

Romania publishes guidelines on changes to public procurement and sectoral contracts

Romania's national authority for public procurement (ANAP) recently published new Guidelines, which unify EU and national rules and practices on making changes to public procurement and sectoral contracts.

The aim of the ANAP Guidelines is to create a predictable framework in which contracting authorities can implement such changes. However, critics claim the Guidelines fall short of these expectations.

In an attempt to bring clarity and a predictable framework for contracting authorities implementing changes to public procurement and sectoral contracts, Romania's national authority for public procurement (ANAP) published new Guidelines in January 2021, which identify EU and national rules and practice on the topic.

Although the Guidelines are not entirely new, as they reiterate and highlight the legal rules for amending public procurement and sectoral contracts, they represent a practical guide for public authorities and private operators alike when contemplating making necessary changes to contracts on on-going projects.

The Guidelines offer over 40 practical examples, specific to each type of contract modification, and also procedural guidance on enforcement of rules, including:

- How contract amendments (irrespective of whether these are performed by addendum) are subject to formal rules of registration in internal records;
- How contracting authorities and contracting entities must keep a register of contract amendments and publicise all contract amendments in the Electronic System for Public Procurement (SEAP);
- Details and clarifications on making unsubstantial contract amendments, irrespective of their value (e.g. the replacement of new subcontractors, extension of contract duration, etc.);
- Clarifications on the circumstances where price changes are allowed, even if the public procurement or sectoral contract provides that the price is firm or fixed;
- The detailed rules on implementing contract amendments for the legal increase of the gross minimum wage;
- Quantifying contract amendments in specific circumstances (e.g. where de-scoping of the contract occurred while other orders increased);
- Amending the contract by way of revision clauses and providing samples of revision clauses;
- Providing a checklist for contracting authorities or entities to conduct quick verifications of unsubstantial and permitted amendments, and any risks that could trigger additional requirements.

Despite the Guidelines' obvious benefits, important stakeholders have questioned the legality of some of the provisions.

The Federation of Employers of Construction Companies (Federatia Patronatelor Societatilor din Constructii or FPSC) released an official statement (available, in Romanian here) in which they expressed disagreement and

dissatisfaction with the content of the Guidelines, alluding to successful challenges in court for similar provisions in former guidelines issued by the ANAP in the past.

The public statements of the FPSC, a strong stakeholder in the Romanian public procurement infrastructure market, cast doubt on the future enforceability of the ANAP Guidelines.

For now, all interested stakeholders should try to view the live sessions (for more information click [here](#)), which the ANAP has promised to organise in order to clarify the new Guidelines. The sessions may provide an opportunity to seek clarification and changes to controversial provisions, which could impact the enforcement practices of contracting authorities or entities when attempting to make changes to public procurement contracts.

For more information on these Guidelines and public procurement in Romania, contact your CMS client partner or local CMS experts: **Horia Draghici, Cristina Popescu and Laura Capata.**