FhA%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D>

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