BENEFITS AND FUTURE COMMITMENTS IN THE ACTUAL LEGAL FRAMEWORK SINCE JOINING THE EU

Interview with Pasquale Silvestro, Partner at Tonucci & Partners

Lawyer Silvestro, how has Romania changed in terms of legislation since its entry into the EU in 2007?

Since its entry into the European Union in 2007, Romania has profoundly changed its general regulatory framework.

This process was and is essentially connected to the obligations of legislative adaptation deriving from membership of the European Union but also from the awareness of answering the requests for legal certainty imposed by an economy undergoing strong transformation and modernization.

Just think of what has been done to support the achievement of the community objectives in the field of renewable energy from 2008 onwards, mainly in the wind and photovoltaic sector.

Nowadays, Romania is experiencing a new and positive season of green investments, being able to count on important reforms such as the one that has reintroduced the possibility of stipulating long-term bilateral contracts or that of authorizing the construction of energy production plants from renewable sources, under certain conditions, even on agricultural land, without therefore the obligation to change the urban destination. The latter is certainly a revolutionary rule for a country anchored to a rigid separation of urban planning categories.

But there is more. Romania has recently introduced important innovations in the labour market through the law n. 283/2022 setting up mandatory principles and rules relating to the constituent elements of wages, the methods of payment of the employee's salary, working hours, all those cases in which the employer cannot proceed with the dismissal except by integrating a serious offense and discrimination.

In essence, with the aforementioned law, an important step has been taken towards the alignment with the standards of the other EU member countries, also in terms of flexibility and smart working.

It must also be said that this reform drive has recently been accelerated also by the agenda imposed by the PNRR, taking in consideration reform law n. 265/2022 on the Business Register which also impacts the general law on company law n. 31/1990.

At this point, an important change is concerning he procedure for mergers and demergers which until now was subject to the authorization of the competent territorial Court while, following the reform, it is approved by the Company Register.

This change should speed things up considerably and be applicable to cross-border mergers.

Furthermore, the reform law, for the part impacting on the main corporate legislation, establishes, inter alia, some important innovations regarding the mandatory contents of the statute of a limited liability company. Well, this should include:

- the subscribed share capital (in place of the share capital, as previously requested;
- the procedure for adopting shareholders' resolutions for which the vote of all shareholders is required, if it is not possible to obtain an absolute majority due to equal participation;
- the duration of the directors' mandate;
- the procedures for ensuring the extinction of liabilities or their regularization via composition with creditors, in the event of dissolution without liquidation, where the shareholders agree on the distribution and liquidation of the company assets; And the identification details of the ultimate beneficial owners and the ways in which they exercise control over the company, where required by law (this also applies to joint-stock companies.

Another novelty introduced by the law n. 265/2022 provides that the shareholders of a limited liability company will no longer be required to pay the entire share capital upon incorporation. These will have the option to pay:

- 30% of the share capital subscribed no later than three months from the date of incorporation, but before the start of any operation on behalf of the company;

and

- the difference with respect to the entire value of the share capital a) in cash - within 12 months from the date of incorporation, and b) in kind - within a maximum of two years from the date of incorporation.

In your opinion, has this process of legislative reform changed or is it changing the nature of investors and investments in Romania?

For several years, Romania has been one of the top destinations for the Italian manufacturing relocation. Starting from the end of the 90s, many Italian companies, from SMEs to large industrial companies in our country, have chosen Romania as their main production site and this for reasons essentially connected to the cost of labour, competitive with fiscal policies attracting very advantageous foreign investments.

To date, we certainly cannot argue that wages and preferential taxation are no longer attractive elements for the Italian entrepreneurs who look at Romania with interest but certainly a lot has changed. Wage retribution and workers' protections have increased and are tending to those of other EU countries, although not yet at the same level; over the years, a settlement, and partly a reduction, of the tax benefits has been made while maintaining important tax benefits for investments in the country, but within the framework of certain rules and rigid controls.

Together with the above, in the last decade, the country's economic growth and the gradual increase in well-being and spending capacity in the area, have meant that Romania has transformed itself from a symbol of relocation for production destined for other markets to a Country that requests the supply of finished products. In essence, Romania has gone from a "factory" to a "market" of interest to many European companies, and beyond. As a result, this important industrial and commercial evolution was in some cases preceded, in others followed by a reform movement on the legislative level.

In your opinion, is there still a lot to do from a regulatory point of view to bring Romania closer to European standards?

We are certainly on the right track but there are sectors in which more needs to be done and which, thanks to the funds of the PNRR, now have a prominent place on the government agenda. I am referring to the health sector, that of digitization, the environment and infrastructure. During the last year, the Italian Chamber of Commerce in Romania presented various and qualified proposals to the Romanian Government, also organizing meetings with the relevant institutional interlocutors. Above all, I would like to underline the initiative carried out by the "Infrastructure" Task Force of the Chamber for the implementation in Romania of an effective regulatory framework on Public Private Partnership ("PPP"). In this regard, the Chamber has produced a position

paper starting from the best practice of the Italian regulatory experience and in particular from the art. 183, paragraph 15 of the Procurement Code (Legislative Decree 50/2016. Indeed, we are confident that also in Romania a clear and flexible regulatory framework on PPPs can be a valid tool for the allocation of financial resources for the construction and management of public infrastructures.

First of all, we suggested changing the effective limit for the contribution of the public partner in a PPP contract, a limit which today cannot exceed 25% of the total value of the investment pursuant to article 12, paragraph 2, of the ordinance of urgency no. 39/2018, proposing the extension up to 49% as foreseen by most of the regulations of the EU members to attract private financial resources.

We then focused on the project financing mechanism envisaged by the Italian law in order to introduce it in emergency ordinance no. 39/2018.

Our proposal focuses on the following points:

I. any economic operator can present a proposal relating to the construction of public works under concession to a contracting station;
II. the proposal must contain a feasibility project, a draft agreement, the certified economic-financial plan and the specification of the characteristics of the service and management;
III. once the contracting station has approved the feasibility study, the contracting station will declare the public utility of the proposal;
IV. at that point, a tender will be called concerning the aforementioned proposal (including all its elements and the promoter will be invited to participate;
V. if the promoter is not awarded the tender procedure, he will be able to exercise, within fifteen days from the communication of the award, the right of pre-emption on the best offer and become the winner from the moment in which he declares to assume and fulfil the contractual obligations under the same conditions offered by the successful tenderer; that failing
VI. if the promoter does not exercise the aforementioned right of first refusal, he will be entitled to payment of the expenses incurred for the preparation of the proposal which cannot exceed 2.5% of the value of the investment calculated in the feasibility study. Payment will be made by the winning bidder. The same right belongs to the original contractor if the promoter exercises the right of pre-emption. Payment will be made, in this case, by the promoter.

Precisely those sectors where today Romania suffers from a clear gap with the other EU member countries such as, by way of example only, transport (e.g. subways, railways, ports, airports) or social infrastructure (e.g. schools, hospitals, prisons, sports facilities) could experience a new and positive construction season through the use of the PPP mechanism, favouring the involvement of private partners in initiatives of public interest.

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