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News in Laws Legal - Monthly Newsletter August 2022

New instruments for restructuring business in difficulty

By Alice Ene, Managing Associate Voicu & Filipescu

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Legal Changes of July 2022

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:

- Data Protection
- Dispute resolution
- Employment
- Public Procurement

VF News

Legal 500, EMEA 2022 edition, recommends Voicu & Filipescu for our lawyers' activity in 6 practice areas: Corporate and Commercial, Employment, PPP and Procurement, Real Estate and Construction, Restructuring and Insolvency and TMT.

Chambers and Partners Europe, 2022 edition recommends Voicu & Filipescu for our lawyer's activity in the field of dispute resolution.

IFLR 1000, 2021 edition recommends Voicu & Filipescu for our lawyer's activity in three practice areas: M&A, Banking and Finance and Project Development. Also, Mr. Dumitru Rusu – Partner, head of the Banking and Finance practice, was selected as a *Highly Regarded Lawyer* for the practice areas of Capital Markets and Banking.

NEW INSTRUMENTS FOR RESTRUCTURING BUSINESS IN DIFFICULTY

Alice Ene, Managing Associate Voicu & Filipescu

The pandemic has had a strong impact on the economy, financial experts predict a new economic crisis and we are already feeling the effects of the recession. In this context, the new regulatory instruments for restructuring distressed businesses are welcome and should make a substantial contribution to mitigating the effects of the economic crisis.

Thus, Law No. 216/2022 amending and supplementing Law No. 85/2014 on insolvency prevention and insolvency proceedings was published in the Official Gazette No. 709 of 14 July 2022. This law was adopted following the implementation of EU Directive No. 2019/1023 on preventive restructuring, discharge of debt as well as measures to increase the efficiency of restructuring and insolvency proceedings, published in OJ L172 of 26 June 2019 ("the Directive").

Brief considerations on EU Directive 2019/1023

The adoption of the Directive on restructuring and insolvency at the level of the European Union took place during Romania's Presidency of the Council of the European Union, even though the proposal for this Directive was registered on 22.11.2016, due to the need to standardize the legislation on restructuring and insolvency in the Member States, in the context that *"it is estimated that 200,000 companies go bankrupt in the EU each year (i.e. 600 per day), resulting in 1.7 million direct job losses each year"*[1].

The proposal was originally based on the World Bank's 2016 Report[2] which established a scale of 0-16 on the efficiency of insolvency proceedings.

Main amendments of Law 85/2014

Law No. 216/2022 introduces major changes to the insolvency prevention procedures, i.e. to the creditors arrangement procedure (in Romanian *„concordat preventiv"*) and replaces the ad hoc mandate in its entirety with the restructuring agreement procedure, but also introduces some clarifications, i.e. changes to some provisions governing the insolvency procedure.

In order to prevent insolvency, innovative concepts and instruments are introduced to open up new ways of safeguarding businesses, which is the ultimate purpose of both the Directive and Law No. 85/2014.

Restructuring is seen as an instrument to be used as early as possible and with a minimum of court involvement, so that it is effective and leads quickly to extra-judicial settlements when the subjects of restructuring are still economically viable.

The concept of early warning of financial distress and the accountability regime are innovative, driven by the need to create concrete and effective mechanisms to identify early signs of financial distress.

[1] The statement of reasons to the proposal for a Directive on preventive restructuring frameworks, second chance and measures enhancing the efficiency of restructuring, insolvency and discharge of debt procedures and amending Directive 2012/30/EU, COM(2016) 723 final, Strasbourg, 22.11.2016.
[2] Available at: http://documents.worldbank.org/curated/en/172361477516970361/Doing-business-2017-equal-opportunity-for-all.

The new Chapter III introduced in Law No. 85/2014 by Law No. 216/2022 makes ANAF and. the Ministry of Entrepreneurship and Tourism responsible for the development of procedures for the initiation of the alert message on non-fulfilment of obligations by the tax authority, general assessment of the financial situation, information on recovery solutions, but such early warning tools can also be developed by private entities.

From the new regulation set out in Article 6 of Law No. 85/2014 arises the newly introduced concept of *non-financial difficulty* introduced by the Directive, a concept aligned with the legislative developments achieved by Regulation 2015/848[3] on insolvency proceedings (recast) [4] which extends the scope *"to include proceedings which are triggered by situations in which the debtor is in non-financial difficulties, provided however that such difficulties give rise to a real and serious threat to the debtor's current or future ability to pay its debts as they fall due"*.

Thus, the debtor shall prove that it is in difficulty and may be subject to insolvency proceedings by means of a report drawn up by the restructuring administrator (in the case of restructuring agreement proceedings) or the administrator of the creditors arrangement procedure (in Romanian „*concordat preventiv*"), which shall include at least the following elements:

(a) the nature of the difficulty, i.e. a description of the circumstance causing the temporary impairment of the business and the expected effects;

b) the internal and external factors that led to the debtor's distress;

(c) financial indicators applicable to that debtor which may justify the existence of a threat to the debtor's future ability to pay its debts as they fall due within a period not exceeding 24 months from the occurrence of that circumstance;

(d) the reason why the difficulty cannot be considered to be reversible in a natural way by the debtor continuing its planned activity without taking appropriate recovery measures.

This report shall be annexed to the restructuring agreement and, in the case of creditors arrangement procedure, to the debtor's application for the opening such procedure.

A debtor who has benefited from such insolvency proceedings which has resulted in a final discharge of obligations cannot access another insolvency proceeding within 12 months of the date of closure of that proceeding, the only option being to open insolvency proceedings. However, when insolvency proceedings are opened, they cannot be dissolved:

- the reasonable and immediate acts and operations necessary for the continuation of the debtor's business until the date of approval of the creditors arrangement, unless it is proved, in accordance with Articles 117-122, that they are fraudulent;

[3] On this regulation, see Andreea Deli-Diaconescu, Problem of compatibility between the insolvency procedure and the Civil Procedure Code, Universul Juridic Publishing House, Bucharest, 2019, p. 58-67 and Marcela Comșa, Regulation on insolvency proceedings. Jurisprudence of the Court of Justice of the European Union, Universul Juridic Publishing House, Bucharest, 2017, pp. 267-350..
[4] Published in OJ L141, of 5.6.2015.

- the acts and transactions carried out pursuant to the confirmed restructuring agreement or the approved creditors arrangement as well as those reasonably and immediately necessary for their implementation concluded during the restructuring period in the normal course of the debtor's business.

Other provisions common to the two preventive procedures - the restructuring agreement and the creditors arrangement

The bodies that apply insolvency prevention procedures are: the courts through the syndic judge, the restructuring administrator and the administrator of creditors arrangement. The administrator must be qualified as insolvency practitioners.

Creditors shall participate in the proceedings individually, to the extent permitted by the rights attached to their claims, as well as collectively, through collective meetings whenever they consider it necessary to meet. Wage creditors may also exercise their rights under this title through a representative chosen from among themselves. The individual and collective rights of the employees, including rights of information and consultation, provided for by law or by collective agreements, shall not be affected by these procedures.

During insolvency proceedings, the debtor retains the management rights under the ordinary law.

By way of derogation from certain provisions of the Civil Procedure Code, the amendments to Law No. 85/2014 allow the court of appeal to intervene in a concrete and practical way, by means of the decision to be rendered, on the content of the restructuring agreement/plan, depending on the criticisms made, changes that will be implemented by the debtor within the period indicated by the court.

The restructuring agreement

As already mentioned, the ad hoc mandate procedure is replaced by the restructuring agreement, which is in fact a contract proposed by the debtor and negotiated between the debtor and the creditors for the recovery of the business and the full or partial settlement of claims. Recovery measures may consist of operational restructuring, the sale of certain assets, merger or division of the debtor, co-option of new shareholders/partners, conversion of claims into shares, etc. Article 15^2 of Law No. 85/2014 provides for the information to be contained in the restructuring agreement, which is usually also included in a reorganisation plan in insolvency proceedings.

The restructuring agreement is only voted on by creditors whose claims are affected (not paid in full), creditors whose claims are not affected do not have a vote on it, assuming they have no interest against the procedure.

Similar to the reorganisation plan, the restructuring agreement is voted on separately, by creditors structured in distinct categories as follows: a) creditors with preferential rights; b) employees; c) indispensable creditors, if any; d) budgetary creditors; e) other creditors.

An agreement will be deemed to be accepted by a category of claims if in that category it is accepted by an absolute majority of the value of the claims.

For debtors who have a net turnover or, where applicable, a gross income up to the equivalent in lei of the sum of 500,000 euro in the previous year, the establishment of categories of claims is not mandatory and the agreement will be deemed accepted if voted by an absolute majority of the value of the claims affected. In case of unanimity, the

confirmation of the agreement by the syndic judge is no longer required (the procedure of approval of the agreement by the insolvency practitioner administrator of the restructuring is established).

After the creditors have voted on the agreement, it is submitted to the syndic judge for confirmation in an expedited, non-contentious procedure. The law provides for situations in which the syndic judge is obliged to confirm the restructuring agreement, the rejection being based solely on grounds of illegality.

If a restructuring agreement is confirmed by the court, the debtor's business will have to be restructured in accordance with its provisions and the rights of creditors holding affected claims will have to be modified in accordance with the provisions of the confirmed restructuring agreement.

A confirmed restructuring agreement is enforceable against all creditors, including those creditors who voted against or did not vote on it, including budgetary creditors, provided that the legal provisions on state aid are respected.

The restructuring administrator will monitor the implementation of the agreement on a quarterly basis.

The restructuring procedure is closed either by the fulfilment of the restructuring agreement or by its failure, in the latter case, the law provides for the revival of the claims reduced by the agreement, as well as the recalculation of the accessory claims that were suspended during the course of the agreement.

The creditors arrangement

New elements introduced by Law No. 216/2022 (in Romanian „*concordat preventiv*"):

- granting the right to initiate the procedure also to creditors, subject to the prior consent of the debtor;
- as from the date of the opening of the procedure, enforcements against the debtor, irrespective of the nature of the claim, shall be suspended by operation of law for a period of 4 months, which may be extended for good grounds up to a maximum period of 12 months; by exception, enforcement of wage claims shall not be suspended; (consequently, during the period of suspension, the limitation period of the right to seek enforcement will also be suspended, and the accrual of interest, late payment penalties and any other costs relating to the claims affected, up to the date of approval of the plan, will be suspended by operation of law);
- the period for drawing up the restructuring plan is extended from 30 to 60 days from the opening of proceedings; the content of the restructuring plan is similar to the restructuring agreement;
- the maximum period for the fulfilment of the restructuring plan is 48 months, with the possibility of an extension for a further 12 months; in the first year, payment of at least 10% of the value of the claims provided for in the plan is mandatory;
- for financing granted under the procedure, a lien is established on all the debtor's movable and immovable property, free of encumbrances at the time of the procedure.
- The procedure for voting on the restructuring plan is similar to that for voting on the restructuring agreement with the following particularities:

- for the purposes of voting on the restructuring plan, one or more sub-categories of claims belonging to creditors with common specific interests may be set up within the same category of claims, the treatment of which may differ from one sub-category of claims to another;
- in the case of the establishment of sub-categories of claims, the category shall be deemed to have voted on the restructuring plan if acceptance is achieved by an absolute majority of the value of the claims in that category.

The syndic judge will approve the restructuring plan approved by the creditors, in an expedited non-contentious procedure, verifying the legality conditions provided for by law.

The procedure for closing the rpocedure is similar to that of the restructuring agreement with the consequences already outlined above. The procedure can also apply to groups of companies.

Main changes to insolvency proceedings

Among the amendments made to the insolvency proceedings by Law No. 2016/2022 we list the following:

- the possibility of organising the creditors' meeting/committee by electronic means of distance communication is introduced;
- the provision that money existing in the debtor's account at the date of the opening of the proceedings and on which a movable mortgage is constituted, as well as cash collateral, shall be distributed at the creditor's request is repealed;
- before the expiry of the maximum period of 12 months laid down for the observation period, the creditors, the debtor or the judicial administrator shall request the syndic judge either to apply article 111 para. (6) - provisionally contested claims to be entered in the final table of claims for the purpose of commencing reorganisation proceedings, either to extend the observation period for good grounds;
- the list of indispensable creditors may be amended and subsequently approved by the judicial administrator and submitted to the case file together with the proposed reorganisation plan, if the criteria considered at the time the list was drawn up have changed;
- the duration of the reorganisation plan is extended to 4 years, with the possibility of an extension for a further year, making a maximum total duration of 5 years from initial confirmation;
- creditors may raise both objections to the legality of the reorganisation plan as well as applications for the annulment of the creditors' meeting decision approving the reorganisation plan, which will be decided at the same time, by the same ruling, by the syndic judge;
- it enshrines the possibility of conducting the public auction by the indicated remote electronic means of communication, in accordance with the provisions of the regulation established by the judicial liquidator, an alternative already used by insolvency practitioners in the pandemic context;
- in the order of priority of payment of claims in the event of bankruptcy, a new category of claims is introduced, namely claims arising from financing granted in insolvency proceedings as well as practitioner's fees in such proceedings.

All these amendments adapt the domestic legal framework to the factual realities of the internal economic space, which in recent times, in the absence of specific regulations, has led to the application of compromising and defective measures, thus reducing the chances of recovery of companies in difficulty, and contribute to the harmonisation of european legislation.

In conclusion, insolvency is an area of ongoing concern, both at national and international level, in general, and at European level, in particular, from the perspective of the Internal Market of the European Union, which is why the combined efforts of all parties involved - debtors, creditors, enforcement bodies, courts, authorities, legislator, are necessary and opportune.

data protection - legislative changes published in July 2022

I. ROMANIA

1 SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY (ANSPDCP)

1.1 E SOFTWARE CONCEPT SRL was sanctioned for violating the provisions of Article 58 para. (1) point a) and e) and Article 32 para. (1) point b) and para. (2) of the GDPR with a fine ammounting to LEI 19,782.64 (the equivalent of EUR 4,000)

Following the investigation, the National Supervisory Authority has sanctioned the controller both for breach of the obligation to ensure adequate technical and organizational measures to prevent unauthorized disclosure of personal data of its clients, finding that by accessing certain links on the controller's website, various documents (invoices and transport documents) containing personal data of data subjects could be viewed: name, surname, sender and recipient address, telephone number, username and password, e-mail addresses, as well as for refusing or failing to comply with requests for information submitted by the National Supervisory Authority in the exercise of its power

1.2 DELIVERY SOLUTIONS S.A (SAMEDAY) was sanctioned for violating the provisions Article 29 and Article 32 para. (1) point b) and para. (2) of the GDPR with a fine ammounting to LEI 14,825.70 (the equivalent of EUR 3,000)

The National Supervisory Authority has sanctioned Sameday for breaching its obligation to implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk of processing, which led to the disclosure and/or unauthorized access to personal data belonging to a number of 26.566 individuals concerned (e.g., recipient's first and last name, telephone number, address, delivery status, type of service, parcel weight, amount to be collected, delivery interval).

Personal data became available for sale on the RaidForums forum, known for discussion topics such as hacking, hacking tools and sharing data resulting from security breaches.

The investigation was initiated following a complaint from an individual who reported that the company's database was available for sale on the above-mentioned forum.

II. EUROPEAN UNION

1 RELEVANT ISSUES AT THE EUROPEAN DATA PROTECTION BOARD (EDPB) LEVEL

1.1 EDPB and EDPS adpot Joint Opinion no. 03/2022 on the Proposal for a Regulation on the European Health Data Space

At its Plenary meeting held on July 12, 2022, the EDPB, together with the EDPS (European Data Protection Supervisor) adopts the Joint Opinion no. 03/2022 on the Proposal for a Regulation on the European Health Data Space.

The Opinion points out that the description of the rights as provided for in the Proposal is not consistent with that in the GDPR, which may create legal uncertainty for data subjects in distinguishing between the two types of rights.

It is also recommended not to extend the scope of the exceptions related to the rights of data subjects in the GDPR to the provisions of the Proposal.

The document is available at the following link: edpb_edps_jointopinion_202203_europeanhealthdataspace_en.pdf (europa.eu).

1.2 EDPB and EDPS adopt Joint Opinion no. 04/2022 on the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse

At its Plenary meeting held on 28 July 2022, the EDPB, together with the EDPS (European Data Protection Supervisor) adopts the Joint Opinion no. 04/2022 on the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse.

The Opinion states that the Proposal raises serious concerns about the proportionality of the envisaged interferences and limitations on the protection of fundamental rights to privacy and personal data protection.

Hence, it is underlined that the Proposal is not clear on key elements such as the notion of 'significant risk'. In addition, the entities in charge of implementing the envisaged measures have a very wide margin of discretion which may lead to legal uncertainty as to the balance between the rights granted to the parties in each individual case.The document is available at the following link: edpb_edps_jointopinion_202204_csam_en_0.pdf (europa.eu).

2 SANCTIONS APPLIED IN THE EU

2.1 The Hellenic Data Protection Authority (”HDPA”) imposed to Clearview AI Inc. a fine of EUR 20 million for breaches of the GDPR

Following the investigation, the HDPA has forbidden the controller from further collecting and processing personal data of individuals located in Greece and has order the controller to delete all personal data already collected.

In particular, the controller was collecting photos containing faces from public social media accounts to create a database used for marketing facial recognition services.

2.2 The Lower Saxony Data Protection Authority (”LfD”) imposed to Volkswagen a fine of EUR 1,1 million for breaches of the GDPR provisions

Following the investigation, the LfD found that the processor collected personal data without prior information of the data subjects and without conducting a data protection impact assessment, in breach of Article 13 and Article 35 of the GDPR.

In particular, a Volkswagen car was testing the effectiveness of a driver assistance system to prevent accidents, and the video cameras mounted on the car were recording the surroundings for subsequent troubleshooting of the system. At the same time, without being informed of the processing of personal data, traffic participants in the immediate vicinity were also recorded.

2.3 The French Data Protection Authority (”CNIL”) imposed to UBEEQO International a fine of EUR 175,000 for breaches of the GDPR

Following the investigation, the CNIL found that the controller collected personal data in violation of the principles of transparency, data minimisation and data retention only for the time necessary to fulfil the purposes for which they are processed.

Thus, when an individual rented a car from the company's fleet, it collected data on the geolocation of the vehicle on a constant basis every 500 metres travelled, every time the engine was started or stopped and when the doors were opened or closed, the data being stored for 3 years after the return of the vehicle.

dispute resolution - legal changes published in July 2022

Law no. 199/2022 for amending Law no. 134/2010 concerning the Civil procedure code was published in the Official Gazette of Romania, Part I, no. 643 of June 29, 2022, in force starting with July 02, 2022.

The law regulates new provisions concerning the justice field by introducing new articles in the Civil procedure code, which regulates aspects regarding the procedure for the settlement of the appeals against the delay of the trial.

Therefore, currently, the appeal shall be filed in writing and shall be submitted to the court invested with the settlement of the trial in relation to which the delay of the trial is invoked. The appeal can also be formulated verbally during the hearing, in which case it will be recorded, together with the reasons indicated by the party, in the closing of the hearing.

Jurisdiction lies with the hierarchically superior court, which resolves the case in a three judges panel. When the case is heard by the High Court of Cassation and Justice, the appeal shall be resolved by a five judges panel and when the case is heard by a five judges panel, the appeal shall be resolved by another panel of five judges.

The court charged with judging the case will immediately submit the appeal to the competent court, along with a certified copy of the case file. When possible, the documents are sent to the hierarchically superior court in electronic format.

The appeal does not suspend the trial. The time limit for the settlement of the appeal is 10 days from the receipt of the file and the judgment is made in closed session, with the summons of the parties, through a judgment that is not subject to any appeal, which must be motivated within 5

If the court finds that the appeal is grounded, it orders to the court resolving the case to perform the procedural act or to take the necessary legal steps, indicating the latter and setting, where appropriate, a time limit for their performance.

When the appeal was made in bad faith, the complainant can be obliged to pay a judicial fine from Lei 500 to Lei 2,000, as well as, at the request of the interested party, to pay compensation for the damages caused by submitting the appeal.

The Decision of the European Court of Human Rights dated 16 November 2021 ruled in Toma against Romania Case (Application no. 19.146/18) was published in the Official Gazette, Part I no. 673 dated July 6, 2022 and it is applicable from the same date. The application has as subject matter the violation of the applicants' rights to a fair trial and the prohibition of torture, as referred to in art. 6 § 1 and 3 of the Convention. In fact, the applicants were involved in a dispute which resulted in their injury and sanction for participating in the brawling. The complainants claimed that they were subjected to ill-treatment by several other private individuals and that no effective investigation was carried out in this regard. They also report the unjustice of the procedure that led to their sanctions.

Consequently, the European Court held that there has been a violation of Article art. 6 § 1 and 3 of the Convention and that the respondent State shall pay to the applicant, within three months, the following amount, which shall be converted into the currency of the respondent State, at the exchange rate applicable at the date of payment: (i) EUR 10,000 plus any other amount that may be due as a tax for this amount for the non-pecuniary damage; (ii) EUR 2,600 plus any other amount that may be due as a tax for this amount for the court fees; (iii) that from the expiry of the above-

mentioned period and until payment, these amount must be increased with simple interest, at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

Furthermore, the Court dismissed the application for equitable relief on the other heads of claim.

Decision of the High Court of Cassation and Justice no. 23/2022 regarding the examination of the request formulated by Brasov Municipal Court – Criminal Section regarding the request that forms the object of Case File no. 13.117/197/2019/a1 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 665 of July 3, 2022 and it is applicable from the same date.

The High Court admitted the request made by Brasov Municipal Court – Criminal Section in order to issue a preliminary ruling, namely, whether the document shall be verified concerning legal aspects and the merits by the superior prosecutor and what is the deadline within such verification shall occur.

Therefore, the Court held that the document by which the prosecutor fixes the irregularities of the indictment, under the conditions provided for in Article 345 para. (3) of the Code of Criminal Procedure, is not subject to the verification concerning legal aspects and the merits by the superior prosecutor.

employment - legal changes published in July 2022

Government Ordinance no. 16/2022 („G.O. 16/2022") for amending and supplementing Law no. 227/2015 on the Fiscal Code, for repealing certain legal acts and other financial-fiscal measures was published in the Official Gazette of Romania, Part. I, no. 716 of July 15, 2022, entering into force on July 18, 2022.

G.O. 16/2022 provides a series of tax regime related amendments which has also an impact on the labour field, the main amendments concerning:

- **The introduction, as of January 1, 2023, of a non-taxable monthly threshold of 33% of the base wage corresponding to the position held, subject to certain conditions and limitations provided under the** G.O. 16/2022**, for which no income tax and social contributions are applied. Thus, it is not taxable income within the meaning of income tax:**
  - additional benefits received by the employee under the mobility clause – except for tho**se received by workers performing mobile road transport activities;**
  - the cost of food provided by the employer for his employees;
  - accommodation and rent costs for accommodation/ living accommodation provided by employers to their employees, up to a non-taxable threshold of 20% of the national gross basic monthly wage/month/person;
  - travel services and/or treatment services costs, including transport, during the holiday period, for own employees and their family members;
  - contributions to a voluntary pension fund, voluntary health insurance premiums and medical subscriptions;
  - amounts granted to teleworking employees to cover the cost of utilities at the place of work, such as electricity, heating, water and data subscription, and the purchase of office furniture and equipment, up to a monthly threshold of LEI 400.
- Tax incentives granted to employees in the construction, agriculture and food sector, consisting of the reduction of the monthly non-taxable threshold from LEI 30,000 to LEI 10,000, starting with August 2022.
- Starting with the salary income for the month of August 2022, the social security contribution and health contributions due by individuals employed on the basis of a full-time or part-time individual employment agreement could not be below the level applied to the national minimum gross basic wage in force in the month for which they are due.

  G.O. 16/2022 does also provide for exceptions to the obligation above. If there is still such an obligation, the employer/payer will bear the difference between the contributions determined considering the salary earned and those due for the national minimum gross basic wage.

- **Amendment of personal deductions** applicable to salary income. Thus, two types of personal deductions are provided for:
  - **basic**: for a gross monthly income of up to LEI 2,000 exceeding the national minimum gross basic wage;
  - **additional**: 15% of the national minimum gross basic wage for individuals up to the age of 26 with a wage income not exceeding LEI 2,000 above the level of the national minimum gross basic wage and LEI 100/month for each child up to the age of 18 if the child is enrolled in an educational establishment, regardless of the employee's wage level.

- The decrease of the threshold for switching from the income-rule system to the real system from EUR 100.000 to EUR 25.000 for self-**employed** income, which shall be applicable starting from 2023.

- A new calculation base of 24 national gross minimum wages was introduced, for which social security **contributions** are due, in case of individuals **earning** their income from self-employment and/or intellectual property rights, if the annual income earned is exceeding 24 national gross minimum wages (in addition to the existing 12 wages).

- Amendment of the annual base for the calculation of the social health insurance contribution. The contribution will be calculated on the basis of three thresholds, depending on the level of income earned: **6, 12 or 24 national gross minimum wages (currently the base is of 12 wages**).

public procurement - legal changes published in July 2022

Law no. 256/2022 for amending and supplementing Law no. 98/2016 on public procurement, for amending Law no. 99/2016 on sectoral procurement, for amending Law no. 100/2016 on works and services concessions, and for amending article 25 para. (1) of Government Emergency Ordinance no. 66/2011 on preventing, finding and punishing irregularities occurred in the acquisition and use of European funds and/or related national public funds, was published in the Official Gazette, Part I No. 744 of July 25, 2022, in force as of July 28, 2022.

The main amendments to Law no. 98/2016 on public procurement concerned the following:

- In relation to the Chapter on Definitions, the amendments aimed to replace the term "*constructions*" by the term "*works*", to define the terms "*public procurement contract on works*" and "*long-term contract*" and to introduce two new definitions for the terms "*investment objective*" and "*public investment*".

- In relation to the Chapter on the method of calculation of the estimated value of the acquisition, the provisions of **article 9** of **Law no. 98/2016** have been amended providing for **4 considerations** in relation to which the Contracting Authority may choose the award procedure in the case of public procurement contracts for works or services whose object is aimed at achieving new public investment objectives or intervention works on existing ones, each of them having as a reference point the **estimated value of the contract** by reference to **(i)** the value of the services for the preparation of the feasibility study; **(ii)** the value of the technical design and assistance services provided by the designer for each individual investment objective added to the value of the works relating to the investment objective; **(iii)** the value of the technical design and assistance services provided by the designer for each individual investment objective separated from the estimated value of the contract for the execution of the works relating to the investment objective; **(iv)** the value of each service such as project verification, expertise, energy audit, environmental impact assessment, fire scenario, consultancy, technical assistance and others.

- In relation to the provisions relating to the Framework Agreement concluded with several economic operators, in cases where the Framework Agreement is executed with the resumption of competition or with the partial resumption of competition between the participating economic operators, the new amendments concerning **article 119 letter d)** of **Law no. 98/2016** provide that, if any of the economic operators who signed the Framework Agreement fails to respond to the request to submit a tender, the Contracting Authority has the right to continue the procedure with the other tenderers and award each contract to the tenderer submitting the most advantageous tender, determined by applying the award criteria and the evaluation factors mentioned in the award documentation drawn up under the Framework Agreement.

- In relation to the provisions relating to the DUAE which provide for the right of the Contracting Authority to request candidates/tenderers to submit all or part of the supporting documents as evidence of the information contained in the DUAE, at any time during the course of an award procedure, if this is necessary to ensure the proper conduct of the procedure, they are amended accordingly, so that under the new rules, **the required documents shall be submitted by candidates/tenderers, under penalty of exclusion, within a maximum of 5 working days**

following the receipt of the request from the Contracting Authority, with the possibility of an extension of a maximum of 5 working days at the motivated request of the candidate/tenderer concerned.

- As for the provisions relating to Subcontracting and the method by which the Contracting Authority makes payments corresponding to the part(s) of the contract performed by the subcontractors proposed in the tender, the amending provisions supplement the previous form of the text excerpt, thus, according to the new regulation, payment shall be made at the request of the subcontractor in accordance with a **contractual schedule agreed by the parties**.

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