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# Legal Bulletin

## Labour law

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## Government Emergency Ordinance No. 82/2017 amending and supplementing certain regulatory acts ("GEO No. 82/2017")

Government Emergency Ordinance No. 82/2017 amending and supplementing certain regulatory acts ("GEO No. 82/2017") introduced, *inter alia*, a series of provisions for the creation of a legal framework governing the initiation of collective bargaining for the application of Government Emergency Ordinance No. 79/2017, amending and supplementing Tax Code Law No. 227/2015 ("GEO No. 79/2017"), such framework derogating from the provisions of Law No. 62/2011 on social dialogue ("Law No. 62/2011").

Thus, GEO No. 82/2017 lays down the following rules for the initiation of collective bargaining:

- Bargaining is mandatory to be conducted by all the employers, without distinction based on the number of employees (compared to Law No. 62/2011, which requires that collective bargaining be conducted only in units having at least 21 employees);
- In the absence of a representative union affiliated to a representative federation in the activity sector of the employer, the bargaining may be attended by representatives of the union federation – based on mandate granted by the union – together with the employees' representatives; and
- In the absence of a union, the bargaining may be attended by the representatives of a federation which is representative at sector-level, or of a union confederation which is representative nationwide – based on invite from the employees' representatives.

Government Emergency Ordinance No. 82/2017 seems to create significant interpretation and application issues, both in terms of the delimitation of the bargaining object, and in terms of determining the parties to the bargaining, as follows:

- The subject of the bargaining is not specified (even the substantiation note for the regulatory act does not contain such specifications). The mere reference to GEO No. 79/2017 ("[…] *for enactment of the provisions of Government Emergency Ordinance No. 79/2017* […]") does not clarify the issue of the subject of the bargaining, since GEO No. 79/2017 does not make any reference to the employer's obligation to initiate bargaining in view of application thereof. Potential remedies or sanctions in the event of failure of the bargaining also remain unclear;
- An omitted fact is that the employees' representatives are selected, according to law, in units of over 20 employees. Therefore, employers would be in a situation where they have no one to invite to the bargaining, by reference to the first item of GEO No. 82/2017, which compels them, regardless of the number of employees, to initiate such bargaining. Furthermore, the absence of employees' representatives would make it impossible to negotiate if there were no trade union in place at unit level, i.e. when the negotiation is presumed to be carried out with the representatives of a federation which is representative at sector-level, or of a confederation which is representative nationwide, but at the employee representatives' invite. It is unclear whether in order to give effect to the provisions of GEO No. 82/2017, the lawmaker considered derogations from the provisions of the Labour Code/Law No. 62/2011, other than those which would expressly result from the very text of the new regulatory act;
- According to Law No. 62/2017, there cannot be any collective labour disputes throughout the validity period of a collective bargaining agreement/contract. If such rule remains valid also in light of GEO No. 82/2017, it would mean that the employer's denial to accept employee requests concerning the enactment of GEO No. 79/2017 provisions cannot be the object of a labour dispute, which would deprive employees of the advantage of this key instrument of collective negotiations.

# Editors

**Employment** is one of the practice areas in which our lawyers have acquired extensive experience, ranging from management schemes tailored for both entities undergoing privatisation or private entities set up by international corporations in Romania, to preparing and negotiating collective and individual labour agreements and related specific clauses (employee benefits, restrictive covenants, stock option plans and trade option plans). Our attorneys also deal with employment related matters in relation to mergers & acquisitions and privatisations, involving redundancy programs, negotiations with trade unions, pension issues raised in transactions, investment management agreements etc. Our specialists are frequent lecturers on employment law issues and regular contributors to local and foreign publications, whilst being actively involved in the activities of reputed domestic and international associations and organisations such as the European Employment Lawyers' Association (EELA), Multilaw, AmCham etc.

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