

## Cover article: „Are you ready for GDPR?” – a very inconvenient question

by Vlad Irimia, Senior Associate Voicu & Filipescu

Although May 25, 2018 - the date of effective enforcement of Regulation no. 679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (hereinafter "the Regulation" or "GDPR") - is approaching very fast, the question "Are you ready for GDPR?" still creates confusion, in certain circumstances, regarding the new regulation on the protection of personal data brought by GDPR and its applicability.

## Legal Changes of April 2018

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- Corporate
- Data Protection
- Dispute Resolutions
- Employment
- Energy

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## cover article

### „Are you ready for GDPR?” – a very inconvenient question

Although May 25, 2018 - the date of effective enforcement of Regulation no. 679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (hereinafter "**the Regulation**" or "**GDPR**") - is approaching very fast, the question "Are you ready for GDPR?" still creates confusion, in certain circumstances, regarding the new regulation on the protection of personal data brought by GDPR and its applicability.

The various publicly available articles on GDPR as well as the many events that took place at the end of 2017 and early 2018 on the subject of personal data protection had the role of informing, in a detailed and varied manner, on the implications of the Regulation and the need to comply with its provisions.

#### Awareness level

Unfortunately, despite all the information available, it seems that the GDPR regulation is still unknown (or far too little known) to a rather large number of people working in different areas of activity, one of the very common explanations being the hypothesis that GDPR is not applicable, since personal data is not processed.

Somehow easy to understand in case of individuals (the processing of personal data by them as part of a purely personal or domestic activity being excluded from the scope of the GDPR), in case of legal persons, it is rather difficult to imagine situations of non-applicability of the Regulation, in general, especially if we consider the classical situation of an organized entity operating under the laws of a Member State of the European Union and operating within that State and/or within the European Union.

#### Possible matters to clarify

In this context, even in the case of entities operating in fields/industries where the interaction with individuals is limited, at the very least the answers to the following questions may prove extremely useful in confirming the application of GDPR:

(a) **Are there any employees within the company?**

Application of GDPR is also required in the field of labor relations, given the personal information that an employer has on the employees.

(b) **Are there relationships established with other natural or legal persons?**

Personal data can also be processed based on or in relation to relationships established by an entity with various partners/suppliers, especially if the services provided directly involve the exchange of personal data (e.g. in case of relationships with payroll or health and safety providers).

(c) **Is it possible that the actual activity excludes any kind of personal data processing?**

GDPR does not only apply to entities that directly address individuals or are related to individuals (such as retail, recruitment, couriers, medical services etc.), but to all persons who, in the course of their work, process personal data.

The impact of the GDPR regulation can be assessed according to the actual circumstances (including the level/ volume of the processed data and/or the processing method).

### **Making an assessment**

In view of the implementation of the GDPR, it is therefore necessary to carry out a general assessment of all personal data processing operations carried out at the level of a person in order to have as detailed a picture as possible of the processes carried out internally and/or with external partners regarding said data.

On the basis of such a preliminary assessment, the necessary steps can be taken to ensure compliance with the provisions of the Regulation.

However, given the specific requirements imposed by the new regulation, it should be stressed out that the GDPR impact assessment should not exclude current processing operations that have been notified to any regulatory authority<sup>1</sup> or previous assessments from this perspective.

### **Specific requirements**

Depending on the actual findings of the assessment of personal data processing operations, the concrete steps that are required to address the provisions of the Regulation (which imply, first of all, the need to raise awareness of the importance of personal data), can be determined, such as:

- (a) provide legal bases for processing personal data, particularly in view of (more restrictive) specific requirements to obtain consent from the data subjects<sup>2</sup> - in this respect, it may be necessary to adopt different processing grounds that can respond much better to new regulatory requirements;
- (b) compliance with the principles of processing, including limitations on the purpose of processing or minimization of processed data – one of the beneficial effects being the removal of unnecessary data;
- (c) fulfillment of the conditions relating to the processing of special categories of data;

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<sup>1</sup> In Romania, the competent authority is the National Supervisory Authority for Personal Data Processing (ANSPDCP).

<sup>2</sup> With a particularity regarding the relationship with employees, as detailed in one of our previous articles available at the following link: [http://vf.ro/newsletter/2018/march/pdf\\_engleza/VF-newsletter\\_EN.pdf](http://vf.ro/newsletter/2018/march/pdf_engleza/VF-newsletter_EN.pdf).

- (d) ensuring observance of the rights established by GDPR for the data subjects (in particular, the right of access, the right to be forgotten and the right to data portability, which can pose serious problems from an administrative/operational perspective);
- (e) ensuring that adequate technical measures are in place to meet the data protection requirements both from the time of designation of the processing facilities and at the time of processing (*data protection by design and by default*) – with implicit effects on the accountability of the persons involved in processing operations;
- (f) assessing potential controller – processor relationships;
- (g) keeping records of data processing;
- (h) implementing internal measures to notify personal data breaches;
- (i) where necessary, carrying out an impact assessment<sup>3</sup> (*Data Protection Impact Assessment*); and

## Conclusions

While apparently both the awareness of GDPR implications and the implementation of related measures that can ensure compliance with the requirements of the Regulation may be difficult to achieve by May 25, 2018, it should be taken into account that this date is only the initial moment when the rules imposed by GDPR begin to apply.

Compliance with the Regulation will be an ongoing process, which will need to be subject to ongoing evaluations to ensure full compliance with the privacy principles set out therein.

In conclusion, the question "Are you ready for GDPR?" will continue to be present in the public space even after May 25, 2018. Fortunately, with the inherent benefits brought to both personal data processors and persons whose data is processed.

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<sup>3</sup> More details on DPIA can be found in one of our previous articles available at the following link: [http://vf.ro/newsletter/2018/february/pdf\\_engleza/Full%20Version-newsletter\\_EN.pdf](http://vf.ro/newsletter/2018/february/pdf_engleza/Full%20Version-newsletter_EN.pdf).

## corporate - legal changes published in April 2018

### Investment project – Competition Council

**Decision of the Government of Romania no. 174/2018 regarding the approval of the Note for substantiation of the main characteristics and the technical and economic indicators related to the investment project "Optimization of the interaction with the business environment and implementation of advanced mechanisms for analysis and data exchange through the implementation of an e-Government and analysis IT system of the Big Data type within the Competition Council"**

The same Decision establishes that the Competition Council is responsible for the implementation of the project.

- The objective of the project is the operational and analytical integration and exploitation of large volumes of data to support investigative activities, develop the prevention function, detect and take specific measures of the activity of the Competition Council by implementing a computer system based on a Big Data platform. The duration of the entire investment project is 30 months.
- The development and implementation of a Big Data system will have the main benefits of strengthening the institution's analysis and decision making process as well as significant time and cost savings due to the elimination of data analysis and manual and/or redundant collection of data.

The decision was published in the Official Gazette of Romania, Part I, no. 320 of 11 April 2018 and entered into force on the same date.

## data protection - legal changes published in April 2018

### **The Working Party on the Protection of Individuals with regard to the Processing of Personal Data has issued a Working Document on the interpretation and application of Art. 30 of Regulation 2016/679**

On Tuesday 10 April 2018, the Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up by Directive 95/46/EC of the European Parliament and of the Council of 25 October 1995 issued a Working Document on the interpretation and application of the provisions of art. 30 of Regulation 2016/679 (GDPR), which imposes on controllers and processors the obligation to keep a record of the processing activities, according to the European Commission's website. This document establishes the position of the Article 29 Working Party on derogations from this obligation:

[http://ec.europa.eu/newsroom/article29/item-detail.cfm?item\\_id=624045](http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=624045)

According to art. 30 par. 5 of the Regulation: *"The obligations referred to in paragraphs 1 and 2 shall not apply to an enterprise or an organization employing fewer than 250 persons unless the processing it carries out is likely to result in a risk to the rights and freedoms of data subjects, the processing is not occasional, or the processing includes special categories of data as referred to in Article 9(1) or personal data relating to criminal convictions and offences referred to in Article 10"*.

### **The Working Party on the Protection of Individuals with regard to the Processing of Personal Data has passed a revised version of the Consent Guidelines under Regulation 2016/679**

On Tuesday, 10 April 2018, the Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up by Directive 95/46/EC of the European Parliament and of the Council of 25 October 1995 adopted a revised version of the Consent Guidelines under Regulation 2016/679 (GDPR), adopted on 28 November 2017, according to the European Commission's website.

[http://ec.europa.eu/newsroom/article29/item-detail.cfm?item\\_id=623051](http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=623051)

### **The Working Party on the Protection of Individuals with regard to the Processing of Personal Data has passed a revised version of the Transparency Guidelines under Regulation 2016/679**

On Wednesday, 11 April 2018, the Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up by Directive 95/46/EC of the European Parliament and of the Council of 25 October 1995 passed a revised version of the Transparency Guidelines under Regulation 2016/679 (GDPR), according to the European Commission's website:

[http://ec.europa.eu/newsroom/article29/item-detail.cfm?item\\_id=622227](http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=622227)

**The Working Group on the Protection of Individuals with regard to the Processing of Personal Data has passed a Recommendation on the standard application form for the approval of binding corporate rules on data processing for the transfer of personal data, according to the European Commission's website.**

On Wednesday, 11 April 2018, the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Directive 95/46/EC of the European Parliament and of the Council of 25 October 1995 passed a Recommendation on the standard application form to approve binding corporate data processing rules for the transfer of personal data, according to the European Commission website:

[Standard form for approving BCRs for personal data transfer](#)

According to art. 4 point 20 of GDPR "**binding corporate rules**" means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, or group of enterprises engaged in a joint economic activity.

**The Working Party on the Protection of Individuals with regard to the Processing of Personal Data has issued a Document on the encryption of personal data**

On Friday, 13 April 2018, the Working Party on the Protection of Individuals with regard to the Processing of Personal Data set up by Directive 95/46 / EC of the European Parliament and of the Council of 25 October 1995 issued a Document on the encryption of personal data:

[http://ec.europa.eu/newsroom/article29/item-detail.cfm?item\\_id=622229](http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=622229)

## dispute resolutions - legal changes published in April 2018

**Decision of the High Court of Cassation and Justice no. 5/2018 regarding the examination of the referral filed by the Bacău Court of Appeals - the Criminal Section and for Minors and Family Affairs in Case no. 8.618/279/2016, requesting a prior decision for the resolution of certain issues of law, published in the Official Gazette of Romania, Part I, no. 355 of 24 April 2018, applicable from the same date.**

By decision 5/28.02.2018, the HCCJ admitted the referral requesting a preliminary ruling for the principle resolution of the following legal problem: "*What is meant by the word injury provided by art. 75 lit. b) the 2<sup>nd</sup> thesis from EGO no. 195/2002 on the circulation on public roads, in the interpretation and application of the provisions of art. 338 par. (1) of the Criminal Code on the offense of leaving the accident scene?*". Thus, in the interpretation and application of the provisions of art. 338 par. (1) of the Criminal Code regarding the offense of leaving the accident scene, the HCCJ has determined that the word *injury* provided by art. 75 lit. b) the 2<sup>nd</sup> thesis of the Government Emergency Ordinance no. 195/2002 on public roads, republished, shall be interpreted as "*traumatic injuries or damage to a person's health, the severity of which is assessed by days of medical care (at least one day) or by one of the consequences provided by art. 194 par. (1) let. a), c), d) and e) of the Criminal Code*".

**Decision of the High Court of Cassation and Justice no. 16/2018 regarding the examination of the referral filed by the Braşov Court of Appeals - administrative and fiscal section in File no. 4.833/ 62/2016, on the issuing of a preliminary ruling, published in the Official Gazette of Romania, Part I, no. 319 of 11 April 2018, applicable from the same date.**

The HCCJ admitted the referral filed by the Brasov Court of Appeal - administrative and fiscal section and, consequently, in interpreting and applying the provisions of art. 15 par. (1) and (2) of Law no. 200/2006 regarding the establishment and use of the Guarantee Fund for the payment of salary claims, as amended, in conjunction with the provisions of art. 7 of the Methodological Norms for the application of Law no. 200/2006 regarding the establishment and use of the Guarantee Fund for the payment of salary claims, approved by the Government Decision no. 1850/2006, established that: (i) the maximum period of 3 months for which the Guarantee Fund may take over and pay the claims of an employer in insolvency shall be within the reference period of 3 months immediately preceding the opening of the insolvency procedure - 3 months immediately following the opening of the insolvency proceedings and (ii) the 3-month period for which the Guarantee Fund can take over and pay the claims of an employer in insolvency, relates only to the date of opening the insolvency proceedings.

**Decision of the High Court of Cassation and Justice no. 3/2018 regarding the examination of the referral filed by the Constanta Court of Appeals - Criminal and Minors and Family section in Case no. 17.774/212/2013/a2, requesting the High Court of Cassation and Justice to solve a matter of law, published in the Official Gazette of Romania, Part I, no. 327 of 13 April 2018, applicable from the same date.**

The HCCJ admitted the referral filed by the Constanța Court of Appeal - the Criminal and for minor and family criminal cases section in Case no. 17.774 /212/2013/a2, requesting a preliminary ruling on the issue of the law: "*If, in interpreting and applying the provisions of art. 19 of Law no. 682/2002 on the protection of witnesses, provided that the defendant has facilitated the identification and prosecution of the person denounced in another criminal case and has benefited from the halving of the punishment limits, the effects of the said criminal provision apply to all criminal cases in the courts, without any limitation*" and established that the effects of the legal grounds of reduction of the punishment provided by art. 19 of Law no. 682/2002 on the protection of witnesses occur exclusively in the specified criminal case, having as object one or more crimes committed before or during the criminal prosecution or the trial of that cause by the person who denounced and facilitated the incrimination of serious crime offenders. In this respect, the author of the denunciation cannot benefit from halving of the special limits of punishment in distinct criminal cases, even if they are related to concurrent crimes committed by them.

## employment - legal changes published in April 2018

**Law no. 81/2018 on telework** was published in the Official Gazette of Romania, Part I, no. 296 of April 2, 2018, with effect from April 5, 2018.

Law no. 81/2018 regulates the way in which employees perform the telework activity.

Telework means the form of work organization whereby the employees, regularly and voluntarily, fulfil their specific duties of their occupation or position from a place other than the workplace organized by the employer, at least one day per month, using information and communication technology.

Telework is based on the consent of the parties and must be expressly provided in the individual labour agreement at the moment of its conclusion, for new employees or by an addendum to the individual labour agreement, for existing employees.

To fulfil their duties, teleworkers organize the work schedule in agreement with the employer, according to the provisions of the individual labour agreement, the internal regulations and/or the applicable collective labour agreement, according to the law.

Upon the employer's request, only with the written consent of the full-time teleworker, the latter can work overtime.

The teleworker benefits from all rights recognized by law, through internal regulations and collective bargaining agreements applicable to employees who have their place of work at the headquarters or domicile of the employer.

The employer is entitled to verify the activity of the teleworker under the conditions established by the individual labour agreement, the internal regulation and/or the applicable collective labour agreement, according to the law.

To carry out the telework activity, the employer must (i) provide the means of information and communication technology and/or the safe work equipment necessary to perform the work, (ii) install, verify and maintain the necessary work equipment, (iii) provide conditions for teleworkers to receive adequate and appropriate training in occupational safety and health field.

In addition, in order to carry out telework activity, the teleworker must perform his activity in accordance with their training and skills, as well as with the instructions received from the employer so as not to expose himself or other individuals to occupational injury or illness.

Failure to comply with the provisions regarding the obligation of the employer to expressly provide in the individual labour agreement the performance of the telework activity shall be sanctioned with a fine of RON 10,000 for each individual.

If the employer obliges the employee to perform telework activity, the employer shall be sanctioned with a fine of RON 5,000 and if the employer obliges the teleworker to perform overtime activity without the latter's written consent in this respect, the employer shall be sanctioned with a misdemeanour fine in the amount of RON 5,000.

The employer may also be sanctioned for not inserting clauses on telework within the individual labour agreement, the fine being RON 5,000, however, as well as for non-observance of the specific obligations regarding the safety and health of the teleworker, the fine amounting to Lei 2,000 for the infringement of any such obligation.

**Order of the Minister of Labour no. 1061/2018 amending and supplementing the annex to the Order of the Minister of Labour, Family and Social Protection no. 1.372/2010 regarding the approval of the procedure for the authorization of protected units** was published in the Official Gazette of Romania, Part I, no. 315 of 10 April 2018, entering into force on the same date.

Order no. 1061/2018 amends and supplements the Annex to the Order of the Minister of Labour, Family and Social Protection no. 1372/2010 related to the approval of the Procedure for the authorization of protected units, as follows:

- the authorization for functioning of the protected units is issued by the National Authority for Disabled Persons and not by the Ministry of Labour, as it stands now;
- the conditions that an entity must meet for authorization as a protected unit are amended:
  - a. an economic operator with legal personality and self-management, in which at least 30% of the total number of employees with individual labour agreement have grade III disability;
  - b. units, workshops or other structures, without legal personality, within public institutions, where at least 30% of the total number of employees with individual labour agreement have grade III disability;
  - c. the individual who employs at least 30% grade III disability persons and who carries out economic activities as an authorized individual, as an entrepreneur of an individual enterprise or as an authorized individual under special laws to carry out their activity individually, as well as in one of the forms of organization of the profession.
- the licensing conditions of the requesting entities are supplemented;
- several provisions are amended regarding the documents that the submitted file must contain to obtain the authorization;
- annexes are amended and introduced.
- until 31 December 2018, the protected units authorized under the Procedure for the authorization of the protected units, approved by the Order of the minister of labour, family and social protection no. 1.372/2010, must apply for authorization as a protected unit under the terms of this order; in case the authorized protected unit does not submit a new application for the issuance of the operating authorization as a protected unit, the National Authority for Disabled Persons shall withdraw, upon the expiry of the aforementioned period, the authorization issued under the previous provisions.

**Law no. 86/2018 for amending and supplementing the Law no. 52/2011 regarding the exercise of occasional activities performed by the day-labourers** was published in the Official Gazette of Romania, Part I, no. 313 of 10 April 2018, with effect from April 13, 2018.

The new act amends and supplements several provisions of Law no. 52/2011 regarding the exercise of some occasional activities performed by the day-labourers, as follows:

- new areas are introduced in which unqualified casual work can be provided, namely: hotels and other similar accommodation facilities - class 5510, restaurants - class 5610, other catering activities n.c.a. - 5629, bars and other beverages - class 5630;
- a new chapter on brokering between the demand and the supply of work is introduced; it is foreseen that the activity of mediation between the daily demand and the job offer is carried out, on the territory of Romania, on the basis of the requests formulated by the persons interested in carrying out activities as day-labourers and by the persons interested to benefit from the work of day-labourers, by accredited brokering agencies according to the legal provisions, which are approved by Government Decision;
- brokering agencies can be: (i) companies established on the territory of Romania under the terms of the Companies Law no. 31/1990, whose activities are activities of employment agencies - NACE code 7810; (ii) companies established in other Member States of the European Union or in the European Economic Area, under the legislation of the State of origin, whether or not subject to an accreditation or authorization condition for the provision of labour brokering services the respective state and which are established with permanent in Romania, under the conditions of Law no. 31/1990, or provides such services on a cross-border basis on Romanian territory, temporarily or occasionally;
- accreditation of day labour brokering agencies is carried out by the National Agency for Employment, through the county employment agencies, and of the Bucharest employment agency; and
- it is established that day labourers who are employed following brokerage by an agency accredited under the law may carry out activities for the same beneficiary for a period of up to 180 cumulative days during a calendar year.

**Law no. 88/2018 regarding the approval of Government Emergency Ordinance no. 53/2017 for amending and supplementing the Law no. 53/2003 - The Labour Code** was published in the Official Gazette of Romania, Part I, no. 315 of April 10, 2018, with effect from April 13, 2018.

Law no. 88/2018 approving Government Emergency Ordinance no. 53 of 4 August 2017 for amending and supplementing the Law no. 53/2003 - The Labour Code contains the following main amendments:

- it inserts a new Article 16<sup>1</sup> into the Labour Code, which defines the workplace as the place where the employee carries out their activity, located within the premises provided by the employer, individual or legal entity, at the headquarters or at branches, agencies or work points belonging to it.

- thus, the employer will have the obligation to keep copies of the individual labour agreements at the workplace according to the above. It is very important that it is expressly stated that the documents will be kept on paper or on electronic support by a person designated for this purpose, subject to the provisions on the confidentiality of personal data.
- Art. 119 of the Labour Code is amended, in the sense that the employer has the obligation to keep at the workplace, as defined above, the record of the hours worked daily by each employee, showing the starting and ending hours of the work program, and to present this to the work inspectors, whenever requested to do so.
- It is also specified that for mobile workers and employees working from home, the employer will keep records of the working hours provided by each employee daily, under the conditions established with the employees by written agreement, depending on the specific activity carried out by them.
- Art. 139 of the Labour Code is supplemented with paragraph 3, according to which, the non-working days established according to art. 139 al. 1 of the Labour Code (non-working legal holidays) for persons belonging to religious denominations other than Christian, is granted by the employer on other days than the statutory holiday days established by law or annual leave.
- Art. 260 of the Labour Code is amended to insert a maximum threshold of RON 200,000 for the fine applicable to the employer for each offense of (i) the employment of one or more persons without the conclusion of an individual labour agreement, (ii) the employment of one or more persons without sending the elements of the individual labour agreement to the general registry of employees by the starting date (iii) the employment of one or more employees during the period in which they have the individual labour agreement under suspension, and (iv) the employment of one or more employees outside the work program established under individual part-time contracts.
- if the employer is found to have committed one of the facts mentioned under (i) - (iii) above - art. 260 al. 1 let. e) - e<sup>2</sup>), the labour inspectors shall order the measure of cessation of the activity of the organized work place, subject to control, under the conditions established by the procedure of the Labour Inspection and approved by order of the minister of labour and social justice. The employer will be able to resume work only after paying the fine and only after remedying the deficiencies that led to the cessation of the activity.

**Government Decision no. 191/2018 for the approval of the National Strategy for Occupational Health and Safety for the period 2018-2020** was published in the Official Gazette of Romania, Part I, no. 331 of 16 April 2018, entering into force on the same date.

Decision no. 191/2018 approves the National Strategy on Health and Safety at Work for the period 2018-2020 which aims to:

- prevent risks and promote safer and healthier conditions at the workplace;

- maintain the good health of workers;
- prevent work accidents and occupational diseases and promote health of employees throughout their professional life

The general objectives of the National Strategy on Occupational Health and Safety for the period 2018-2020 are as follows:

- better implementation of health and safety legislation, especially in micro-enterprises and SMEs;
- to improve the safety and health protection of workers, with priority given to those in high risk activities, in the priority areas of action, with a focus on the prevention of occupational diseases;
- stimulating joint actions with the social partners through their awareness and involvement in the management of health and safety issues and the materialization of an effective social dialogue;
- adequate management of the problem of elderly workers in the context of the general phenomenon of aging of the population, and of the active labour force respectively

According to the Strategy, the Ministry of Labour and Social Justice together with the Ministry of Health are the institutions responsible for elaborating and monitoring the implementation of the National Action Plan for the implementation of the National Strategy on Occupational Safety and Health for the period 2018-2020.

## energy - legal changes published in April 2018

**NRAE Order no. 64 / 29.03.2018 regarding the approval of the framework conditions related to the license for the natural gas supply activity** was published in the Official Gazette of Romania, Part I, no. 334 of 17 April 2018 and is applicable from the same date.

The new Order approves the validity framework conditions attached to the License for Natural Gas Supply, which contain, inter alia, provisions on (i) the rights of the Licensee; (ii) the obligations of the Licensee; (iii) the establishment and maintenance of financial resources; (iv) sanctions for non-compliance.

We limit ourselves to mentioning only the following rights of the Licensee:

- (i) to carry out the activity of supplying natural gas through wholesale or retail operations;
- (ii) to conclude contracts with the licensees for the operation of the natural gas systems, according to the framework agreements approved by the NRAE;
- (iii) the possibility of appealing NRAE's decisions in administrative and fiscal litigation

Here are some of the obligations of the Licensee:

- (i) to supply natural gas to a final customer only after the conclusion of a supply contract, except in the cases specifically dealt with by the NRAE;
- (ii) to update and amend, by means of addendums, the supply contracts or their annexes in accordance with the regulations in force;
- (iii) to not make proposals or to conclude contracts that contain provisions contrary to the obligations of the Licensee or the NRAE regulations;
- (iv) not to use unfair or misleading business practices

An important obligation of the Licensee, provided separately, is to maintain the financial resources necessary to participate in the centralized natural gas market and to ensure the continuity of natural gas supply to household customers.

The normative act repeals the decision of the President of the National Regulatory Authority for Natural Gas no. 1271/2004 on the approval of the Framework Conditions for the validity of the natural gas distribution license, the Framework Conditions for the validity of the license for the supply of natural gas and the Framework Conditions for the validity of the authorization for the operation of the natural gas distribution systems/objectives published in the Official Gazette of Romania, Part I, no. 1.165 of 9 December 2004.

Other acts in energy published in April 2018:

- 1. NRAE Order no. 42/2018 for amending and supplementing the Performance Standard for the Natural Gas Distribution and System Service, approved by the Order of the President of the National Regulatory Authority for Energy no. 162/2015**, was published in the Official Gazette of Romania, Part I, no. 302 of April 4, 2018. The Order is applicable starting with the date of

entry into force of the Regulation on connection to the natural gas distribution system, approved by the NRAE Order no. 32/2017, except point 5 of art. I, which will enter into force on 1 October 2018.

2. **Law no. 85/2018 regarding the establishment and maintenance of minimum reserves of crude oil and/or petroleum products** was published in the Official Gazette of Romania, Part I, no. 308 of April 5, 2018 and is applicable from April 8, 2018;
3. **Emergency Ordinance no. 26/2018 regarding the adoption of measures for the security of electricity supply**, published in the Official Gazette of Romania, Part I, no. 314 of April 10, 2018 is applicable during April 15, 2018-30 June 2020;
4. **NRAE Order no. 69/2018 for amending and supplementing the Network Code for the National Gas Transmission System, approved by the Order of the President of the National Regulatory Authority for Energy no. 16/2013** was published in the Official Gazette of Romania, Part I, no. 314 of 10 April 2018 and is applicable from the same date;
5. **NRAE Order no. 68/2018 on repealing art. 2 par. (3) of the Order of the President of the National Regulatory Authority for Energy no. 97/2013 for the approval of the rules regarding the purchase of electricity for covering own technological consumption related to the electrical networks** was published in the Official Gazette of Romania, Part I, no. 315 of 10 April 2018 and is applicable from the same date;
6. **We also mention the Bucharest Court of Appeal's decision dated 06.04.2015 on the settlement of the administrative litigation formulated by the applicants Bucur Izabela Claudia, Bănăţeanu Mirela Luminiţa, Hobai Valentin, Arsene Niculae, Bobeică Mihai, Lalu Mihai, Arsenie Constantin Păulică, Niţescu Jordan, Spiridon Constantin, Chirciu Ioana Roxana, Dumitru Aurel, Sîrbu Cristache, Ion Adrian, Lepădatu Aurel and Florea Constantin against the defendants National Regulatory Authority for Communal Management Services and Autonomous Administration of Heat Distribution Constanţa, having as object an administrative act annulment** published in the Official Gazette of Romania, Part I, no. 318 of April 11, 2018, in which the court held that from the manner of formulating the provisions of art. 249 of Order no. 91/2007 for the approval of the Framework Regulation of the public service for the supply of heat resulted in the establishment of an condition additional to the provisions of art. 30 of the Law no. 325/2006 regarding the public service of heat supply, namely that, prior to 2007, in a condominium, individual disconnections should have been made in order to approve the execution of disconnections after the date of entry into force of the Regulation approved by Order no. . 91/2007. Thus, the court found the illegality of the contested rule, as adding to the law, introducing new criteria to be fulfilled for the household user *requesting disconnection from the heat distribution system*, taking into account the provisions of art. 30 par. (2) of the Law no. 325/2006 laying down the conditions under which disconnections of a condominium and individual disconnections can be made, *without prohibiting the possibility for a household consumer to drop the heat service*

*used up to that point.* In this regard, without having a correspondent in Law no. 325/2006, the norm in Art. 249 of Order no. 91/2007 is unlawful because it establishes an additional condition for individual disconnection, namely that individual disconnections must have been executed in that condominium prior to the date on which the framework regulation approved by that order entered into force. The conclusion is applicable from April 11, 2018.

- 7. NRAE Order no. 63/2018 for the approval of the Regulation regarding the monitoring by the National Regulatory Authority for Energy of the compliance programs established by the distribution operators or the natural gas storage operators** was published in the Official Gazette of Romania, Part I, no. 335 of 17 April 2018 and is applicable from the same date;
- 8. NRAE Order no. 67/2018 for the approval of the Methodology for monitoring the wholesale electricity market** was published in the Official Gazette of Romania, Part I, no. 342 of 19 April 2018 and is applicable from the same date;
- 9. NRAE Order no. 88/2018 for amending the orders of the President of the National Regulatory Authority for Energy regarding the establishment of the regulated prices for the distribution service and the approval of the prices for the regulated gas supply** was published in the Official Gazette of Romania, Part I, no. 361 of 26 April 2018 and is applicable from May 1, 2018;
- 10. NRAE Orders no. 73-87 regarding the establishment of the regulated prices for the provision of the distribution service performed by a number of companies** were published in the Official Gazette of Romania, Part I, no. 362 of 26 April 2018 and are applicable from 1 May 2018.

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

**Voicu & Filipescu SCA**

31 General Ernest Brosteanu Street

010527, Bucharest, Romania

Tel: +40 21 314-02-00

Fax: +40 21 314-02-90

E-mail: [office@vf.ro](mailto:office@vf.ro)

Web: [www.vf.ro](http://www.vf.ro)

