

## Cover article: “ Data Protection Impact Assessment (DPIA) according to GDPR - a practical approach”

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After having dealt with a problem of practical interest for companies in the December 2017 issue of our newsletter in terms of GDPR requirements, we intent to cover in this article another topic of major interest for companies: when must they assess the impact of their processing of personal data activities and, if so, how do they make this assessment?

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- Data Protection
- Dispute Resolution
- Employment
- Energy
- Public Procurement

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## cover article

### **Data Protection Impact Assessment (DPIA) according to GDPR - a practical approach**

After having dealt with a problem of practical interest for companies in the December 2017 issue of our newsletter in terms of GDPR requirements, we intend to cover in this article another topic of major interest for companies: when must they assess the impact of their processing of personal data activities and, if so, how do they make this assessment?

#### **What is DPIA, when is it necessary, and why?**

The Data Protection Impact Assessment, also known under the **DPIA** acronym, is a mandatory requirement under GDPR under Article 35 and will apply only to processing operations to be initiated after May 25, 2018.

Specifically, DPIA allows organizations to explore how a particular project or a particular system involving personal data processing activities will affect the right of data subjects to protect their data. In particular, a type of processing involving the use of new IT technologies (e.g. in the case of a new IT system for storing and accessing personal data, or using existing data for a new and more intrusive purpose) but also the nature, purpose and the context of a processing activity may result in a high risk for the rights and freedoms of individuals. A single assessment may address a set of similar processing operations that present similar high risks.

Performing an impact study such as DPIA should not be a lengthy or complex process, the following containing a set of practical guidelines to perform such a process.

#### **What are the minimum aspects which a DPIA must include?**

DPIA must include at least:

- a description of the envisaged processing operations and the purposes of the processing;
- an assessment of the necessity and proportionality of the processing;
- an assessment of the risks to the rights and freedoms of data subjects.

The measures envisaged to:

- address the risks;
- demonstrate compliance with this Regulation.

## DPIA-related responsibilities

The obligation to make the DPIA is provided by the GDPR under the responsibility of the controller, and the latter must involve its Data Protection Officer (DPO) and Chief Information Security Officer (CISO), but it is advisable for the controller to obtain the opinion of independent experts in various fields (IT, security, law, sociology, ethics, etc.).

Generally, responsibility for the data protection impact assessment belongs to the Controller's Information Owners, notably human resources, marketing, information security, but is not limited to them.

In practice, it will be useful for organizations to prepare methodologies for the DPIA, to be disseminated by the Information Owners.

## Is a DPIA necessary for every project?

There are no provisions in the GDPR that expressly and limitingly determine where the DPIA is required. As a matter of principle, a DPIA will be needed where the processing project has a very broad purpose or uses information that is likely to create a **high risk** for the rights and freedoms of individuals or where new and intrusive technologies are used, or when private or sensitive information is used in a new and unexpected manner.

In assessing the risk, it is considered that where the benefit or need for processing is greater, the risk associated with the processing will be higher.

Article 35 of GDPR highlights only some situations where DPIA is mandatory. For example, when processing a wide range of special categories of data, or any personal data related to criminal or minor offenses. Furthermore, if processing is based on an automatic decision-making mechanism, including profiling, the DPIA will be required. The last case under Article 35 is the systematic monitoring of a large scale accessible area (entry into a company with very many employees).

However, if the processing of the data does not endanger the rights and freedoms of individuals or if it has already been authorized for similar operations then DPIA will not be necessary. The same is true if there is a legal basis in EU or Member State law.

## The first steps to identify whether a DPIA is necessary

Organizations asking whether or not a particular personal data processing project will require DPIA will have to answer the following set of questions:

- what kind of data do we have?
- do we really need all this data?
- how do we use the data we have?
- which risks arise from processing this data?
- how we can minimize these risks?

A preliminary analysis of the need for DPIA can be made on the basis of the processing registry you have already prepared on the basis of GDPR.

### **Why should one perform a DPIA?**

- to identify the risks that might arise on the protection of citizens' private data;
- to identify the degree of compliance with data protection obligations;
- to protect the reputation of the organization;
- to inspire public trust in one's product/project;
- to avoid expensive claims for damages later on.

### **When should one start a DPIA?**

DPIA is an effective way to protect against risks when made at the early stages of the project, namely when:

- the project is in the creation stage;
- you know what you want to do;
- you know who will be involved in the project.

But the DPIA must be finalized before:

- the decisions on the processing of personal data are final;
- the computer systems are purchased;
- the contractual agreements are finalized by signing a legal commitment;
- you lose the possibility to change your mind.

If you have made the DPIA and it is shown that the risk is low, processing can begin and it will periodically be reassessed if changes occur.

If the processing risk has been identified as high or if it is not clear that a DPIA is required, you have two options:

- don't start the processing;
- consult the supervisory authority before proceeding with any processing activities. Together with the authority, you will be able to find the risk minimization solution (technical and organizational measures) and implement it. Processing can start and can be periodically reviewed if changes occur. If you do not find remedies with the authority - you will not start processing or significantly alter your processing.

It is to be expected that the national supervisory authorities draft and publish a list of the types of processing activities subject to the DPIA requirement, and a list of processing activities for which DPIA is not necessary.

## corporate - legal changes published in January 2018

### **Decision no. 962/2017 regarding the approval of the fee for some operations performed by the National Trade Registry Office and the offices of the trade register attached to the courts**

was published in the Official Gazette of Romania, Part I no. 10 of January 5, 2018.

By the new Decision no. 962/2017 approves the fee, structured by levels, for some operations carried out by the National Trade Registry Office and the offices of the trade registry attached to county courts, consisting of:

- release of information (20 lei / company); from the date of entry into force of this Decision, there will only be an extended format on-line statement;
- registry extracts and acknowledging certificates of data from the Trade Registry (45 lei);
- certificates on historical report about a company (250 lei / company);
- copies and certified copies of entries made in the registry and of submitted documents

*Date of entry into force: 15 January 2018*

## data protection - legal changes published in January 2018

### **The European Commission publishes new guidelines on GDPR and launches a new online tool for SMEs**

The European Commission published guidelines on 24 January 2018 to facilitate the direct and uniform application of the new data protection rules across the EU as of 25 May. The Commission is also launching a new online tool for SMEs. Details [here](#).

With just over 100 days left before the application of the new law, the guidance outlines what the European Commission, national data protection authorities and national administrations should still do to bring the preparation to a successful completion.

While the new regulation provides for a single set of rules directly applicable in all Member States, it will still require significant adjustments in certain aspects, like amending existing laws by EU governments or setting up the European Data Protection Board by data protection authorities. The guidance recalls the main innovations, opportunities opened up by the new rules, takes stock of the preparatory work already undertaken and outlines the work still ahead of the European Commission, national data protection authorities and national administrations.

**Andrus Ansip**, European Commission Vice-President for the Digital Single Market, said: *"Our digital future can only be built on trust. Everyone's privacy has to be protected. Strengthened EU data protection rules will become a reality on 25 May. It is a major step forward and we are committed to making it a success for everyone."*

**Věra Jourová**, Commissioner for Justice, Consumers and Gender Equality, added: *"In today's world, the way we handle data will determine to a large extent our economic future and personal safety. We need modern rules to respond to new risks, so we call on EU governments, authorities and businesses to use the remaining time efficiently and fulfil their roles in the preparations for the big day."*

### **Commission calls on EU governments and data protection authorities to be ready and provide support**

Since the adoption of the General Data Protection Regulation in May 2016, the Commission has actively engaged with all concerned actors — governments, national authorities, businesses, civil society — to prepare the application of the new rules.

Preparations are progressing at various speeds across Member States. At this stage, only two of them have already adopted the relevant national legislation. Member States should speed up the adoption of national legislation and make sure these measures are in line with the Regulation. They should also ensure they equip their national authorities with the necessary financial and human resources to guarantee their independence and efficiency.

The Commission is dedicating EUR 1.7 million to fund data protection authorities, but also to train data protection professionals. A further EUR 2 million is available to support national authorities in reaching out to businesses, in particular SMEs.

## New online tool supporting practical application

Knowledge of the benefits and opportunities brought by the new rules is not evenly spread. There is in particular a need to step up awareness and accompany compliance efforts for SMEs.

Today, the Commission launches a new practical online tool to help citizens, businesses, in particular SMEs, and other organisations to comply and benefit from the new data protection rules.

The Commission will also engage in events organised across the Member States to help the stakeholders in their preparation efforts and inform the citizens about the impact of the Regulation.

## Recalling the main innovations and new opportunities

The General Data Protection Regulation enables the free flow of data across the Digital Single Market. It will better protect the privacy of Europeans and reinforce trust and security for consumers, while at the same time opening up new opportunities for businesses, especially smaller ones.

The guidance recalls the main elements of the new data protection rules:

- **one set of rules across the continent**, guaranteeing legal certainty for businesses and the same data protection level across the EU for citizens.
- **same rules apply to all companies offering services in the EU**, even if these companies are based outside the EU.
- **stronger and new rights for citizens**: the right to information, access and the right to be forgotten are strengthened. A new right to data portability allows citizens to move their data from one company to the other. This will give companies new business opportunities.
- **stronger protection against data breaches**: a company experiencing a data breach, which put individuals at risk, has to notify the data protection authority within 72 hours.
- **rules with teeth and deterrent fines**: all data protection authorities will have the power to impose fines for up to EUR 20 million or, in the case of a company, 4% of the worldwide annual turnover.

## Next steps

In the run up to 25 May, the Commission will continue to actively support Member States, Data Protection Authorities and businesses to ensure the reform is ready to enter into effect. From May 2018 onward, it will monitor how Member States apply the new rules and take appropriate action as necessary. One year after the Regulation enters into application (2019) the Commission will organise an event to take stock of different stakeholders' experiences of implementing the Regulation. This will also feed into the report the Commission is required to produce by May 2020 on the evaluation and review of the Regulation.

## Background

On 6 April 2016, the EU agreed to a major reform of its data protection framework, by adopting the data protection reform package, comprising the [General Data Protection Regulation \(GDPR\)](#) replacing the twenty years old [Directive](#). On 25 May 2018, the new EU-wide data protection rules will become applicable, two years after its adoption and entry into force.

In January 2017, the Commission proposed to align the rules for electronic communications ([ePrivacy](#)) with the new world-class standards of the EU's General Data Protection Regulation. In September 2017, the Commission proposed a [new set of rules to govern the free flow of non-personal data](#) in the EU. Together with the already existing rules for personal data, the new measures will enable the storage and processing of non-personal data across the Union to boost the competitiveness of European businesses and to modernise public services. Both proposals still need to be agreed by the European Parliament and Member States.

## litigation & arbitration - legal changes published in January 2018

**Decision of the High Court of Cassation and Justice no. 77/2017 regarding the examination of the referral filed by the Bucharest County Court - Civil Section IV in Case no. 13.765 / 299/2016, in order to issue a preliminary ruling, was published in the Official Gazette of Romania, Part I, no. 23 of 10 January 2018, applicable from the same date.**

The High Court has been tasked with a prior ruling on the issue of the law relating to the "*timely application of the provisions of Article 666 (2) of the Code of Civil Procedure - in the form in force prior to their amendment by GEO No. 1 / 2016, regarding the approval of the mandatory enforcement given by the bailiff after the decision of the Constitutional Court No. 895 of December 17, 2015, prior to the publication of this decision, a matter raised in due time as a ground for nullity through a challenge to enforcement registered with the courts after the publication of Decision No 895 of 17 December 2015.*" The High Court accepted the complaint and stated that, in interpreting and applying in time the provisions of Art. 666 par. (2) of the Code of Civil Procedure, the form prior to the modification by GEO no. 1/2016, the effects of the Constitutional Court's Decision no. 895 of December 17, 2015 shall also apply to the approval of mandatory enforcement given by the bailiff before the publication of this decision, if the ground for invalidity resulting from the lack of competence of the bailiff was invoked in the challenge on enforcement, submitted in due time after the decision of the constitutional court was published in the Official Gazette of Romania.

**Decision of the High Court of Cassation and Justice no. 86/2017 regarding the examination of the referral filed by the Bucharest County Court - Civil Section VI, in Case no. 114.907 / 299/2015, for the purpose of issuing a preliminary ruling, was published in the Official Gazette of Romania, Part I, no. 46 of 17 January 2018, applicable from the same date.**

The HCCJ has upheld the Bucharest County Court referral to issue a preliminary ruling and has decided that in the case of compulsory civil liability insurance for damage caused by vehicle accidents the insurer subrogated in the rights of the injured person is entitled to obtain the penalties provided by the provisions of Art. 38 of the Norm of the Financial Supervisory Authority no. 23/2014 on compulsory motor insurance in respect of damage caused by vehicle accidents, as subsequently amended and supplemented, if the insurer fails to meet its obligations at maturity or fails to fulfill them appropriately.

**Decision of the High Court of Cassation and Justice no. 81/2017 regarding the examination of the referral filed by Cluj County Court - Civil Section in Case no. 3.633/211/2016, for issuing a preliminary ruling, was published in the Official Gazette of Romania, Part I, no. 49 of 18 January 2018, applicable from the same date.**

In the case, the County Court of Cluj - Civil Section has ordered the referral to the High Court of Cassation and Justice for issuing a preliminary ruling on the following question of law: the provisions of Art. 9 par. (1) of the Law no. 112/1995 for the regulation of the legal status of some residential buildings, which are state property, are applicable after February 14, 2001, taking account of the provisions of art. 52 and art. 42 para. (3) of the Law no. 10/2001

regarding the legal regime of some real estate properties abusively taken over between 6 March 1945 and 22 December 1989.

The High Court of Cassation and Justice upheld the referral filed by the Cluj County Court - Civil Section in case no. 3.633/211/2016 for a preliminary ruling and established that, in the interpretation and application of the provisions of art. 42 para. (3) of the Law no. 10/2001 regarding the legal regime of properties abusively taken over between 6 March 1945 and 22 December 1989, republished, with the subsequent amendments and additions, besides the preemptive right, the tenants have the right to opt for the purchase of the residential buildings, a right provided by art. 9 par. (1) of the Law no. 112/1995 for the regulation of the legal status of some residential buildings, which have been taken into state ownership.

**The judgment of the European Court of Human Rights in the Valdhuter v. Romania case of 27 June 2017 was published in the Official Gazette of Romania, Part I, no. 59 of 19 January 2018, applicable from the same date.**

The applicant claims that his right to a fair trial was not observed on the grounds that during the proceedings before the courts he was unable to challenge I.R, initially a defendant along with the applicant, despite the fact that the latter's statement was taken into account for his conviction. He complains that the courts, both those who pronounce on ordinary claims and those who have ruled on the review, that, without any other valid reason, he did not conduct a hearing of I.R. The Court noted that the first courts did not invoke any reason to justify the omission of I.R.'s hearing. Subsequently, in the context of the measures preceding the review initiated by the applicant, that witness was heard only by the prosecutor. The Court merely finds that the applicant had no opportunity, either at the stage of the prosecution or before the courts, to submit questions for witnesses whose statements were taken into account by the national courts. Moreover, the applicant himself was heard in person only at the appeal stage. In addition, the courts did not proceed to a thorough examination of the credibility of the absent witnesses and the reliability of their statements. The Court found that there were no procedural steps taken by the national courts to compensate for the applicant's impossibility to directly address questions to I.R., the courts not taking the compensatory measures which would have allowed a fair and appropriate assessment of the reliability of the unverified evidence. Thus, the Court has concluded that Art. 6 § 1 and art. 6 § 3 let. d) of the Convention were breached.

## employment - legal changes published in January 2018

**Order of the National House of Health Insurance no. 15/2018/1311/2017 for the approval of the Norms for the application of the provisions of the Government Emergency Ordinance no. 158/2005 on sick leave and indemnities** was published in the Official Gazette of Romania, Part I, no. 31 of January 12, 2018, entering into force on the same date.

The Order approves the rules for the application of the provisions of Government Emergency Ordinance no. 158/2005 on sick leave and indemnities, stipulated in the Annex which is an integral part of the Order.

The Implementing Rules primarily provide the categories of insured persons in the health insurance system for paid and sick leave insurance. The minimum insurance period for granting the rights provided for in art. 2 par. of Government Emergency Ordinance no. 158/2005, as subsequently amended and supplemented, is 6 months during the last 12 months preceding the month for which the sick leave is granted.

In addition, the conditions under which insured persons receive leave and indemnities are detailed, based on the medical certificate issued by the attending physician. Medical leave certificates shall be filled in and issued on the date of the medical consultation, establishing the required number of days of sick leave.

The rules detail the procedure, terms and conditions for granting:

- leave and indemnity for temporary incapacity for work, caused by ordinary illness or accidents outside work;
- leave and benefits for the prevention of illness and recovery of work capacity;
- maternity leave and allowance;
- leave and allowance for the care of the sick child;
- maternity leave and maternity allowance
- the modalities and formulas for calculating the social health insurance indemnities.

**Order of the Ministry of Communications and Information Society no. 1168/2017/492/2018/3024/2018/3337/2017 regarding the employment within the activity of creation of computer programs** was published in the Official Gazette of Romania, Part I, no. 52 of 18 January 2018, with effect from 1 February 2018.

The Order repeats the provisions of Order no. 409/4.020/737/703/2017 regarding the employment within the activity of creating computer programs and extends its scope to the employees who benefit from the exemption from income tax on salaries and similar income as follows:

- the provisions of the Order also apply to employees who hold a diploma awarded after completing a short-term education form or have a baccalaureate diploma and attend the courses of an accredited higher education institution and effectively carry out one of the activities listed in the annex;
- the list of occupations specific to computer program creation activities is supplemented with the positions of programmer aide and analyst aide, as well as the specific activities that they will carry out

On the date of entry into force of the Order, the provisions of Order no. 409 / 4.020 / 737/703/2017 regarding the employment within the activity of creation of computer programs, published in the Official Gazette of Romania, Part I, no. 468 of 22 June 2017 are repealed.

**Order of the Ministry of Labor and Social Justice no. 489/2018 for the approval of the model of the social insurance contract and the addendum thereto, used in the public pension system** was published in the Official Gazette of Romania, Part I, no. 77 of January 26, 2018, entering into force on the same date.

The Order approves the template of the social insurance contract and addendum thereto used in the public pension system. The template is used for voluntary insurance in the public pension system as of 1 January 2018.

On the date of entry into force of the Order, the Order of the Minister of Labor, Family and Social Protection no. 5/2011 for the approval of the social insurance contract, of the addendum, of the individual statement of insurance, of the amending notice and of the request for termination of the individual statement of insurance, published in the Official Gazette of Romania, Part I, no. 35 of 14 January 2011, is repealed.

## energy - legal changes published in January 2018

**Law no. 1/2018 for the amendment and supplementation of Government Emergency Ordinance no. 33/2007 on the organization and functioning of the National Regulatory Authority for Energy** was published in the Official Gazette of Romania, Part I, no. 8 of January 4, 2018.

The Law amends and supplements Government Emergency Ordinance no. 33/2007 on the organization and functioning of the National Regulatory Authority for Energy, establishing, inter alia, that:

- NRAE's activity verification by the Romanian Court of Accounts is carried out only on the economic and financial operations performed by NRAE, which is reflected in the income and expenditure budget and in the annual accounts;
- the maximum number of positions in NRAE is 350, excluding members of the Regulatory Committee. The staffing of NRAE personnel as an autonomous administrative authority is done according to the law, according to NRAE regulation and organization regulations;
- in the exercise of its powers and competencies, NRAE may hire specialized consultancy services as well as third party auditors from Romania and abroad, in compliance with the public procurement procedures provided by the law.

*Date of entry into force: 07 January 2018*

**Order no. 124/2017 amending and supplementing the Order of the President of the National Regulatory Authority for Energy no. 28/2014 on the approval of the Framework Contract between the Support Scheme Administrator and the Contributor for High Efficiency Cogeneration and the Framework Contract between the High Efficiency Cogeneration Electricity and Thermal Power Generator and the Administrator for paying the bonus support /the unpaid bonus/the amount for settling the ante-overcompensation and the refund of the undue bonus/ overcompensation**, was published in the Official Gazette of Romania, Part I, no. 30 of 12 January 2018

Order of the President of the National Regulatory Authority for Energy no. 28/2014 on the approval of the Framework Contract between the Support Scheme Administrator and the Contributor for High Efficiency Cogeneration and the Framework Contract between the High Efficiency Cogeneration Electricity and Thermal Power Generator and the Administrator for paying the bonus support /the unpaid bonus/the amount for settling the ante-overcompensation and the refund of the undue bonus/ overcompensation is modified and supplemented as follows:

- Within Annex no. 1 to Order 28/2014, art. 3, art. 6, art. 21 the provisions concerning the suppliers providing electricity for export are deleted. As far as the contributor is concerned, it pays the bills submitted by the support scheme administrator within 7 days of receipt, but no later than the 20<sup>th</sup> of each month following the consumption.

- In Annex no. 2 to Order 28/2014 a new art. 51 on NRAE decisions on the amount of overcompensation and / or the undue bonus, which are binding on producers and are enforced for recovery by issuing a recovery decision by the support scheme manager in accordance with the law on state aid. If the manufacturer accrues payment obligations to the support scheme administrator resulting from the application of the support scheme and does not comply with the debt clearing arrangements with the support scheme administrator, payment of the monthly bonus to the producer is suspended until the debt is paid.
- Based on the NRAE decision on the amount of overcompensation, the support scheme administrator issues the decision to recover the overcompensation in accordance with the state aid law which it sends to the producer for which overcompensation has been determined, together with the overpayment bill, within 7 days of receiving the communication from the NRAE.
- Framework contracts enter into force on the date of their signature by the parties and remain in force for 18 months from the date of cessation of the state aid established by the Government Decision no. 1.215 / 2009 establishing the criteria and conditions for the implementation of the support scheme for the promotion of high efficiency cogeneration on the basis of the useful heat demand, with subsequent amendments or completions, or until termination of the contract by any other cause.

*Date of entry into force: 12 January 2018; Contracts in effect at the date of issue of the Order will be amended accordingly within 30 days.*

**Order no. 19/2018 regarding the application for the year 2017 of the provisions of Art. 21 par. (2) and Art. 27 of the Regulation for the qualification of the production of electricity in high efficiency cogeneration and for verification and monitoring of the fuel consumption and the production of electricity and useful heat in high efficiency cogeneration approved by the Order of the President of the National Regulatory Authority for Energy no. 114/2013, and the provisions of art. 21-23 of the Regulation on establishing the method of collecting the contribution for high efficiency cogeneration and the payment of the bonus for electricity produced in high efficiency cogeneration approved by the Order of the President of the National Regulatory Authority for Energy no. 116/2013** was published in the Official Gazette of Romania, Part I, no. 61 of 19 January 2018.

The Order stipulates that for the year 2017, for the producers of electricity and heat in cogeneration using natural gas, the provisions of Art. 21 par. (2) and Art. 27 of the Regulation for the qualification of the production of electricity in high efficiency cogeneration and for verification and monitoring of the fuel consumption and the production of electricity and useful heat in high efficiency cogeneration approved by the Order of the President of the National Regulatory Authority Energy Sector no. 114/2013 apply as follows:

- the qualification documentation for 2017, provided in art. 21 par. (2) shall also include the annex which forms an integral part of this Order;

- the annual qualification decision for 2017 will also include the Electricity benefiting from the Support Scheme for the first semester of 2017 and the Electricity benefiting from the Support Scheme for the second semester of 2017 for each configuration.

For the year 2017, in the case of producers of electricity and heat in cogeneration using natural gas, the legal provisions regarding the regularization of the payments corresponding to the bonus by the scheme manager, respectively by the producer, as applicable, apply for each semester of 2017. The equivalent amount of electricity for the year 2017 for which the producer benefited from an undue/unpaid bonus and on the basis on which the adjustment invoice is drafted, results after adding up the amounts determined for each semester of 2017.

*Date of entry into force: 19 January 2018*

**Order no. 23/2018 regarding the amendment and supplementation of the Order of the President of the National Regulatory Authority for Energy no. 49/2013 for the approval of the Regulation on the organized trading platform on the centralized market with continuous double negotiation of the bilateral electricity contracts** was published in the Official Gazette of Romania, Part I, no. 83 of 29 January 2018.

The Order amends and supplements the Regulation on the organized trading platform on the centralized market with continuous double negotiation of the bilateral electricity contracts, establishing, inter alia, that:

- Throughout the auction session, trading takes place in two ways: (i) selecting ("clicking") and accepting the eligible sale/purchase offer in the trading platform. Ineligible bids will not be traded by this method. (ii) automatic correlation, with or without the initiation of the mediation procedure.
- If a PC-OTC product reaches the bidding situation: (i) they are automatically correlated if the bids are entered by eligible partners, and transactions are entered into by the eligible participants whose bids were linked; or (ii) they will be automatically reserved by the platform, and the trading platform manager will perform the provided activities for mediating and concluding the transactions if the bid is introduced by market participants other than eligible partners;
- Throughout the auction session it is allowed to enter/modify/ cancel bids, all transactions being viewed in the market through the trading system screens.

*Date of entry into force: 29 January 2018*

## public procurement - legal changes published in January 2018

**Order of the National Agency for Public Procurement no. 1170/1450/2017 regarding the level of the update rate for the year 2018 related to the purchase contracts** was published in the Official Gazette of Romania, Part I, no. 24 of January 10, 2018, entering into force on the same date.

The Order provides that, in accordance with the methodology for calculating the rate to be used for the life cycle cost costs in public procurement/framework agreements award procedures which have the lowest cost criterion, approved by the Order of the President of NAPP no. 842/175/2016 approving the methodology for calculating the update rate to be used for the award of public procurement contracts, a level of this indicator of 4,5% is set for 2018.

The above-mentioned update rate is used in the award of public procurement contracts/framework agreements financed exclusively from the state budget.

In the case of public procurement contracts financed from European non-reimbursable funds for which the award procedure is initiated in 2018 and the award criterion is the "lowest cost", the provisions of Art. 5 of the Order of the President of NAPP and of the President of the National Prognosis Commission no. 842/175/2016 remain applicable.

**Government Decision no. 1/2018 for the approval of general and specific conditions for certain categories of procurement contracts related to publicly funded investment objectives** was published in the Official Gazette of Romania, Part I, no. 26 of January 11, 2018, entering into force on the same date.

The decision sets out the general and specific conditions, together with the framework agreement template, for public or sectoral works contracts which have as their sole object the execution of works and are related to publicly funded investment objectives, including from non-reimbursable and/or reimbursable funds, whose total estimated value, according to the legal provisions, is equal to or higher than the value threshold provided by art. 7 par. (1) lit. a) of Law no. 98/2016 on public procurement.

Also, the normative act approves the general and specific conditions, together with the framework agreement template, for the public or sectoral contracts for works which have as object both the design and the execution of works and which are related to the investment objectives financed by public funds, including non-reimbursable and/or reimbursable funds, the total value of which, according to the legal provisions, is equal to or higher than the value threshold provided by art. 7 par. (1) lit. a) of Law no. 98/2016.

This Decision does not apply to contracts under projects financed under the National Rural Development Program and approved before the date of its entry into force.

## constructions - draft laws published in January 2018

**The draft law on the authorization of construction and demolishing works** was published on the website of the Ministry of Regional Development and Public Administration on 15 January 2018.

The draft that will repeal Law no. 50/1991 on the authorization of construction works (**Law no 50/1991**) was initiated for the implementation of a consolidated legal act regulating the legislation in the field of execution of construction and demolition works, the strengthening of the responsibility of issuers of documents necessary for the authorization of constructions, as well as for the consolidation of specialized structures at the level of the local public administration.

In this respect, the substantive content of Law no. 50/1991 will be maintained, without significant changes in the procedures, the powers of the public authorities or other elements that define the authorization of the construction works, and the demolition of buildings. In particular, it regulates distinctively the main documents necessary for the completion of the stages of the authorization of building and demolition works, namely (i) the zoning certificate, (ii) the specific approvals and agreements, (iii) the building permit or, as the case may be, the demolition permit.

As a legislative novelty, the draft law will contain a distinct chapter devoted to specific regulations in Bucharest. Thus, the specific attributions of building/demolition permits of the mayor-general and the mayors of the Bucharest Sectors are laid down. In addition, there will also be a distinct regulation of demolition procedures for buildings.

The draft extends the category of works that can be carried out without a building permit that do not change the supporting structure and/or the architectural appearance of the constructions. Among these works we mention:

- a) repairs to fences, roofs or terraces that can be executed even if the materials from which they are executed change;
- b) repairs and replacements of interior carpentry can be carried out even with the change of shape, dimensions of the voids and carpentry;
- c) repairs and replacements of chimneys;
- d) plaster, plywood and other interior finishes, as well as interior floors;
- e) solariums and works for underground and above ground funeral buildings.

Regarding the streamlining of the authorization procedure, the draft law establishes exhaustively the framework content of the design for authorizing the execution of the construction works, the design for authorizing the execution of the demolition works and the design for organizing the execution of the works.

Also, in order to ensure strict compliance with zoning and construction regulations, the draft law provides for a substantial increase in the amount of the misdemeanor fines applicable in case of violation of legal norms.

## employment - draft laws published in January 2018

**The draft Government Decision for amending and supplementing some normative acts in the field of labor** was published on the website of the Ministry of Labor on January 22, 2018.

The draft normative act contains provisions for the purpose of implementing the provisions of EGO no. 95/2017, but EGO no. 79/2017 and Law 250/2017, as well as to clarify the way of granting rights and the removal/ introduction of new documents for their granting, in some situations ascertained by applying the provisions of the normative acts mentioned by the employment agencies in their practice.

The main regulations regarding the modification and supplementation of the *Methodological Norms for the application of Law no. 76/2002 on the unemployment insurance system and the stimulation of employment*, approved by GD no. 174/2002 and for modifying and amending the Procedures on Access to Measures for Employment Stimulation, Funding Methods and Implementation Instructions, approved by GD no. 377/2002 refer to:

- the introduction of persons who earn income included in the calculation basis of the insurance contribution for work and who are granted by the employer or the income payer into the category of the persons stipulated in art. 19 of the Law, following the termination of the individual employment contract, the temporary employment contract, the service rapport, the mandate for which they were appointed or elected, the management or mandate contract, except salary income and similar, determined on the basis of judicial decisions remained final;
- The redefinition of the phrase "do not meet the conditions for retirement according to the law", by also including in this category, besides persons who do not request early retirement, persons who do not request partial early retirement;
- regulating the way of certifying the minimum contribution period, as well as establishing the right to unemployment benefit
- clarifying the types of income that form the basis for calculating the unemployment benefit, i.e. the incomes included in the calculation of the insurance contribution for labor during the last 12 months in which the contribution was paid;
- clarification that the monthly basis of calculation of the insurance contribution for labor for each month of the last 12 in which the contribution was paid, namely that in the monthly declaration on the obligations to pay social contributions, the income tax and the nominal record of the insured persons, provided in the Fiscal Code, is made available electronically to employment agencies in the IT system of the Ministry of Public Finance;
- details of the necessary documents, the deadlines and the way of submitting them, for the employment agencies to award the insertion premium;
- supplementing the necessary documents for the granting of mobility bonuses;

- supplementing the conditions for granting, as well as the necessary documents for requesting the relocation premium;
- replacement and repeal of certain annexes, corresponding to the modifications and additions mentioned

The main regulations regarding the modification of the *Methodological Norms for the application of Law no. 279/2005 on Apprenticeship at Work*, approved by GD no. 855/2013 and the Methodological Norms for the application of the provisions of Law no. 335/2013 on the performance of the internship for graduates of higher education, approved by GD no. 473/2014 refer to:

- Restricting the conditions for verifying and granting the monthly sums due according to the law, as well as setting the deadline for submitting the documents up to and including the 25th of the month following the month for which these sums are claimed;
- stipulating the possibility to resubmit documents forwarded in time which are not legible, until the last day of the following month for which these amounts are requested;
- regulating the way in which the applications and documents are transmitted by the entitled persons in order to benefit from certain rights or measures provided by the law.

The main regulations regarding the amendment of the *Methodological Norms for the application of the provisions of Law no. 72/2007 on the stimulation of the employment of high-school and university students*, approved by GD no. 726/2007 refer to:

- Restricting the conditions for verifying and granting the monthly sums due according to the law, as well as setting the deadline for submission of documents up to and including the 25<sup>th</sup> of the month following the month for which these sums are requested;
- stipulating the possibility to redeploy documents forwarded in time which are not legible, until the last day of the following month for which these amounts are requested;
- regulating the fact that the amount representing the financial incentive due according to art. 1 of the Law is granted by the County Employment Agency, respectively that of the Municipality of Bucharest, from the unemployment insurance budget, within 5 working days from the 1<sup>st</sup> of the month following the expiry of the deadline for submission of the documents necessary for the verification and granting of this amount.

The main regulations regarding the amendment of the *Methodological Norms for the application of the provisions of Law no. 200/2006 regarding the establishment and use of the Guarantee Fund for the payment of salary receivables*, approved by GD no. 1850/2006 refer to:

- repealing the provisions regarding the definition of the employees with an individual labor contract and the share of the contribution due by the employers stipulated in art. 7 of the law to the unemployment insurance budget;

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- amendment of the social contributions due by the employers under insolvency by supplementing them with the labor insurance contribution and, as the case may be, the social insurance contribution, payable by the employers starting with 01.01.2018.

The draft Decision is published on the website of the Ministry of Labor and can be accessed at the following link:  
[http://www.mmuncii.ro/j33/images/Documente/Transparenta/Dezbateri\\_publice/Proiect-HG-SITE-22-01-2018.pdf](http://www.mmuncii.ro/j33/images/Documente/Transparenta/Dezbateri_publice/Proiect-HG-SITE-22-01-2018.pdf).

## energy - draft laws published in January 2018

**The Draft Order amending 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** was published on the website of the National Regulatory Authority for Energy on 23 January 2018.

The amendment of the provisions of the Network Code for the National Transmission System for Natural Gas (Network Code) became necessary following the finalization by S.N.T.G.N. TRANSGAZ S.A on works to its IT platform, giving network users the possibility of transmitting requests for capacity transfers online at the points of entry/exit to/from the National Gas Transmission System. Thus, in order for this facility to become operational, it became necessary to modify the Network Code, in this respect S.N.T.G.N. TRANSGAZ S.A. transmitting its proposals to amend Articles 37, 79 and 80 of the Network Code.

The draft can be viewed at:

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

**The draft Order for the approval of specific rules on the setting of regulated fees for natural gas distribution service for the year 2018** was published on the website of the National Regulatory Authority for Energy on 23 January 2018

The amendment to the draft order consists in the extension of the third regulatory period, related to the natural gas distribution activity, until December 31, 2018, subject to specific rules on the establishment of regulated fees for the gas distribution service, for the year 2018, namely:

- maintaining the regulated rate of return on capital at the level approved for the third regulatory period, namely 8.43%;
- the rate of increase of the efficiency of the regulated activity, for 2018, is zero;
- the value of the technological consumption for the year 2018 is set at the level allowed by each distribution license holder for the year 2017 upon the establishment of the third regulatory period.

The draft can be viewed at:

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

**The Draft Order on the amendment of the methodology for establishing the unified income for the regulated supply activity in a regulatory year and for the approval of regulated prices in the natural gas sector starting with 2016 approved by the Order of the President**

**of the National Regulatory Authority for Energy no. 182/2015** was published on the website of the National Regulatory Authority for Energy on January 23, 2018.

The draft order supplements the current Methodology, in order to detail the way of analyzing the costs recognized by the operators according to the principles of decisional transparency, established by the provisions of Law no. 52/2003 on decisional transparency in public administration.

The draft can be viewed at:

<http://www.anre.ro/download.php?f=fq98hg%3D%3D&t=wOutwdHbn8%2BcmLPfvrV5ps%3D>

## public procurement - draft laws published in January 2018

**The draft Order for the approval of the ex-post control methodology on the award of public procurement/framework agreements, sectoral contracts/framework agreements, works and service concession contracts** was published on the website of the National Agency for Public Procurement (NAPP) on January 23, 2018.

The draft envisages the approval of the ex-post control methodology on the award of public procurement contracts/framework agreements, sectoral contracts/framework agreements, works and service concession contracts.

The methodology aims at regulating the ex-post control activity carried out by NAPP, namely the NAPP ex-post control department, on the award of public procurement contracts/framework agreements, sectoral contracts/framework agreements, works and service concession contracts by contracting authorities/ beneficiaries as a result of notifications/requests from natural/legal persons.

More specifically, in exercising the ex-post control function of public procurement, NAPP, through the Ex-Post Control Directorate will carry out the following activities:

- a) analyzing and verifying the compliance of the procedures for the award of public procurement contracts/framework agreements, sectoral contracts/framework agreements, works and service concession contracts with the relevant legislation;
- b) punctual verification of the issues raised in the area of public procurement/sectoral / works concessions and service concessions/green public procurement;
- c) verification of the way in which the decisions of the NCSC are carried out, if this the object of the referral; and
- d) finding and sanctioning the facts that violate or elude the legal provisions in the field of public procurement/sectoral procurement/concessions of works and concessions of services/green public procurement.

It is noted that the subject of ex-post control is only limited to the public procurement/sectoral procurement procedures /works and service concessions that are finalized by the conclusion of a public procurement contract/framework agreement, sectoral contract/ framework agreement, works or service concession contract. The following are not subject to ex-post analysis:

- the necessity and opportunity of a public/ sectoral procurement /concession of works or concessions of services;
- the conformity of the technical proposal with the specifications;
- the prices put forth by the economic operators;

- the technical and/or economic aspects included in the reports of the experts/specialists involved in the evaluation committees;
- issues analyzed in ex-ante controls;
- calculating or determining potential damages.

According to the Draft, the ex-post control activity is carried out by the control team designated through the control plan, following these steps:

- a) sending, after approval of the ex-post control plan, to the contracting authority/beneficiary, the notice on the commencement of the ex-post control activity whose template is provided in the Methodology (Annexes 1 and 2);
- b) performing the ex-post control itself;
- c) concluding the minutes of finding and sanctioning misdemeanors, if any;
- d) drawing up the control report or the control note, as the case may be;
- e) sending to the contracting authority/beneficiary the notice on cessation of the ex-post control activity;
- f) sending to the petitioner the conclusions resulting from ex-post control.

It is also stated in the Draft that the ex-post control activity is usually carried out at the premises of the contracting authority/beneficiary. Instead, the control activity is carried out at the headquarters of NAPP or at the headquarters of the contracting authority/beneficiary as well as at the headquarters of NAPP, if the sanction is prescribed or in other cases justified by the designated inspection team, with the approval of the head of service /manager of the department.

In addition, it is stipulated that the provisions of the Methodology are supplemented with the provisions of Government Ordinance no. 2/2001 on the legal regime of misdemeanors.

In exercising the ex-post control function, NAPP can conclude protocols of interinstitutional cooperation or cooperation agreements with public institutions/authorities that have specific competences in the field of public procurement, European funds checking/management or competition or control afferent to these areas.

The project can be consulted by accessing the following link: <http://NAPP.gov.ro/web/wp-content/uploads/2018/01/Metodologie-finala-finala-DGPPRAL2018.pdf>.

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

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