

CMS: Romania adopts new law to support investments in transport infrastructure

The Romanian government adopted new legislation to support and expedite investment projects in transport infrastructure.

Effective as of 21 March 2022, the New Law was adopted due to increased concerns that Romania may lose EUR 12.7 billion awarded by the EU through the Recovery and Resilience Facility unless it implements the projected investments in the transport sector by the deadlines set in the National Resilience and Recovery Plan (NRRP).

At present, Romania has allocated a total of EUR 10 billion for both regional transport projects to be financed by EU funds (through operational programmes) and NRRP funds. Despite the significant financing available, no NRRP-funded contracts have so far been signed. This despite the ambitious terms set by the NRRP for the investments: 2026 for completion of the projects and 2023 for conclusion of relevant contracts with selected contractors. In addition, the sanctions for non-compliance are harsh: failure to observe these deadlines will result in the loss of all NRRP financing for transport-related investments.

Against this background, through the New Law, the Romanian government introduces significant measures, which aim to facilitate absorption of NRRP and EU funds and accelerate award procedures for transport projects.

The newly introduced far-reaching measures include:

- contracting authorities have the right to use the direct negotiation procedure (without prior publication of a contract notice) in cases of extreme urgency determined by unforeseen events for the contracting authority, and for transport projects, the contracting authority may conclude the contract for a period longer than that strictly required to cover unforeseen circumstances;
- in most cases, contracting authorities will have only one business day from the notice of selection of the successful bidder to request supporting documents regarding compliance with qualification requirements in accordance with the European Single Procurement Document (ESPD), and bidders will then have seven business days to procure and submit the relevant documents;
- contracting authorities have the right to make direct payments to suppliers, subcontractors of designated subcontractors and other economic operators if this possibility is provided in the award documentation;
- small-value amendments to public procurement works contracts are allowed up to 15% of the contract value and in case of successive amendments, this threshold will apply by accruing the value of other similarly small amendments based on the same legal provisions although other contract amendments based on different legal provisions shall not be considered in the calculation of the legal threshold;
- smaller procedural deadlines for court proceedings (e.g. 15 days for submission of the statement of defence for complaints filed in court);
- special procedural means to obtain suspension of certain court proceedings (e.g. termination of a contract) are now inadmissible;
- shorter periods for statute of limitations apply for termination of public procurement contracts (e.g. 30 days instead of three years);
- in case of the rejection of a complaint, the contracting authority is legally obliged to retain the legal bond (i.e.

bail) set up by the claimant for the purpose of recovering damages incurred due to delays in completion of the award procedure.

The government expects that these legislative measures will facilitate the implementation of a significant number of public-procurement projects in the future. This, along with the high pressure on contracting authorities in the transport sector to absorb the available funding in a short timeframe, will surely lead to an unprecedented line of public procurement procedures being initiated in the near future. With the door open towards more direct negotiation procedures, interested stakeholders should carefully review public information available on planned investments and prepare to bid.

For more information on opportunities in Romania's transport investment sector, contact your CMS client partner or local CMS experts: **Cristina Popescu** and **Laura Capata**.