

# Tax & Legal Weekly Alert

28 November – 2 December 2016

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### **Preliminary proposals for the Code of Cultural Heritage**

The preliminary proposals for the Code of Cultural Heritage ("the Code") represent the general framework to establish the principles of the future legislation which will codify the regulations which safeguard the national cultural heritage.

### **Law amending and supplementing Law no. 51/2006 on community public utilities services**

Law no. 225/2016 amending and supplementing Law no. 51/2006 on community public utilities services has been published in the Official Gazette.

### **Government Decision no. 500/2011 on the general registry of employees was amended**

On 28 November 2016, the Government Decision for the amendment of the Government Decision no. 500/2011 on the general registry of employees (hereinafter "GD 500/2011") was published in the Official Gazette no. 963.

### **Law no. 233/2016 on public-private partnership**

Law no. 233/2016 on public-private partnership has been enacted and published in the Official Gazette no. 954 from November 25, 2016, in the form sent for promulgation.



## Preliminary proposals for the Code of Cultural Heritage

### Legislation which will be codified

The code will repeal the legislation regarding the cultural movable and immovable assets as well as the immaterial heritage, as all these provisions will be incorporated in the Code. The main normative acts which will be codified are:

- The Government Ordinance no. 43/2000 regarding the protection of the archeological heritage and the declaration of certain archeological sites as areas of national interest (approved with amendments by Law no. 378/2001), with subsequent amendments and completions;
- Law no. 182/2000 regarding the protection of the movable national cultural heritage, with subsequent amendments and completions;
- Law no. 422/2001 regarding the protection of historical monuments, with subsequent amendments and completions;
- Law no. 311/2003 regarding museums and public collections, with subsequent amendments and completions;
- Law no. 6/2008 regarding the legal status of the technical and industrial heritage;
- Law no. 26/2008 regarding the protection of the immaterial cultural heritage.

Other normative acts will be amended and completed to be in concordance with the provisions of the Code.

### The Structure of the Code

The code will be structured on 9 Chapters, as follows:

- CHAPTER I – PRELIMINARY PROVISIONS
- CHAPTER II – GENERAL PROVISIONS
- CHAPTER III – AUTHORITIES, INSTITUTIONS, STATE ORGANS WITH ATTRIBUTIONS IN THE FIELD OF NATIONAL CULTURAL HERITAGE
- CHAPTER IV – PROVISIONS REGARDING THE IMMOVABLE CULTURAL HERITAGE
- CHAPTER V – PROVISIONS REGARDING THE CULTURAL LANDSCAPE AND PROTECTED AREAS
- CHAPTER VI – PROVISIONS REGARDING THE MOVABLE CULTURAL HERITAGE
- CHAPTER VII – PROVISIONS REGARDING THE IMMATERIAL HERITAGE
- CHAPTER VIII – CONTROL AND SANCTIONS
- CHAPTER IX – FINAL AND TRANSITORY PROVISIONS

#### Chapter 1 – Preliminary provisions

The purpose of this chapter is to regulate the prevalence of the principles which should govern any legal measure adopted in relation with the cultural heritage. Chapter I will be structured on three main subjects regarding the strict interpretation of the provisions of the code in relation with the fundamental principles and the technical terminology, fundamental principles, technical terminology.

#### Chapter II – General provisions

This chapter will include the legal provisions which will be applicable to all types of heritage, as well as all the general rules applicable to them.

The first section will establish the scope of the regulation, general definitions, the purpose of the Code, the general definition of cultural heritage, or the establishment through distinct measure a legal protection system at a national or local level.

The second Chapter will also regulate in its third section the regulatory framework of the right to property over the national cultural heritage. This section will contain provisions regarding:

- The regulatory framework of the property and easement rights over an asset part of the national cultural heritage;
- The expropriation for a public utility clause of assets part of the national cultural heritage;
- The preemption right;
- The right to administrate assets part of the national cultural heritage which belong to the public domain.

Other relevant provisions will refer to the obligations of the owners of a public or private right over assets part of the national cultural heritage to maintain personal files of the assets; the obligation to allow access to the asset part of the national cultural heritage or to allow only certified specialists to make repairing works on the asset; the rules governing the donation or inheritance of assets part of the national cultural heritage; the rules governing the concession of assets part of the national cultural heritage.

Additionally, the Code will regulate the procedures which will establish a protection system of the assets. Moreover, the Code will introduce a system of inventory for the cultural heritage which will attribute unique codes to the assets belonging to the national cultural heritage and their registration in a register.

### **Chapter III - Authorities, institutions, state organs with attributions in the field of national cultural heritage**

This chapter will identify which authorities, institutions, and state organs which will have a direct role in the cultural heritage field. The provisions will identify the general and the specific areas of competences and the relation of subordination or collaboration between the institutions.

### **Chapter IV - Provisions regarding the immovable cultural heritage**

This chapters will contain specific definitions of the immovable assets which belong to the national cultural heritage, public utility and easement rights applicable to them, as well as rules regarding the protection of the immovable assets or the state guarantee to protect, prohibit the destruction and the conditions to relocate the immovable assets belonging to the national cultural heritage.

Additionally, there will be included provisions regarding the legal framework of the right to property over immovable assets part of the national cultural heritage, as follows:

- The nature of the right to property, the imprescriptibility, inalienability, unattachability of the historical monuments part of the public domain;
- The civil circulation of the immovable assets or groups of immovable assets part of the national cultural heritage which have a private form of property, the preemption right and its procedures;
- The obligation to implement the legal framework of legal protection in all the acts of transfer of the administration rights;
- The concession of immovable assets or groups of assets
- The liability of the owners and the situations where the owners are unknown;
- The expropriation for a public utility cause of the historical monuments.

Additionally, there will be introduces specific administrative procedures, as such: the inventory of the assets, the establishment of the legal protection, the evidence and endorsement of the assets which will regulate the works on the assets, the conditions of the amendments which can be effected during the course of the repairing works or the guarantee regarding the quality of the assets. There will also be instituted specific measures of protection, as such the obligation to adapt the authorized project in the situation of a discovery during the execution of the works of certain archeological elements or of a different nature with a high cultural relevance.

Moreover, the archeological heritage will benefit from additional regulation regarding the right to property, such as:

- The nature of the right to property and the easements of the public property over the national cultural archeological;
- The possession of discovered archeological movable assets and the financial compensations related to such discoveries;
- The civil circulation of the plots located on archeological sites or areas and the obligation and the obligation to include in the acts of transfer of the administration rights over the plots the exact location of the aforementioned sites or areas;
- The concession of the plots with archeological heritage;
- The liability of the owners and the situations where the owners are unknown;
- The expropriation for a public utility cause of the plots located on archeological sites or areas;
- Special provisions regarding the land registry office.

Additionally, there will be instituted a specific administrative procedure of inventory; a system of legal protection; the evidence, endorsement and authorization of the archeological research, such as: the communication of the commencement of the procedures of the establishment of the legal protection, the public recognition of the limits of the legal protection, the closure or the removal of the archeological findings. Additionally, there will be instituted measures of specific protection of durable development, protection of the casual archeological discoveries, or the authorization of interventions on the archeological sites or areas and the obligation to restore the plot to its initial state after the end of the archeological searches.

## **Chapter V - Provisions regarding the cultural landscape and protected areas**

This Chapter will firstly include the general and specific definitions for the cultural landscapes and its different types, the limits of the protected territories and areas as a cultural landscape.

Additionally, there will be included a list of the instruments of protection of the landscapes and its components, as follows:

- The landscape plans;
- The territorial landscape plan;
- The local landscape plan;
- The minimal provisions and the mandatory annexes to the landscape plans;
- The endorsement of the landscape plans.

Moreover, there will be included specific landscape plans provisions correlated to the legislation regarding urbanism and territorial planning, and the environment, as follows:

- The implementation of the provisions regarding the protection of the cultural landscapes at a local level;
- The implementation of the provisions regarding the protection of the cultural landscapes at a national level;
- The endorsements;
- The authorizations;
- The monitoring and control.

## **Chapter VI - Provisions regarding the movable cultural heritage**

The chapter dedicated to the movable assets part of the heritage will aim to develop provisions regarding to special necessities such as:

- Administrative procedures;
- Technical and scientific procedures;
- The circulation of the movable cultural assets on the Romanian territory and abroad.

## **Chapter VII - Provisions regarding the immaterial heritage**

The chapter dedicated to the immaterial heritage will include specific research, inventory, archive procedures of the immaterial heritage, as well as measures of protection.

## **Chapter VIII – Control and sanctions**

This chapter will regulate the contraventions, crimes, ascertainment procedures, control and sanctioning. Additionally, there will be included monitoring and application of sanctions procedures.

For further questions regarding the aspects mentioned in this alert, please contact us.

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## Law no. 225/2016 amending and supplementing Law no. 51/2006 on community public utilities services was published in the Official Gazette on 23 November, 2016

On November 23, 2016, Law no. 225/2016, amending and supplementing Law no. 51/2006 on public utilities services, was published in Official Gazette no. 942.

Law no. 225/2016 brings substantial changes in community public utilities services field, amending the general framework regulated by Law no. 51/2006 and harmonizing the provisions of special laws in the community public utilities sector. In this respect, the provisions of the special laws on community public utilities services shall be amended and completed accordingly with the provisions of Law no. 51/2006, as well as with Law no. 225/2016.

The main changes brought by Law no. 225/2016 are:

- the limitation of the extent of community public utilities services. In this respect, the activities regarding management of public and private domain of administrative-territorial units were eliminated from the scope of public utilities community services. Also, the activities relating to the production, transmission, distribution and supply of heat in a centralized system were removed and replaced with activities related to heat supply in centralized system;
- clarification at the level of primary legislation that the recovery of operating costs and investment may involve elements of state aid nature, situation in which the local authorities shall seek the approval of the Competition Council;
- introduction of new concepts such as "compensation for service obligation", "local community", "public service obligation", in view of harmonization with European legislation;
- introduction of specific provisions regarding the interdiction of sub-delegation by the operator of the management service or of activities which make part of the service, as well as the obligation to apply public procurement legislation in case of subcontracting of works or services.

Introduction of the obligation for local public authorities to take appropriate actions to ensure compliance of contracts with the provisions of Law no. 51/2006, as amended. Failure to comply with this provision represents administrative offence and is sanctioned with fine ranging from RON 10.000 to RON 50.000.

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## Amending and supplementing the Government Decision no. 500/2011 on the general registry of employees

The decision amending GD 500/2011, adopted by the Government during the meeting held on 23 November 2016, was published in the Official Gazette no. 963/28 November 2016. Significant changes were brought to the rules governing the filling in of the employees' general registry.

### The main changes brought to GD 500/2011 cover the following issues:

- The establishment of the General Registry of personnel paid from public funds ("**Public Registry**") alongside the General Registry of employees in the private sector ("**Private Registry**").

Both the personnel performing work under an individual employment agreement, and on the basis of an administrative act or a different kind of act, issued under the law, shall be registered in the Public Registry, drawn up in electronic form.

- The obligation of recording new elements in the Private Registry
  - a) The start and end date of posting;
  - b) The start and end date of transnational posting, as defined under Law 344/2006 concerning the posting of workers in the transnational provision of services, the State where the transnational posting will be carried out, the name of the beneficiary / user in favor of whom the employee shall perform work and the nature of this activity.
  - c) The start and end date of the posting in a State which is not a member of the European Union or European Economic Area, the state where the posting is made, the name of the beneficiary / user in favor of whom the employee shall perform work and the nature of this activity;
  - d) Data regarding study documents of the person, as well as data on profile / specialization / qualification according to the documents / certificates of qualification;
  - e) Identification data of the user, in case of temporary employment agreements;
- Regulation of the distinction between postings regulated under the Labour Code, respectively under Law no. 344/2006 concerning the posting of workers in the transnational provision of services.

Following the amendments brought to GD 500/2011, employers and public institutions / authorities shall record distinctly the state of posting, unlike in the previous version of the General Registry of Employees, which did not allow this.

### Consequences arising from the amendments brought to GD 500/2011

The amendments brought to GD 500/2011 solves a series of problems triggered, mainly, by the confusion made in practice between the posting governed under the Labor Code and the transnational posting regulated under Law no. 344/2006 concerning the posting of workers in the transnational provision of services

For further questions regarding the aspects mentioned in this alert, please contact us.

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