



## PPP & concessions - legal changes published in August 2021

**Government Ordinance no. 3/2021 amending and supplementing certain normative acts in the field of public procurement** was published in the Official Gazette of Romania, Part I, no. 821 dated August 27, 2021, entering in force on August 30, 2021.

Emergency Ordinance no. 3/2021 (hereinafter referred to as "**G.E.O. 3/2021**" or the "**Emergency Ordinance**") amended a series of primary normative acts in the field of public and sectoral procurement, as well as concessions.

As regards Law no. 100/2016 on concessions of works and services, the amendments brought by G.E.O. 3/2021 relate to the notion of "*subcontractor/ sub-entrepreneur*". It is defined as any economic operator that is not part of a concession contract and that performs certain parts or elements of the works / services, being responsible in front of the contractor for the organization and development of all the necessary steps for this purpose. It is also expressly stipulated that making available for use of a machinery or the supply of materials/goods under a concession contract is not considered to represent a subcontracting operation.

At the same time, the economic operator declared as the winner has no longer the obligation of presenting tax certificates for all secondary offices / working units; the obligation was replaced by a statement on its own responsibility regarding the fulfillment of the obligation to pay taxes, fees or contributions due to the general consolidated budget.

Also, the period within which the contracting authority/entity has the obligation to make public the decision to cancel the procedure for the award of the concession contract, accompanied by the justification for the annulment of the award procedure, has been reduced to 1 day after the adoption of the annulment decision.

Last but not least, a clarification was introduced in case of application of a contravention sanction to the contracting authority, namely that it may order the adoption of measures against the person/persons involved in the concession process that was the subject of the contravention, only if the courts find that they have fulfilled or omitted the fulfillment, with guilt, consisting of serious fault, of any act or fact in connection with the exercise, under the law, of their duties.