

Cover article: “ GDPR’s impact on processing of employee personal data for HR purposes. Employment relations – How should one prepare for GDPR compliance?”

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GDPR (Regulation 679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, repealing Directive 95/46/EC), which will apply from 25 May 2018 (hereinafter referred to as "GDPR"), covers all processing of personal data, including personal data of employees.

Legal Changes of February 2018

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company’s activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in:

- Corporate
- Data Protection
- Dispute resolution
- Employment
- Energy

Drafts in Laws of February 2018

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

- Constructions
- Employment
- Energy
- Public Procurement
- Real Estate

+ VF News

Managing associate Alice Ene invited as speaker at the Annual Conference “The year in Banking and Finance” organized by FinMedia Group.

Article “Data Protection Impact Assessment (DPIA) according to GDPR - a practical approach” by Voicu & Filipescu Senior Partner Marta Popa published on CEE Legal Matters. [Click here](#) to read the article.

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cover article

GDPR's impact on processing of employee personal data for HR purposes

Employment relations – How should one prepare for GDPR compliance?

GDPR and employment relations

GDPR (Regulation 679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, repealing Directive 95/46/EC), which will apply from 25 May 2018 (hereinafter referred to as "GDPR"), covers all processing of personal data, including personal data of employees.

Employee personal data processing is natural in the employment relationship because the employer must be able to correctly identify the employee, evaluate them, pay the salary to a bank account, register the employment contract in Revisal, monitor the work and the use of work equipment. All these actions involve the processing of personal data. Of these types of processing, some are mandatory and necessary because they are provided by law, while others are optional, designed to increase the productivity and efficiency of the employer or for other purposes that might be considered excessive according to the GDPR provisions.

The set of obligations of the employer according to the GDPR is more complex and stricter than the previously existing obligations and refers to the processing of personal data of the employees from a triple perspective, namely: (i) recruitment, (ii) performance of the employment contract and (iii) termination of the employment contract.

What are the necessary verifications for GDPR compliance?

Two novelties are especially relevant for HR departments, as follows:

Employees must be informed on the source of personal data

In light of the changes brought on by GDPR, employees will need to be informed on the source which the employer obtained the personal data from. In principle, the data can be obtained from 3 major sources:

- directly from the employee, such as by submitting the resume or filling in the employment application or providing the necessary information for signing the employment contract;
- through the activities that the employee carries out during their employment, such as through performance evaluations;
- from third parties, including references and other background checks, former employers and recruitment agencies (of course, subject to the applicable legal requirements).

Take note of the reason for personal data processing

Once the GDPR takes effect, consent does not validate the processing of all kinds of data in any way, nor their transfer, even within the same group as long as the employee is in a relationship of subordination to the employer and the other principles are not respected, such as limitation of purpose and data minimization.

The main reasons for which employee data can be processed are:

(A) *Contract performance*

For the actual performance of the employment contract, the employer will only be able to process the personal data of the employee required to perform the contractual obligations. For example, the employer will be able to request the employee's identification data necessary for the conclusion of the contract, the bank details needed to pay the salary. It will be difficult to justify requesting information about family members, such as surnames, first names, family members' jobs except when, depending on the workplace, this information may be required for emergency situations.

(B) *Complying with certain obligations*

In some cases, the employer has legal grounds for certain types of personal data processing because there are legal obligations for employers that result from a legal provision or a public authority order. For example, communicating employees' data for health and safety or social security protection, information on the criminal record (for guards, bank employees, warehouse managers), sending it to the tax authorities, processing for purposes related to occupational medicine, assessment of the employee's work capacity.

(C) *Consent*

In recent years, the processing of personal data of employees on the basis of consent has often been questioned, the main argument being that the employee is in a relationship of subordination, which can affect the free manifestation of consent. The employee may feel compelled to agree to the processing of their data requested by the employer, for fear of suffering adverse consequences at the workplace, suffering harm, including being fired. For example, a consent expressed by the employee for video monitoring or GPS monitoring could be considered invalid.

In the case of consent, a detailed analysis of the situation is necessary to ensure that all the requirements that the GDPR imposes in these cases are met:

- Consent must be given freely, be informed, specific and unambiguous;
- Consent must be presented in a manner clearly different from other aspects, in a readily understandable and easily accessible form, using simple and clear language;
- The employee must be able to withdraw their consent at any time.

If the employee withdraws their consent, the employer must promptly cease the processing of personal data, and possibly delete it if it is not associated with other processing based on another supported reason.

(D) *Legitimate interest*

The legitimate interest of the employer may be used as grounds for the processing of data, unless it interferes with the employee's privacy. Before using this reason, the employer will have to carefully examine the extent to which its purpose prevails over the employee's right to privacy or whether there are other ways to collect the necessary information without affecting the privacy of the employees. For example, video surveillance of employees is not legal if it is based on consent but could be justified on the basis of a legitimate interest of the employer (guarding and protecting employees and goods, making work more efficient).

Considering that, unlike the pre-GDPR situation, the processing of personal data of employees on the basis of consent will no longer be a universal and indisputable basis for processing after 25 May 2018, employers must take a series of steps in the meantime, such as:

- Mapping the personal data to determine which data is processed, the purpose of the processing, and how long it is stored. Once having done so, one should consider which of the reasons apply to each processing activity.
- Reviewing and revising all clauses of employment agreements intended to obtain the employee's general consent for processing of personal data.
- If employees' personal data is processed on the basis of consent, then they will be able to withdraw it at any time. Therefore, you will need to implement a mechanism for withdrawing consent and deleting said data.

As the first step in this process, we recommend that you conduct an audit of the "AS IS" situation in your company. Our team can assist you in identifying the compliance gaps and correcting them, and in implementing the measures you decide to apply in preparation of GDPR compliance.

corporate - legal changes published in February 2018

Decision no. 24/2017 on the examination of appeals in the interest of the law formulated regarding the interpretation and application of art. 72 and art. 15312 of Law no. 31/1990, in relation to the provisions of art. 1552 and 1554-1555 of the Civil Code of 1864 and of Art. 2030 of the Civil Code.

The HCCJ has been notified for a decision to ensure the unitary interpretation and application of the provisions of art. 72 and art. 15312 of Law no. 31/1990, in relation to the provisions of art. 1552 and 1554-1555 of the Civil Code of 1864 and of Art. 2.030 of the Law no. 287/2009 regarding the Civil Code, namely, whether in a joint stock company, the statutory director whose mandate expired, without the company extending this mandate expressly or appointing another director, still has the prerogative of representation of the company.

in the case law:

- In a first opinion, it was deemed that the expiration of the director's mandate does not lead to the loss of the capacity to legally represent the company, the director will represent the company after the expiration of the mandate until the appointment of another director;
- In a second opinion it was considered that the expiry of the mandate of a company's director and the non-registration of another director does not confer to the old director the status of legal representative of the company without the explicit acceptance of the appointment to the position of director.

The HCCJ has determined that in the interpretation and uniform application of the provisions of art. 72 and art. 15312 of Law no. 31/1990, referring to art. 1.552 of the Civil Code from 1864, respectively in Art. 2.030 of the Law no. 287/2009 on the Civil Code, applying art. 54 par. (2) of the Law no. 31/1990, **the director of the joint stock company whose mandate expired, without an act of appointing a new director and their acceptance, holds the prerogatives of representation until the termination of the position has been published in accordance with the law.**

Decision no. 24/2017 was published on February 19, 2018.

Government Decision no. 33/2018 regarding the establishment of misdemeanors under the Prevention Law no. 270/2017, as well as the model of the remediation plan was published in the Official Gazette of Romania, Part I, no. 107 of February 5, 2018.

The Government Decision establishes misdemeanors under the Prevention Law no. 270/2017, misdemeanors which are set out in Annex no. 1. Of these, we mention :

- Article 13 (1) of the Law no. 67/2006 on the protection of employees' rights in case of transfer of business;
- Article 113 let. a), b), e), h) of the Law no. 76/2002 on the unemployment insurance system and the stimulation of employment;

- Art. 217 par. (1) let. c) of the Social Dialogue Law no. 62/2011;
- Article 270 par. (1) and (2) of the Companies Law no. 31/1990;
- Article 337 par. (1) of the Law no. 85/2014 on insolvency and insolvency prevention procedures;
- Article 26 par. (1) let. g) of Law no. 50/1991 regarding the authorization of the execution of the construction works;
- Article 24 of Law no. 15/1994 regarding the amortization of capital immobilized in tangible and intangible assets

Annex no. 2 sets out the model of the remedial plan that is attached to the report of the finding and sanction of misdemeanors.

Government Decision no. 33/2018 entered into force on 5 February 2018.

data protection – legal changes published in February 2018

The National Supervisory Authority for Personal Data Processing and the European Commission published new guidelines to ensure a harmonized application of the General Data Protection Regulation.

The National Supervisory Authority for Personal Data Processing published on 21 February 2018 the final form of the following guides, in English, to ensure a harmonized application of the General Data Protection Regulation as of May 25, 2018, according to a press release:

- *Guidelines on Personal data breach notification ;*
- *Guidelines on Automated individual decision-making and Profiling*

At the same time, the European Commission, in the February 2018 Plenary of the Article 29 Working Group, adopted two guides available for public consultation and proposals :

- *Guidelines on the accreditation of certification bodies ;*
- *Guidelines on Article 49 of Regulation 2016/679 - deadline 26 march 2018.*

Litigation - legal changes published in February 2018

The Decision of the Constitutional Court no. 33/2018 regarding the objection of unconstitutionality over the provisions of the Law for amending and completing the Law no. 304/2004 regarding the judicial organization was published in the Official Gazette of Romania, Part I, no. 146 of 15 February 2018 and is applicable from the same date.

The Constitutional Court noticed that the drafting of the judgment, the final act and the resolution of the court by which the dispute between the parties is resolved shall be the result of the secret deliberation activity attended only by the judges who are members of the panel in front of which the debate took place. Only they can rule on matters of fact and law deduced from the judgment, in order to solve them. Therefore, the law expressly provides that the decision is drafted by one of the judges who participated in the case. Moreover, the drafting of a court decision is inherently related to its reasoning, the latter aspect representing, as stated above, an obligation of the judge of the case arising from the provisions of art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. All these aspects are guarantees of the right of the parties to a fair trial, tried by an independent and impartial court, which is subject only to the law. In this respect, the Court considers that the statement of reasons for the judgment is an act inherent in the function of the judge of the case, is the expression of his or her independence and cannot be transferred to a third person.

The Constitutional Court upheld the objection of unconstitutionality and found that the provisions of art. 1 2, 4, 29 and 61 of the Law for amending and completing the Law no. 304/2004 on judicial organization are unconstitutional. Also, by the same Decision, the Constitutional Court rejected as **groundless** the objection of unconstitutionality formulated by the same authors and found that the other provisions of the Law for amending and completing the Law no. 304/2004 regarding the judicial organization are constitutional in relation to the criticisms made regarding the violation of the constitutional provisions of art. 1 par. (5) regarding the clarity and predictability of the law, art. 16 par. (1) on equality before the law and public authorities, art. 21 on free access to justice, art. 73 par. (3) on organic laws, art. 124 and art. 126 on the courts of law.

The Decision of the High Court of Cassation and Justice no. 24/2017 on the examination of appeals in the interest of the law formulated by the Managing Board of the Constanta Court of Appeals and the Public Ministry regarding the interpretation and application of art. 72 and art. 15312 of Law no. 31/1990, in relation to the provisions of art. 1552 and 1554-1555 of the Civil Code of 1864 and of Art. 2030 of the Civil Code, was published in the Official Gazette of Romania, Part I, no. 153 of 19 February 2018 and is applicable from the same date.

The HCCJ has been notified to give a decision to ensure the unitary interpretation and application of the provisions of art. 72 and art. 15312 of Law no. 31/1990, in relation to the provisions of art. 1552 and 1554-1555 of the Civil Code of 1864 and of Art. 2030 of the Law no. 287/2009 regarding the Civil Code, namely, if in a joint stock company, the statutory director whose mandate has expired, without the company extending the mandate expressly or appointing another director, has the prerogative of representation of the company. There are two main opinions in the case law: (i) In the first opinion, it was appreciated that the expiration of the director's mandate does not lead to the loss of the capacity to legally represent the company, being able to represent the company after the expiration of the mandate, (ii) in the

second opinion, it was considered that the expiry of the mandate of a company's director and the non-registration of another director did not give the former director the status of legal representative of the company without the explicit acceptance of the appointment as administrator. The HCCJ has established that, in the interpretation and uniform application of legal provisions, the director of a joint stock company whose mandate has expired without an act of appointing a new director and expressly accepting it, has the prerogatives of representation until the termination of the mandate is published in accordance with the law.

The Decision of the High Court of Cassation and Justice no. 26/2017 regarding the examination of the appeal in the interest of the law declared by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice regarding the unitary interpretation and application of the provisions of art. 86 of the Criminal Procedure Code for the purposes of determining the procedural quality of the entity called the Insured Guarantee Fund for insured persons in the case of mandatory motor insurance to a bankrupt insurer and the limits of liability in criminal proceedings, was published in the Official Gazette of Romania, Part I, no. 162 of 21 February 2018 and is applicable from the same date.

The HCCJ accepted the appeal in the interest of the law formulated by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice and found that, in the interpretation and uniform application of the provisions of Art. 86 of the Code of Criminal Procedure, in the criminal proceedings, the Insured guarantee fund in the case of mandatory motor insurance with a bankrupt insurance company, is not a civilly liable party.

The Decision of the Constitutional Court no. 21/2018 regarding the admission of the unconstitutionality exception of the provisions of art. 352 par. (11) and paragraph (12) of the Criminal Procedure Code was published in the Official Gazette of Romania, Part I, no. 175 of 23 February 2018 and is applicable from the same date.

The subject of unconstitutionality is art. 352 par. (11) and paragraph (12) of the Criminal Procedure Code: "(11) *When classified information is essential to resolving the case, as a matter of urgency, the court shall, request, total declassification, partial declassification, transfer to another classification or permit to access the classified information for the defendant's counsel*" and "(12) *If the issuing authority does not allow the defendant's counsel access to the classified information, they cannot serve to issue a solution of conviction, waiver of the punishment or postponement of punishment in the case*".

The Court upheld the objection of unconstitutionality and (i) found that the phrase "*court requests*" in relation to the phrase "*allowing access to classified information to defendant's counsel*" in the provisions of Art. 352 par. (11) of the Code of Criminal Procedure is unconstitutional, and (ii) found that the phrase "*issuing authority*" in the provisions of Art. 352 par. (12) of the Criminal Procedure Code is unconstitutional because the criticized legislative solution breaks the right balance between the general and the private interests by attributing the decision to refuse access to the classified information with evidential value in the criminal proceedings to an administrative authority which is equivalent to an impediment to the defendant's right of information, with direct consequences on their right to a fair trial, an impediment that is not subject to any form of judicial control.

The Decision of the Constitutional Court no. 22/2018 on the objection of unconstitutionality of the provisions of art. 102 par. (3), Art. 345 par. (3) and Art. 346 par. (4) of the Criminal Procedure Code was published in the Official Gazette of Romania, Part I, no. 177 of 26 February 2018 and is applicable from the same date.

The subject of unconstitutionality is art. 102 par. (2) - (4), art. 345 par. (3) and Art. 346 par. (4) of the Criminal Procedure Code. From the analysis of the exception of unconstitutionality, the Court notes that the authors criticize, in fact, the provisions of art. 102 par. (3), Art. 345 par. (3) and Art. 346 par. (4) of the Criminal Procedure Code: (i) Article 102 (3): "*The nullity of the act by which one ordered or authorized submitting a piece of evidence or by which it has been submitted shall result in the exclusion of the evidence.*"; (ii) art. 345 par. (3): "*If the Preliminary Chamber judge finds irregularities in the referral or if they apply sanctions according to Art. 280-282 to acts of criminal prosecution carried out in violation of the law or exclude one or more of the pieces of evidence submitted, within 5 days from the notification of the conclusion, the prosecutor remedies the irregularities of the notification document and informs the preliminary chamber judge if they maintains the order for referral or request the return of the case*"; (iii) Art. 346 par. (4): "*In all other cases in which one has found irregularities in the notification, they have excluded one or more pieces of evidence submitted or applied sanctions according to Art. 280-282 on acts of criminal prosecution carried out in violation of the law, the preliminary chamber judge shall order the commencement of the trial.*" The Court (a) accepted the objection of unconstitutionality of the provisions of Art. 102 par. (3) of the Criminal Procedure Code and found that they are constitutional in so far as, by the expression "exclusion of the piece of evidence", one also means the deletion of the evidence from the case-file, and (b) dismissed as inadmissible, the exception of the unconstitutionality of the provisions of art. 345 par. (3) and Art. 346 par. (4) of the Criminal Procedure Code.

employment - legal changes published in February 2018

Decision of the Constitutional Court no. 759/23 November 2017 regarding the admissibility of the unconstitutionality exception of the provisions of art. 56 para. (1) let. c) second sentence, the first hypothesis of Law no. 53/2003 - The Labor Code was published in the Official Gazette of Romania, Part I, no. 108 of February 5, 2018, its provisions being applicable by that date.

The Constitutional Court upheld the exception of unconstitutionality raised by Felicia Oanea in Case no. 27.722/3/2014 (old no. 3,680 / 2016) of the Bucharest Court of Appeal - Section VII for cases concerning labor disputes and social security and by Veronica Doboş in File no. 7.802 / 99/2015 of the Iaşi Court of Appeal - Labor and Social Security Litigation Division and found that the provisions of Art. 56 para. (1) let. c) second sentence, the first hypothesis of Law no. 53/2003 - Labor Code are unconstitutional.

Thus, the Constitutional Court mentioned that the provisions of art. 56 para. (1) let. c) second sentence, the first hypothesis of Law no. 53/2003 provide the notification of the third-degree disability pension decision as one of the causes that lead to the automatic termination of the individual employment agreement. Unlike the beneficiaries of the first or second degree invalidity pension, who can not cumulate the pension with obtaining monthly income, being in one of the situations provided by art. 6 par. (1) point I let. a) and b) or point II of the Law no. 263/2010, in the case of third degree invalidity pensioners, the employer has theoretically the option of concluding a new individual employment contract for a maximum of half of the normal working time. Also, the pensioner is free to find another job if the employer refuses to renew the employment relationship.

In this respect, the Constitutional Court considered that the restriction of the exercise of the right to work resulting from the provisions of Art. 56 para. (1) let. c) second sentence, the first hypothesis of Law no. 53/2003 is a disproportionate measure in relation to the considerations envisaged by the legislator and creates an imbalance in terms of the protection afforded to the two parts of the employment relationship, thus defeating the provisions of art. 41 par. (1) of the Constitution. This conclusion is outlined by the fact that it refers to persons with low chances of integration into the labor market, as a consequence of the state of disability.

Separate opinion:

In the separate opinion on the Constitutional Court's decision, the termination of the employment agreement is not determined by a manifestation of the parties' intention to end the employment relationship, but by the effect of the law, as a result of the intervention of a factual situation stipulated by the law, which no longer allows the continuation of the employment relationship under the initial conditions, independently of the will of the employee or the employer.

According to the law, the person having third degree disability lost at least half of the work capacity, being able to perform a professional activity corresponding to at most half of the normal working time (art. 69 let. c) of Law no. 263/2010 on the unitary pension system). It follows that a medical decision finding the third degree invalidity obviously changes one of the essential elements of the individual employment contract, namely that of working time. It is a change that is independent of the will of the employee or the employer, established by law.

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The automatic termination of the employment relationship in such a case is not equivalent to an abusive, unlawful and unjustified cessation, which would result in state interference in order to ensure the employee's exercise of their right of defense against any unlawful or ungrounded measures.

energy - legal changes published in February 2018

NRAE Order no. 27/2018 for the approval of the Regulation for organizing and conducting auctions on the centralized market for universal service was published in the Official Gazette of Romania, Part I, no. 106 of 02 February 2018

The Order approves the Regulation for organizing and conducting auctions on the centralized market for universal service, Regulation which establishes the framework for the procurement by the last providers in a transparent, public, centralized and non-discriminatory way of the electricity intended for the consumption of the end users under the service regime universal, namely:

- the method of organizing and conducting auction sessions on the centralized market for universal service;
- the way of determining the trading products within the auction sessions on the centralized market for the universal service;
- the way of establishing transactions and contracting of the energy traded on the centralized market for the universal service;
- the way of managing and publishing the information about participants, the conduct and the results of the auctions on the centralized market for the universal service

The regulation applies to:

- license holders for production/supply/trading in the electricity sector;
- the operator of the electricity and natural gas market in Romania, as operator of the centralized market for universal service

The Regulation contains provisions on: (i) the framework for the organization of the centralized market for universal service; (ii) the principles for the operation of an auction session; (iii) conducting auction sessions; (iv) the results of the auctions and the conclusion of the contracts.

On the date of entry into force of this Order, the Order of the President of the National Regulatory Authority for Energy no. 65/2014 for the approval of the Regulation on the organization and running of simultaneous auction with decreasing price on the centralized market for universal service, as well as the Decision of the President of the National Regulatory Authority for Energy no. 2.667 / 2014 for the approval of the Framework Contract for sale / purchase of electricity traded on the centralized market for universal service are repealed.

Date of entry into force: 02 February 2018.

NRAE Order no. 33/2018 for the amendment of the Regulation for issuing green certificates, approved by the Order of the President of the National Regulatory Authority for Energy no. 4/2015 was published in the Official Gazette of Romania, Part I, no. 121 of February 8, 2018.

The Order amends the Regulation for the issuance of green certificates, approved by the Order of the President of the National Regulatory Authority for Energy no. 4/2015, as follows:

- one of the obligations of the transmission system operator is amended, namely the operator verifies the existence of certificates of origin and other documents issued by the relevant ministries provided in art. 3 par. (10) of the Order, or institutions subordinated to these ministries, which will show the quantities of RES used for electricity production in the previous semester by producers in accredited power plants;
- an obligation of the accredited economic operators is modified, namely to transmit to the transmission system operator the certificates of origin and other documents issued by either the relevant ministries referred to in art. 3 par. (10) of the Act, or institutions under the subordination of these ministries, showing the quantities of RES used for electricity production and the analysis bulletins resulting in the lower calorific value of the fuels used;
- in the annex no. 2 to the Regulation, it amends point 4 on the calculation formula regarding the share of the consumption of renewable sources of energy accompanied by certificates of origin issued under Art. 3 par. (10) of the Law.

Date of entry into force: 08 February 2018.

NRAE Order no. 38/2018 regarding the establishment of the mandatory quota for the acquisition of green certificates for the year 2017 was published in the Official Gazette of Romania, Part I, no. 187 of 28 February 2018.

The mandatory quota for the acquisition of green certificates by economic operators obliged to purchase green certificates for 2017 is set as follows:

- for January-March 2017, at 0,210 green certificates / MWh, corresponding to a final electricity consumption exempt from the payment of green certificates of 1,693.5 GWh;
- for April-December 2017, at 0.357 green certificates / MWh, corresponding to a final electricity consumption exempt from the green certificates of 5.515,1 GWh

Date of entry into force: 01 March 2018.

Other acts in the energy field:

- (1) NRAE Order no. 20/2018 regarding the amendment of the Order of the President of the National Regulatory Authority for Energy no. 60/2016 was published in the Official Gazette of Romania, Part I, no. 98 of February 1, 2018, in force from the same date;
- (2) NRAE Order no. 22/2018 for amending and supplementing the Regulation regarding the connection to the natural gas distribution system, approved by the Order of the President of the National Regulatory Authority for Energy no. 32/2017 was published in the Official Gazette of Romania, Part I, no. 109 of 5 February 2018, in force from the same date;
- (3) NRAE Order no. 21/2018 regarding amending and supplementing the Order of the President of the National Regulatory Authority for Energy no. 82/2017 for the approval of the Regulation regarding the connection to the natural gas transmission systems was published in the Official Gazette of Romania, Part I, no. 111 of February 5, 2018, in force from the same date;
- (4) NRAE Order no. 25/2018 for amending and completing the Order of the President of the National Regulatory Authority for Energy no. 145/2014 regarding the implementation of smart metering systems was published in the Official Gazette of Romania, Part I, no. 123 of February 8, 2018, effective from the same date;
- (5) NRAE Order no. 26/2018 for the approval of the Competition Selection Regulation for the designation of the suppliers of last resort and for the amendment of certain regulations in the electricity sector was published in the Official Gazette of Romania, Part I, no. 129 of 12 February 2018, in force since July 1, 2018;
- (6) NRAE Order no. 32/2018 amending 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, approved by the Order of the President of the National Regulatory Authority for Energy no. 73/2014 was published in the Official Gazette of Romania, Part I, no. 136 of 13 February 2018, in force from the same date;
- (7) NRAE Order no. 28/2018 for the approval of the document "Proposing all OPEEDs for products that may be considered by OPEEDs in the single coupling for the next day in accordance with Article 40 of Commission Regulation (EU) 2015 / 1.222 of 24 July 2015" laying down guidelines on capacity allocation and congestion management" was published in the Official Gazette of Romania, Part I, no. 137 of 13 February 2018, in force from the same date;
- (8) NRAE Order no. 30/2018 to approve the document "Proposing all OPEEDs for Reserve Methodology in accordance with Article 36 (3) of Commission Regulation (EU) 2015 / 1.222 of 24 July 2015 laying down guidelines on capacity allocation and congestion management" was published in the Official Gazette of Romania, Part I, no. 141 of 14 February 2018, in force from the same date;
- (9) NRAE Order no. 29/2018 for approving the document "Proposing all OPEEDs for products that may be considered by OPEEDs in the intraday locking process, in accordance with art. 53 of Commission Regulation (EU) 2015 / 1.222 of 24 July 2015 laying down guidelines on capacity allocation and congestion management"

was published in the Official Gazette of Romania, Part I, no. 143 of 15 February 2018, in force from the same date;

- (10) NRAE Order no. 31/2018 regarding the approval of the Regulation on the functioning and settlement of the balancing market and the Regulation for calculation and settlement of imbalances of the parties responsible for balancing, as well as for the modification, supplementing and repealing some provisions in the electricity sector was published in the Official Gazette of Romania, Part I, no. 166 of 22 February 2018, in force since August 1, 2018;
- (11) NRAE Order no. 35/2018 approving specific rules on the setting of regulated prices for natural gas distribution service for the year 2018 and completing the Methodology for setting regulated prices for gas distribution services starting with the third period approved by the Order of the President of the National Regulatory Authority for Energy no. 42/2013 was published in the Official Gazette of Romania, Part I, no. 167 of February 22, 2018, effective from the same date;
- (12) NRAE Order no. 36/2018 regarding amending and supplementing the Methodology for determining the regulated income, the total income and the regulated prices for natural gas transmission activity, approved by the Order of the President of the National Regulatory Authority for Energy no. 32/2014 was published in the Official Gazette of Romania, Part I, no. 181 of 27 February 2018, in force from the same date;
- (13) NRAE Order no. 37/2018 on some derogating measures from the Methodology for determining the regulated income, the total income and the regulated prices for the natural gas storage activity, approved by the Order of the President of the National Regulatory Authority for Energy no. 4/2017 was published in the Official Gazette of Romania, Part I, no. 181 of 27 February 2018, in force from the same date;
- (14) NRAE Order no. 34/2018 for amending and supplementing the Procedure regarding the elaboration and approval of the investment programs of the economic operators of the electricity distribution service, approved by the Order of the President of the National Regulatory Authority for Energy no. 8/2016 was published in the Official Gazette of Romania, Part I, no. 186 of 28 February 2018, in force from the same date.

constructions - draft laws published in February 2018

Draft Government Decision approving the Regulation on State Quality Control in Construction was published on the website of the Ministry of Regional Development and Public Administration on 13 February 2018.

The draft decision will repeal the Government Decision no. 272/1994 for the approval of the Regulation on State Quality Control in Construction and aims to establish the new legal framework of state quality control in construction.

As legal improvement, the draft establishes the control duties of the staff of the State Construction Inspectorate. Among these, we list the following powers:

- (i) the quality control of the execution of the works and the power to order the stopping, restoration, technical analysis, when the contractor is found to be in breach of the technical design and the technical regulations in force at the date of execution;
- (ii) control of the existence of the written and drawn parts of the projects and the conformity of their contents with the framework content provided by the legislation in force;
- (iii) the control of the acceptance at the completion of the works;
- (iv) notifying competent authorities of the facts that can be classified as offenses and finding misdemeanors and applying sanctions.

Also, the personnel with control and inspection duties has the obligation to preserve the confidentiality of the technical data, performances, technical solutions, technological methods and the like, of which they became aware during the exercise of the control activity.

Draft Government Decision on Amending the Government Decision no. 925/1995 for the approval of the Regulation for the verification and technical expertise of the quality of the designs, the execution of works and constructions was published on the website of the Ministry of Regional Development and Public Administration on 13 February 2018.

The draft decision aims to amend the Government Decision no. 925/1995 with the purpose of repealing the Regulation for verification and technical expertise in the field of construction and adopting a new Regulation on the technical verification and technical examination of the designs, the technical expertise of the execution of works and constructions, as well as the quality check of the executed works (the "Regulation").

The new Regulation's main purpose is the establishment of the types of activities carried out by the specialists certified in construction, broken down as follows:

- (i) the technical verification and technical examination of the designs, as well as the technical expertise of the execution of the works and constructions regarding the observance of the technical regulations regarding the basic requirements provided by the Law no. 10/1995 are carried out by specialists in construction, certified by the Ministry of Regional Development and Public Administration;

- (ii) the verification of the execution of construction works is carried out by construction specialists, authorized by the State Construction Inspectorate ("SCI"),

In order to implement European directives, the Regulation regulates the professional recognition of specialists in construction for Romanian citizens, as well as citizens of a Member State of the European Union, of the European Economic Area, or of the Swiss Confederation, who wish to apply to the professional activities of project verifier, technical expert, technical officer responsible for the execution and site supervisor, and to perform them in Romania in order to ensure the free movement of services and not to limit the exercise of regulated professions in the field of construction in Romania.

Also, the Regulation introduces a new element to specify the role of SCI in case of special events due to natural or human factors. Thus, in case of special events, SCI has the right to request the participation of the certified technical experts in the construction domains/subdomains and the specialties related to the damaged constructions, in order to determine the conditions for further use or decommissioning.

The draft proposes that the verification of the quality of the works executed for new constructions and for the interventions to existing constructions shall be carried out by the contractors, by the technical specialist responsible with the authorized execution and by the investors, through authorized construction supervisors.

employment – draft laws published in February 2018

Draft Order for Amendment and Supplementation of Annex 1 to the Order of the Minister of Labour, Family and Social Protection no. 1372/2010 approving the procedure for the authorization of protected units was published on the website of the Ministry of Labour on 9 February 2018.

The project aims at supplementing the annex to the Order of the Minister of Labour, Family and Social Protection no. 1372/2010 approving the procedure for the authorization of protected units and establishes, inter alia, the following:

- The authorization is issued by the National Authority for Persons with Disabilities, hereinafter referred to as ANPD, by a decision of its president, at the proposal of the specialized structure.
- In order to be authorized as a protected unit, the entity must comply with the provisions of Article 5 paragraph 29 and Art. 81 paragraph (1) and (2) of Law no.448 / 2006 on the protection and promotion of the rights of persons with disabilities, republished, as subsequently amended and supplemented, namely, to be:
 - (a) an economic operator with legal personality and self-management, in which at least 30% of the total number of employees with an individual employment contract are disabled /have grade III invalidity;
 - (b) units, workshops or other structures, without legal personality, within public institutions, where at least 30% of the total number of employees with an individual employment contract are disabled / have grade III invalidity; or
 - (c) a natural person who employs at least 30% disabled and persons with grade III invalidity and who carries out economic activities as a natural person authorized as an entrepreneur of an individual enterprise or as a natural person certified under special laws to carry out their activity both individually , and in one of the forms of organization of the profession.
- The authorizing conditions of the requesting entities are as follows: a) to have its own management; b) at least 30% of the total number of employees to have disability / IIIrd grade invalidity; and c) the submitted documents to be valid.
- The withdrawal of the authorization is made by decision of the ANPD president, based on a note drawn up by the specialized structure.

The Draft Decision is published on the website of the Ministry of Labour and can be accessed by 22 March 2018 at the following link:

http://www.mmuncii.ro/j33/images/Documente/MMJS/Transparenta-decisionala/5076_09022018_Proiect_ordin_procedura_upa_final.pdf

The legislative proposal for amending Law no. 416/2001 on the minimum guaranteed income

was registered at the Senate for debate under no. B25 on February 14, 2017.

Law no. 416/2001 on Minimum Guaranteed Income was adopted to prevent and combat poverty and the risk of social exclusion by guaranteeing a minimum income which, according to the principle of social solidarity, is ensured by granting social assistance.

The legislative initiative proposes that social welfare payments to be made also in the form of social vouchers.

In this regard, the initiative proposes that the payment of social aid to be made as follows:

- 50% of the amount of social aid, as the case may be, depending on the beneficiary's option, by postal money order or into a bank account;
- 50% of the amount of social aid as social aid voucher.

According to the legislative proposal, the vouchers for social aid are issued only by the issuing units authorized by the Ministry of Public Finance, on the basis of the service contracts concluded with the county agencies for social benefits, and that of the municipality of Bucharest.

The initiative proposes to regulate only the electronic social aid voucher, since social aid does not exist in a fixed amount, but variable.

The most important aspect of the legislative initiative is that it prohibits the use of the voucher for the purchase of cigarettes and/or alcoholic beverages or its capitalization through cash transformation.

The legislative proposal also provides for the same source of funding for the cost of purchasing social vouchers, coupled with postal money order and bank account fees, all of which will still be covered by the Ministry of Labour and Justice budget of the same funds from which social assistance is paid. In addition, it introduces a maximum limit for the cost of purchasing social aid vouchers similar to bank charges.

Legislative proposal to amend let. i) paragraph (1) of art. 260 of the Law no. 53/2003 - The Labour Code

was registered at the Senate for debate under no. B27 from February 15, 2018.

The legislative proposal mentions that overtime has a negative impact on the health and performance of employees and affects family and personal life by reducing time spent with the family and resulting in low involvement in child development.

The legislative proposal also highlights the fact that, according to the current provisions of the Labour Code, fines for additional work are between 1500 and 3000 lei, with no correlation between the amount of the fines, the number of overtime worked and the number of overtime workers .

To this end, the initiators propose linking the amount of fines to the number of overtime workers in order to ensure proportionality between the fine and the extent of the misdemeanor in order to discourage overtime with beneficial consequences for both the health of employees , and for productivity.

Legislative proposal for the repeal of paragraph (1) of Article 3 of the Government Decision no. 250/1992 on the paid leave and other leaves of public administration employees, specialty autonomous government entities and budgetary entities was registered at the Senate for debate under no. B39 of February 19, 2018.

The legislative proposal points out that art. 3 of the Government Decision no. 250/1992 provides that employees who perform, in addition to the full-time job, another function, are entitled to paid leave only from the entity in which they hold the main position. The entity where the employees cumulate time will grant them, upon request, unpaid leave for the days of paid leave received from the other entity.

In this context, the legislative proposal mentions that there is an implicit repeal of the "main position" institution of G.D. no. 250/1992, considering that the content of Law no. 53/2003 on the Labour Code does not include the "main position" institution. Thus, initiators consider that the institution of the main position has been replaced by the institutions of the full-time or part-time individual employment agreement.

At the same time, the initiators point out that in Law 53/2003 on the Labour Code there is no distinction between the full-time employee and the part-time employee, but the fact that all employees are entitled to paid leave, which can not be limited.

In conclusion, in order to avoid contradictory situations regarding the existence of two categories of public servants, one represented by those who have earned in court the salary rights for the part-time contract and those who do not enjoy these rights, the initiators propose to repeal the provisions on this paid leave in art. 3 of GD no. 250/1992.

Draft Order no. 1086/20.02.2018 regarding the approval of the framework model of the Annual Action Plan on social services managed and financed from the budget of the county council/ local council/general council of Bucharest was published on the website of the Ministry of Labour on 20 February 2018

The draft aims to approve the framework model of the Annual Action Plan on social services managed and financed from the budget of the county council/local council/general council of Bucharest.

The Draft Decision is published on the website of the Ministry of Labour and can be accessed by 02 April 2018 at the following link:

http://www.mmuncii.ro/j33/images/Documente/Transparenta/Dezbateri_publice/20180220-Ordin-PAA.pdf

Annex to Order no. 1086 / 20.02.2018 - the framework model of the Annual Action Plan on social services managed and financed from the budget of the County Council/Local Council/General Council of Bucharest can be accessed by 02 April 2018 at the following link:

www.mmuncii.ro/j33/images/Documente/Transparenta/Dezbateri_publice/07032018_Anexa_1_la_Ordin_privind_PA_A_-_prop_Dezbateri.pdf.

Draft Order no. 1085/20.02.2018 regarding the approval of Methodology for the selection and financing of projects in the field of the protection of persons with disabilities for the year 2018 was published on the website of the Ministry of Labour on the 20th of February 2018.

The project aims to approve the Methodology for selecting and financing projects in the field of the protection of persons with disabilities for 2018.

The draft decision is published on the website of the Ministry of Labour and can be accessed by 02 April 2018 at the following link:

http://www.mmuncii.ro/j33/images/Documente/Transparenta/Dezbateri_publice/Ordin-metodologie-20022018.pdf

The methodology for selecting and financing projects in the area of the protection of persons with disabilities for the year 2018 provides, inter alia, that non-governmental organizations active in the field of the protection of persons with disabilities, accredited as social service providers can receive the necessary funds to finance projects, and projects can be done on their own or in partnership with other public or private social service providers, accredited under the law.

It also mentions that projects that are in line with the specific objective established by the Financing Authority, namely providing adults with disabilities access to family-type alternatives to institutionalized protection, in order to promote independent living conditions and community integration.

Eligible activities are, according to the Methodology, the establishment of social services such as day centers, ambulatory neuromotor recovery centers or protected dwellings, corresponding to the individual needs of persons with disabilities.

The Annex to the Order no.1085 / 20.02.2018 - The Methodology for the selection and financing of projects in the field of the protection of persons with disabilities for the year 2018 can be accessed by 02 April 2018 at the following link:

http://www.mmuncii.ro/j33/images/Documente/Transparenta/Dezbateri_publice/20022018-Anexa-Metodologie-proiecte-ONG-2018.pdf.

The legislative proposal for amending Art. 159 of Law no. 263/2010 on the unitary pension system was registered at the Senate for debate under no. B61 on February 27, 2018.

In support of the initiative, it is mentioned that the natural and legal persons who kept the work cards and the documents afferent to them were obliged to hand them over to the National House of Public Pensions ("NHPP"), together with the copies of the ID, under misdemeanor penalty, in order to create a national database with the

insurance history and the income of all pension system policyholders in order to ensure safer procedures for setting pension rights and to better serve the citizens.

The initiators mention that for the processing of the work cards the data regarding the periods of contribution in the public pension system prior to April 1, 2001, there were expenditures from the state social insurance budget of LEI 76,5 million and USD 2,8 million.

In this respect, although the electronic archive was designed to allow for a link between the image of the document and the data on the electronic support, having the personal numeric code as the link and identification key, Law no. 263/2010 provides that proof of seniority until 1 April 2001 is still carried out with the work card, which is again requested from the insured.

The initiators therefore point out that it is necessary that the data retrieved in the electronic archive of the NHPP have value of proof and should be used as a priority for the calculation of pension entitlements, without requiring the insured's work card again. The work card will only be required from the insured if it is not retrieved in the electronic archive or if it was inappropriately taken over.

The legislative proposal for amending the Emergency Ordinance no. 103 of 20 December 2017 for amending and supplementing certain acts in the field of social security was registered at the Senate for debate under no. B60 dated February 27, 2018.

The proposal is represented by the necessity of correcting the legislative error that causes shortcomings to citizens and the return to the previous legislation, considering that the adoption of GEO no. 103/2017 has limited the right of patients who are registered with occupational diseases or accidents at work to specialized medical services. Thus, art. Article 14 (1) of that law provides that: "In the event of accidents at work or occupational diseases declared in accordance with the law in the course of their professional activity, the right to benefits and insurance services shall also be maintained after the termination of the employment relationship **until the retirement conditions are fulfilled or until retirement age**".

In this regard, initiators want to return to the old regulation to avoid long-term consequences for patients in the above situations, given that after retirement they can no longer be treated, hospitalized and supervised by the labour clinics they were registered with.

The Draft Law on amending and supplementing Art. 10 of the Law no. 76/2002 on the unemployment security system and the stimulation of employment was registered at the Senate for debate under no. B56 of February 27, 2018.

The draft law aims at amending and supplementing the labour legislation regarding Romanians working abroad, aligning the Romanian legislation with good practices in other EU Member States and other democratic states of the world and avoiding wage differences between Romanian citizens and citizens of the destination country, avoiding the

inappropriate working conditions, the constraints to which they are subjected when they arrive and are being forced to accept illegal employment.

The initiative seeks to optimize the working conditions applicable to Romanian citizens, as well as the clear evidence of the persons active on the labour market, the legal conditions in which the work is carried out and the fulfillment of the Romanian state's obligation to guarantee the respect of the individual rights of every Romanian citizen going abroad and guaranteeing by the Romanian state of the obligation of protector of Romanian citizens.

energy – draft laws published in February 2018

The Draft Order on the approval of the validity framework conditions associated with the license for the LPG supply activity was published on the website of the National Regulatory Authority for Energy on 1 February 2018.

The conditions under which the license for the LPG supply activity is valid and which must be observed by the licensee are set out in the Annex to the Draft Order. Among these, we mention the most important aspects:

- Pursuant to Article 6 of the Annex, Licensee may not simultaneously hold more than one license for the LPG supply activity;
- Article 8 of the Annex states that the Licensee is entitled, under the terms of the specific regulations, to carry out the LPG supply activity through transactions of:
 - (a) sale of LPG to end customers, including through export operations;
 - (b) purchase of LPG, including through import operations.
- Article 9 of the Annex stipulates the right of the Licensee to collect the price of the sold GPL;
- the Licensee's obligations are set out in Articles 11-20 of the Annex;
- a specific obligation of the Licensee is provided in Article 21 of the Annex, according to which the financial resources to ensure continuity in the performance of the LPG supply activity, established in accordance with the legal provisions in force, must be maintained by the Licensee. Regardless of the form in which these financial resources were established, their value may at no time be less than the amount of funds required to perform for 60 calendar days the obligations under the ongoing LPG sales contracts.

The draft can be viewed at:

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

Draft Order on amending and supplementing the Network Code for the National Gas Transmission System, approved by the Order of the President of the National Regulatory Authority for Energy no. 16/2013, published in the Official Gazette of Romania, Part I, no. 171 and 171 bis of 29 March 2013, as subsequently amended and supplemented, was published on the website of the National Regulatory Authority for Energy on February 6, 2018

The draft amends articles 17⁴, 52-54, 86 and the title of Annex 13 of the din Network Code for the National Gas Transmission System.

The draft can be viewed at:

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

The Draft Order for the approval of the General Rules for the Centralized Gas Market was published on the website of the National Regulatory Authority for Energy on 13 February 2018.

- Article 1 of the draft Order establishes that the Annex approves the General Rules on the centralized natural gas market;
- within 30 working days from the date of entry into force of the Order, the holders of centralized market management licenses have the obligation to submit to the National Regulatory Authority for Energy, for approval, a common list of standardized marketable products on the short term, medium and long term standardized product market, defined in the Annex;
- within 60 days from the date of approval of the common list of standardized marketable products on the short term, medium and long term standardized product market, the holders of centralized market management licenses have the obligation to submit to the National Regulatory Authority for Energy, for approval, their own regulations regarding the organized trading framework on the centralized natural gas market reviewed in accordance with the provisions of the Order;
- the Order of the President of the National Regulatory Authority for Energy no. 51/2013 for the approval of the Regulation on the organized framework for trading on the centralized natural gas markets administered by the Romanian Commodities Exchange - S.A. and the Order of the President of the National Regulatory Authority for Energy no. 54/2017 for the approval of the Regulation on the organized framework for trading on the centralized natural gas market administered by OPCOM - S.A. Market Operator of Electricity and Natural Gas Market. shall remain in force until the approval of the revised regulations on the organized trading framework on the centralized natural gas market referred to in paragraph (1) of the Order

The draft can be viewed at:

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

The Draft Order on repealing par. (3) of art. 2 of the NRAE President Order no. 97/2013 on the approval of the rules for the purchase of electricity to cover its own power consumption was published on the website of the National Regulatory Authority for Energy on 14 February 2018.

Through this Draft, the obligation for PRE whereby network operators lessees delegated their responsibility for balancing to transmit to NRAE, for approval, procedures for internal allocation of imbalances between members of PREs, their obligations and the calculation algorithm are specified in the NRAE Order no. 76/2017.

The draft can be viewed at:

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

The Draft Order on approving the Validity Framework Conditions associated with the third stage GNC/GNCV supply License was published on the website of the National Regulatory Authority for Energy on 21 February 2018.

The licensing framework conditions for the supply of compressed natural gas for vehicles to be observed by licensees are set out in the Annex to the Order.

- Pursuant to Article 6 of the Annex, the Licensee may not simultaneously hold more than one license for the GNC/GNCV supply activity;
- under Article 8 of the Annex, the Licensee is entitled, under the terms of the specific regulations, to carry out the GNC/GNCV supply activity, through
 - (a) sale of GNC/GNCV to end users, including through export operations;
 - (b) purchase of GNC/GNCV, including through import operations.
- Article 9 of the Annex establishes that the Licensee has the right to collect the price of the GNC/GNCV sold;
- Articles 11-20 of the Annex aim to establish the obligations of the Licensee;
- a specific obligation of the Licensee is provided in Article 21 of the Annex, according to which the financial resources to ensure continuity in the business of selling GNC/GNCV, established in accordance with the legal provisions in force, must be maintained by the Licensee. Regardless of the form in which these financial resources were established, their value may not at any time be less than the amount of funds required to perform for 60 calendar days the obligations under the GNC/GNCV ongoing sales contracts.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=f6Z7hA%3D%3D&t=wOutwdHbn8%2BcmLPfvrrV5ps%3D>

public procurement - draft laws published in February 2018

The Draft Government Decision approving the Methodological Norms for the application of the provisions of the Emergency Ordinance no. 98/2017 on the ex-ante control function of the award of procurement contracts/framework agreements, sectorial contracts/ framework agreements and works concession and service concession contracts was published on the National Agency's website for Public Procurement (NAPP) on February 26, 2018.

The draft law proposes to approve the Methodological Norms for the application of the provisions of the Emergency Ordinance no. 98/2017 on the ex-ante control function of the award of procurement contracts/framework agreements, sectorial contracts/framework agreements and works concession and service concession contracts, published in the Official Gazette of Romania, Part I, no. 1004 of 18.12.2017.

In this respect, the Methodological Norms for the application of the Emergency Ordinance no. 98/2017 on the ex-ante control function of the award of procurement contracts/framework agreements, sectorial contracts/framework agreements and works concession and service concession contracts contain provisions on:

- the scope of ex ante control and its organization at the level of the National Agency for Public Procurement;
- carrying out the ex-ante control activity of the tender documentation, the simplified/competitive bidding/ contract notice, the erratum type announcement and the proposal to respond to the clarification/additional information requests;
- carrying out the activity of controlling the process of evaluating the bids/applications and awarding the contract;
- specific aspects of ex ante control of negotiated procedures without prior publication and contractual changes;
- NAPP's endorsement;
- conciliation procedure;
- amending and supplementing some acts in the field of public procurement

Thus, among the most important provisions we indicate the regulation of the methodology for the selection of the procedures that will be subject to ex ante control, their inclusion in the verification program by applying filters, criteria and sub-criteria. The filters will consider a) the scope of the contract; and (b) the estimated value, consistent with threshold values that are periodically established through the operational procedure; and the risk criteria are: (i) the financial impact of the procurement or that of the contractual change; (ii) the complexity of the scope of

work of the contract or that of the contractual change; and (iii) the history and experience of the contracting authority in the field of public procurement.

Also, amendments to GD no. 395/2016, HG nr. 394/2016 and GD no. 867/2016, approving the Methodological Norms to Law no. 98/2016 on public procurement, Law no. 99/2016 on sectorial acquisitions and Law no. 100/2016 on works and service concessions are proposed. Among the most important, we mention (1) the express provision that the contracting authority does not retain the tender bond if the successful bidder refuses to sign the public procurement contract/ framework agreement during the period of validity of the bid, awarded after a 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 deficiencies found by NAPP; and (2) inclusion of persons empowered by NAPP within the category of persons participating in the bids evaluation committee meetings.

The draft can be consulted on the website www.achizitiipublice.gov.ro or by accessing the following link:

<http://anap.gov.ro/web/wp-content/uploads/2018/02/HG-approbare-norme-ex-ante.pdf>

Draft Government Decision for amending and supplementing the Methodological Norms for the application of the provisions regarding the award of the sectorial contract/framework agreement under Law no. 99/2016 - GD no. 394/2016 and the Methodological Norms for the application of the provisions of Law no. 98/2016 - GD no. 395/2016, was published on the website of the National Agency for Public Procurement (NAPP) on February 26, 2018.

Among the most important amendments of GD 395/2016, we note:

- (1) the elimination of the market consultation stage from the obligatory stages of the public procurement procedure (it remains, however, an option for the contracting authorities);
- (2) the mention in the annual procurement program of the unique identification code of each contract subject for which an award procedure is included in the annual program;
- (3) details of how the market consultation process will be conducted, namely individual or joint meetings or events open to interested persons / organizations, where discussions are held on their views, suggestions or recommendations have or have been referred to topics of general interest such as, but not limited to, market structure, price trends and other specific business features in the sector of interest, technical, innovative aspects, social integration, or aspects related to environmental protection, which can be used in the award procedure. Thus, it is proposed to remove the provision that, during the consultation process, the contracting authority has the obligation to preserve the confidentiality of the information declared by the participants to the consultation as confidential, classified or protected by an intellectual property right, according to the law, the idea being that the market consultation will no longer involve

- the disclosure of confidential information about the products, services or works of those present in the consultation procedure;
- (4) within the definition of the awarding documentation, the DUAE form is included as a separate document;
 - (5) the repeal of the provision that the price can be adjusted by updating if certain conditions have emerged on the market as a result of which the price indexes for the constituent elements of the bid are diminished/increased, the effect of which is reflected in the increase/lowering of the costs on which the contract price was based;
 - (6) the repeal of the provision that, in the case of service contracts having as subject intellectual services such as consultancy/technical assistance, studies, design or supervision related to high complexity projects, the award criterion provided in paragraph (1) shall be mandatory and the ratio assigned to the price factor shall not be higher than 40%;
 - (7) reduction the tender bond from 2% to 1% of the estimated value of the public procurement contract;
 - (8) introduction of new exceptions to direct procurement procedures - if the estimated procurement value is less than: a) 100,000 lei for products and services, or 280,000 lei for works, the contracting authority may purchase directly without using the electronic catalog or prior notice through a negotiated procedure involving the consultation of at least three candidates; b) 70,000 lei, the contracting authority may purchase directly on the basis of a single bid, following a negotiation; c) 4,500 lei, the contracting authority has the right to pay directly, on the basis of the legal commitment, without the prior acceptance of a bid;
 - (9) the insertion of the provision whereby subcontractors on whose capacity the bidder/applicant relies for proving that certain qualification and selection criteria are met are also considered as third-party supporters, in which case the subcontracting agreement is at the same time a firm commitment;
 - (10) insertion of the provision that, during the performance of the contract, the price can be adjusted by updating if certain conditions have emerged on the market, as a result of which the price indexes for the constituent elements of the bid have increased/ diminished, the effect of which is reflected in the increase /decrease of costs on which the price of the contract was based; the price update will be made under certain conditions detailed in the draft decision.

The draft can be consulted on the website www.achizitiipublice.gov.ro or by accessing the following link: http://anap.gov.ro/web/wp-content/uploads/2018/02/pHG_394_395_modif_norme-002.pdf

real estate - draft laws published in February 2018

Draft Government Emergency Ordinance amending and supplementing the Law on Cadastre and Real Estate Publicity no. 7/1996 was published on the website of the Ministry of Regional Development and Public Administration on 21 February 2018.

Amending the Law on Cadastre and Real Estate Publicity no. 7/1996 ("**Law No. 7/1996**") is determined by the lack of a complete record of real estate properties, which affects economic development both in social and business terms, contributing to an uncertain environment for investments. The purpose of amending Law no. 7/1996 is the acceleration of obtaining the cadastre in Romania and the implementation of the National Cadastre and Land Book Program, through the systematic registration of all the real estate on the territory of the country.

Thus, the draft establishes a new term up to which, at the level of each jurisdiction, at least one land book office and real estate publicity office or, as the case may be, a public relations office will be set up and will operate as units without legal personality, subordinated to the territorial offices, namely 31 December 2018.

In order to stimulate the financial allocations from the European Union for the implementation of the common agricultural policies, it will be explicitly mentioned that, when prioritizing the cadastral sectors proposed by the administrative-territorial units receiving the financing of the systematic registration works, the lands subject to subsidies paid by the Payments and Intervention Agency for Agriculture shall also be taken into consideration.

In order to simplify the procedures related to the systematic registration of under the National Program, the provisions regarding the issuance of the order of the general manager of the National Agency for the start of the works, and for the closure of the old records, will be repealed.

Further to the above, it is intended to amend Law no. 7/1996 in the case of the issuance of reports on the possession of property, according to the provisions of the Land Law no. 18/1991. Thus, property rights will be provisionally registered in favour of entitled persons; the provisional registration is made on the basis of the minutes of taking into possession and the decision of the county commission of the land regarding the validation of the property right issued under the law.

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

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