

## Legal Changes of July 2018

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in:

- Corporate
- Data Protection
- Employment
- Energy
- Litigation & Arbitration
- Public Procurement
- Real Estate

## + VF News

**Marta Popa**, Senior Partner Voicu & Filipescu, authored the Romania chapter of the ICLG to: *Outsourcing 2018* released by Global Legal Group on July 31, 2018.

Voicu & Filipescu supports the launch of "Revista Societăților și a Dreptului Comercial" (The Companies and Commercial Law magazine) released by Editura Rosetti.

**Chambers and Partners Europe** recommends Voicu & Filipescu for Corporate and M&A practice.

**IFLR 1000** recommends Voicu & Filipescu for our lawyer's activity in two practice areas: M&A as well as Banking and Finance.

**Legal500 EMEA 2018** recommends Voicu & Filipescu for our lawyers' activity in 7 practice areas: commercial, corporate and M&A, employment, energy and natural resources, PPP and procurement, real estate and construction, restructuring and insolvency, TMT. Mugur Filipescu, Marta Popa, Roxana Negutu, Raluca Mihai and Mariana Popa are also recommended by the prestigious guide for their activity.

## corporate - legal changes published in July 2018

### **Law no. 163/2018 for amending and supplementing the Accounting Law no. 82/1991 and the Companies Law no. 31/1990, as well as for amending the Law no. 1/2005 on the organization and operation of cooperatives**

Below a summary of the main changes:

#### (I) Accounting Law no. 82/1991

- as a novelty – quarterly distribution of dividends is now allowed; to this end, provisional financial statements must be prepared. Previously, the distribution of dividends could only occur after the annual financial statements have been approved by the General Assembly of Shareholders. Dividend distribution without the approval of the annual financial statement was expressly forbidden until now.;
- adjustments to the amounts distributed during the financial year must take place after the approval of the annual financial statements and the dividends distributed and paid over the financial year must be reimbursed within 60 days from the date of the approval of the annual financial statements;
- a restitution obligation is imposed for the shareholders who have received dividends on a quarterly basis. It is the management duty to pursue the recovery of these amounts and to order the necessary measures to this purpose.

#### (II) Companies Law no. 31/1990

- dividends are distributed to shareholders pro-rate with the participation to the share capital, optional quarterly based on interim financial statements and annual basis, after adjustment effected by the annual financial statements, unless the articles of association provide otherwise;
- dividends may be paid on an optional quarterly within the time limit set by the general meeting of shareholders or, as the case may be, by special laws, and adjusting the differences resulting from the distribution of dividends during the year shall be made through the annual financial statements. Payment of the differences resulting from the adjustment shall be made within 60 days from the date of approval of the annual financial statements for the financial year ended. Otherwise, the company owes after that term penalty interest;
- in case of partial dividend distribution between shareholders during the financial year, the annual financial statements will highlight dividends that are partially paid and will regularize the resulting differences accordingly;
- if the shareholders owe dividend repayments following regularization in the annual financial statements, they should pay the differences to the company within 60 days of the date of approval of the annual financial statements. Otherwise, after such term, the shareholders owe penalty interest to the company;

- the annual financial statements, the annual report of the Board of Directors, respectively the report of the Board of Directors and the Supervisory Board, as well as the proposal regarding the distribution of dividends and the situation regarding the dividends distributed partially during the fiscal year shall be made available to the shareholders at the company's headquarters, from the convening of the general meeting. Upon request, shareholders shall be issued copies of these documents. Amounts charged for the release of copies may not exceed the administrative costs involved in supplying them.

Source: the Official Gazette of Romania, Part I, no. 595 of July 12, 2018. The law entered into force on July 15, 2018.

### **Law no. 176/2018 regarding the internship**

Under the new law, the internship program is based on a fixed-term internship agreement, up to 720 hours, for a maximum of 6 months, without the possibility of extension. Depending on the number of employees, the host organization may simultaneously conclude internship agreements for a number of interns that may not exceed 5% of the total number of employees. Exceptions are made by firms that have fewer than 20 employees, who may have 2 interns.

The monthly allowance is equal to at least 50% of the country's minimum gross basic salary guaranteed in payment and is granted in proportion to the number of hours worked. The period of internship based on the internship agreement is seniority and, depending on the case, seniority in specialty depending on the type of activity.

The host organization may receive a promotion premium of Lei 4,586 per employee if within 60 days of completing the internship program it concludes an individual employment agreement with the person who has completed the internship program and maintains the employment relationship for an uninterrupted period of at least 24 months.

Source: the Official Gazette of Romania, Part I, no. 626 of July 19, 2018. The law shall enter into force on August 18, 2018.

### **Law no. 191/2018 for the amendment of Government Emergency Ordinance no. 193/2002 on the introduction of modern payment systems**

Legal entities carrying out retail and wholesale activities, as defined by Government Ordinance no. 99/2000 regarding trading of goods and services market, as well as those which perform services activities, which achieve annually a turnover exceeding Euro 50,000 in Lei equivalent, have the obligation to accept as a means of payment and the debit cards, and credit cards via a POS terminal and / or other modern acceptance solutions.

Card accepting institutions are required to install payment terminals within 30 days of the request. Expenditure on the administration and operation of payment terminals will be determined by agreements concluded with the designated institutions.

Source: the Official Gazette of Romania, Part I, no. 642 of July 24, 2018. The law entered into force on July 27, 2018.

## **Law no. 200/2018 for amending and completing the Law no. 217/2016 on the reduction of food waste.**

The purpose of this law is to increase the level of information to final consumers on the date of minimum expiration date and food hygiene conditions, which should be the responsibility of the public authorities with regulatory and control responsibilities in the agri-food sector and the motivation of the economic operators to donate food close to the end of the expiration date.

The law establishes that targeting foods close to the expiry date is made to recipient operators, being forbidden to sell the food to other food business operators or directly to the final consumer (except: the case of associations and foundations operating according to the Government order no. 26/2000; social enterprises operating under the Law no. 219/2015; public social services providers operating under art. 27 of the Law on social assistance no. 292/2011). Economic operators who transfer food by donation under the law benefit from certain tax incentives.

The law was suspended and will be applied from February 1, 2019, period during which the relevant authorities should develop the methodological norms for application.

Source: the Official Gazette of Romania, Part I, no. 647 of July 25, 2018.

## data protection - legal changes published in July 2018

### On July 31, 2018 will come into force Law no. 190/2018 on measures to implement the General Data Protection Regulation (Regulation (EU) 2016/679)

Law no. 190/2018 establishes special rules on the processing of certain categories of personal data which take into account: genetic data, biometric data or health data, national identification number, personal data processing in the context of labor relations, personal data and special categories of data in the context of performing a task that is of public interest.

With regard to the processing of a ***national identification number*** (e.g. personal identification number, identity card number and series, passport no, driving license number or social health insurance number), including the collection or disclosure of documents containing it, the new law provides for the existence of a basis stipulated by art. 6 paragraph (1) of GDPR. If the legal basis for processing is ***legitimate interest*** (Article 6 (f) GDPR), it will be mandatory to establish guarantees consisting in: **(a)** the implementation of special technical and organizational measures; **(b)** appointing a Data Protection Officer (DPO); **(c)** setting durations for the storage and processing of data according to the nature of the data and the purpose of the processing, as well as specific periods in which the data must be deleted or revised for deletion; **(d)** periodic training of persons processing data.

If monitoring systems by means of ***electronic communications and / or video surveillance*** are used in the ***workplace***, in order to achieve the legitimate interests of the employer, the new law provides additional obligations to the employer, as well as special conditions, namely: **(a)** prior mandatory full and explicit information of all the employees; **(b)** justification of the legitimate interest of the employer, in respect of which it must be possible to prove that it prevails over the rights and freedoms of the data subjects (employees); **(c)** consultation with the trade union/employee representatives before the introduction of monitoring systems; **(d)** proof that other means and ways to achieve the purpose pursued by the employer have not proven their effectiveness before; **(e)** the period of storage of personal data should be proportional to the purpose of the processing, but not more than 30 days, except in some cases provided by law or duly justified.

Law no. 190/2018 regarding the measures for implementation of GDPR was published in the Official Gazette no. 651 / 26.07.2018 and entered into force on July 31, 2018.

**On July 13, 2018, has been published Decision no. 133 of the National Supervisory Authority for Personal Data Processing approving the Procedure of 03.07.2018 regarding the receipt and settlement of complaints.**

According to the Procedure, complaints to the National Supervisory Authority for Personal Data Processing may be addressed by any identified data subject who considers that the processing of their personal data violates the legal provisions in force, especially if the residence, his place of work or alleged violation is or, as the case may be, takes place on the territory of Romania.

The procedure governing the wording, receipt of the complaint by the Authority, how to handle, terms, if the data subject considers that the data controller is processing the data illegally.

It also establishes the Authority's competence in dealing with the complaint, as well as the possibility of an alternative option for the data subjects to defend their rights.

Decision no. 133 of the National Authority for Supervising the Processing of Personal Data was published in the Official Gazette no. 600 of July 13, 2018.

**On July 3, 2018 was published the Decision no. 128 of the National Supervisory Authority for Personal Data Processing on the approval of the standard form for the personal data breach notification in accordance with Regulation (EU) 2016/679.**

Taking into account the provisions of the General Data Protection Regulation, in the event of a breach of personal data security, the controller notifies the competent supervisory authority under Art. 55, without undue delay and, if possible, no later than 72 hours from the date on which it became aware of it, unless it is unlikely to create a risk to the rights and freedoms of individuals.

The notification form includes fields related to the *identification of the controller* (name, dates of the data protection officer, whether it is a new notification or a supplement to an old notification, the date and time of the incident and of the detection of the incident, the nature of the breach of the security of personal data, the content of the data concerned, the technical and organizational measures applied, the relevant use of other controllers) and *information on breaches of data security* (summary of the incident that generated the personal data breach, number of data subjects, possible consequences and adverse effects for individuals, technical and organizational measures taken by the controller to mitigate potential adverse effects, possible additional information to the individuals concerned, possible cross-border issues).

Decision no. 128 of the National Authority for Supervising the Processing of Personal Data was published in the Official Gazette no. 557 of July 3, 2018.

## employment - legal changes published in July 2018

**Order of the Ministry of Labour and Social Justice no. 1635/342/2018 for amendment of the Annex to the Order of the Minister of Labour, Family and Social Protection and of the President of the National Institute of Statistics no. 1.832/856/2011 regarding the approval of the Classification of Occupations in Romania - level of occupation (six characters)** was published in the Official Gazette of Romania, Part I, no. 566 of July 5, 2018, entering into force at the same date.

The Annex to the Order of the Minister of Labour, Family and Social Protection and of the President of the National Institute of Statistics no. 1.832/856/2011 regarding the approval of the Occupation Classification in Romania - level of occupation (six characters), is modified with respect to the major group 9 - Basic Occupations, new occupations being introduced and/or modified in this group.

In this respect, the new Annex sets out group 9 "Elementary Occupations" as opposed to the modified form, which provided for this group positions for "Unqualified workers". In addition, the position of "Household and service personnel" is replaced by "Housekeepers". Not only, the "Chef aid" occupation has been replaced, currently having the name "Kitchen help".

Another amendment brought by the new Order is represented by change into "Sanitation workers and other workers with elementary training" as opposed to the old provision, where this occupation was named "Sanitation workers and others unqualified workers".

Last, another new provision is represented by the name change of the occupation of 9629 in "Workers with elementary training not classified in the earlier basic groups", compared to the old provision, namely "Unqualified Workers not classified in the earlier basic groups".

**Emergency Ordinance of the Romanian Government no. 60/2018 for the amendment and completion of certain normative acts in the field of labour force** was published in the Official Gazette of Romania, Part I, no. 577 of July 9, 2018, entering into force on the same date.

The Emergency Ordinance amends and supplements Law no. 76/2002 on the unemployment insurance system and the stimulation of employment, establishing, inter alia:

- increasing the amount of the activation bonus from Lei 500 to Lei 1,000;
- the activation bonus does not cumulate with the insertion bonus, nor with the installation bonus provided in art. 73<sup>1</sup> par. (1) and art. 75;
- employers who employ graduates from the educational institutions for an indefinite period of time receive for each graduate employed a monthly amount of Lei 2,250 for a given 12-month period (the old regulation stipulated an amount of Lei 900);

- the same amount increased from Lei 900 to Lei 2,250 is also provided to employers who employ for an indefinite period of time unemployed individuals aged over 45, unemployed individuals who are single parents supporting single-parent families, long-term unemployed individuals or young people NEET; they will receive monthly, for a period of 12 months, for each employed individual in these categories, an amount of Lei 2,250, with the obligation to maintain the employment relationship for at least 18 months;
- of the same amount of Lei 2,250 benefit employers who employ, according to the law, unemployed individuals who, within 5 years as of the employment date, fulfil, according to the law, the conditions for applying for the partial early retirement pension or for the granting of the limit pension, if they do not meet the conditions for applying for partial early retirement; the amount is granted monthly, during the period of employment, until the date when the obligations are fulfilled.

The Emergency Ordinance amends as well para. (2) of art. 16 of Law no. 279/2005 regarding the apprenticeship at the work place, providing that the employer who enters into an apprenticeship contract, according to the law, receives, upon request, during the entire period of the apprenticeship contract, an amount of Lei 2,250 / month, granted from the unemployment insurance budget within the limits of the funds allocated for this purpose (the former amount was Lei 1,125).

At the same time, para. (1) of art. 28 of the Law no. 335/2013 concerning the performance of the traineeship for the graduates of higher education, provides that the employer who concludes a traineeship contract, according to the law, receives, upon request, during the period of the traineeship contract, an amount of Lei 2,250 / month, granted from the unemployment insurance budget within the limit of the funds allocated for this purpose (the previously regulated amount was Lei 1,350).

**Law no. 165/2018 regarding the issuance of the value tickets** was published in the Official Gazette of Romania, Part I, no. 599 of July 13, 2018, entering into force starting January 1, 2019.

The Law provides the method of granting, for the benefit of the employees, value tickets, under the conditions and exceptions provided by Law no. 227/2015 regarding the Fiscal Code. Value tickets can be issued both on paper and on electronic support.

In accordance to the Law, the value tickets that can be granted are: meal vouchers, gift vouchers, nursery vouchers, cultural vouchers and holiday vouchers.

The Law establishes that the value tickets are granted within the limits of the amounts provided for this purpose in the state budget or, as the case may be, in the local budgets, for the budgetary units, and within the limits of the amounts provided for this purpose in the approved revenues and expenditures budget, for the other categories of employers.

Value tickets are issued only by the units authorized by the Ministry of Public Finance, which must carry out this activity only based on the operating authorization granted by the Ministry of Public Finance.

With respect to costs, it is stated that those related to the issuance on paper support and / or electronic support are entirely on the employers' expense. An employer who purchases directly from an issuing entity paper-support tickets pays both their nominal value, as determined by law, and the cost of the print for the paper-support ticket. The

employer who contracts with the issuing unit, the service of issuance of value tickets on electronic support, pays both the nominal value of the tickets distributed to the employees as well as the cost of issuing the electronic support.

From a fiscal point of view, the amounts corresponding to the value tickets granted by the employer, within the nominal limits provided by law, are deductible with respect to the corporate income tax. These amounts shall not be taken in consideration neither by the employer nor by the employee at the determination of the rights and obligations in relation to the salary.

The law establishes that, the employers, together with legally constituted trade unions or, where no union is established, with employees' representatives, shall jointly determine the categories of value tickets to be given to employees, the frequency of their assignment and their value where applicable, the issuing unit and the method of delivery, on paper and / or on electronic support.

On the date of the entry into force of Law no. 165/2018, there will be repealed:

- Law no. 142/1998 on the granting of value tickets, published in the Official Gazette of Romania, Part I, no. 260 of July 13, 1998;
- Law no. 193/2006 regarding the granting of gift vouchers and nursery vouchers, published in the Official Gazette of Romania, Part I, no. 446 of 23 May 2006; and
- Government Emergency Ordinance no. 8/2009 on the granting of holiday vouchers, published in the Official Gazette of Romania, Part I, no. 110 of 24 February 2009.

**Law no. 176/2018 on internship**, was published in the Official Gazette of Romania, Part I, no. 626 of 19 July 2018, and shall enter into force on August 18, 2018.

The Law on internship provides the method of performing the internship programs for individuals over the age of 16, with the main purpose of developing professional skills, performance by interns of the specific activity of the host-organisation, acquiring professional experience, practical competences and / or competences and facilitate the transition to the labour market. The law also allows internship contracts to minors who have reached the age of 15, however, only with the consent of their parents or legal representatives, as per case.

An important aspect is that the host-organization can simultaneously conclude internship contracts for several interns that may not be more than 5% of the total number of employees.

Such internship programs can be organized at any time during an uninterrupted period of 12 months and the duration of an internship program is up to 720 hours over 6 consecutive months. A single internship contract can be concluded between the intern and the host organization. However, several internship contracts may be concluded provided that they are for different internship programs and that their cumulative period is no longer than 6 months.

An important aspect represents the prohibition, under penalty of absolute nullity, to conclude an internship contract to avoid the conclusion of an individual employment contract for performing the respective activity. However, the period of internship based on the internship contract is considered seniority.

The Law also provides the prohibition of the conclusion of an internship contract with individuals with which they had labour relations or employment relationships, and it also prohibits the conclusion of an internship contract for a period of 3 years after the application of the penalty of absolute nullity, as consequence of the case when an internship contract was concluded to avoid the conclusion of an employment contract.

The Law establishes that a mentor can provide training for up to 3 interns and the activity carried out in this respect is included in the job description and in the normal work schedule.

The Law on Internship provides a series of obligations for both the intern and the mentor and the host-organization, and it as well provides an internal evaluation procedure based on an evaluation report that will include a description of the activities carried out by the intern and the method of performance.

The internship contract must be concluded in written form, in Romanian, no later than the day before the start of the internship program, and the host-organization has the obligation to conclude the internship contract in written form, while establishing the maximum duration of the internship contract of 6 months without the possibility of extension. Upon termination of the internship contract, the parties may agree to continue the activity by concluding, in accordance with the law, an individual employment contract.

The Internship Law establishes the right for host-organizations, within 60 days of completing the internship program, to conclude an individual labour contract with the individual who has completed the internship program, and the right to request from the unemployment insurance budget a promotion bonus of employment in the amount of Lei 4,586 for each employed individual. However, this bonus may be obtained only after fulfilment of the obligation of maintaining the employment relationships for an uninterrupted period of at least 24 months. The employment promotion bonus is granted within the limits of the funds allocated for this purpose.

**Decision of the Constitutional Court of Romania no. 387/2018 on the exception of the unconstitutionality of the provisions of art. 53 par. (1) the first sentence of Law no. 263/2010 on the unitary pension system and art. 56 para. (1) lit. c) the first sentence of Law no. 53/2003 – Labour Code** was published in the Official Gazette of Romania, Part I, no. 642 of July 24, 2018, being applicable from that date.

The criticisms of constitutionality have been reported to the provisions of art. 56 para. (1) lit. c) the first sentence of Law no. 53/2003 - Labour Code, republished in the Official Gazette of Romania, Part I, no. 345 of May 18, 2011. In this respect, the Constitutional Court held that these provisions create a cause of termination of the individual labour contract as of the date of fulfillment of the standard age conditions and of the minimum retirement contribution.

This legal provision of the Labour Code applies equally to women and men, but according to art. 53 par. (1) of the Law no. 263/2010 on the unitary pension system, the termination of the employment contract on the date of fulfillment of the standard age conditions and the minimum retirement contribution applies at different ages, the one for women being different from that of men.

The Court determined that, while the provisions of art. 53 of Law no. 263/2010 establish the necessary conditions for acquiring the old-age pension, art. 56 of Law no. 53/2003 does not provide an option for the employee for continuation of the employment relationship in progress at the age of retirement. As a matter of fact, the termination of the individual employment contract is not available for the employer either, but operates *ope legis* (by the law). Thus, the only possibility for a person meeting the standard age and minimum retirement contribution to continue the employment relationship under the individual employment contract is to conclude a new contract, with the same employer, if the employer agrees, or with another employer.

From this perspective, the difference in legal treatment between men and women in terms of age at which the individual employment contract ceases, loses therefore its character as a measure intended to support women, considering social, family, and economically less favorable conditions, but, on the contrary, creates a disadvantage for those women who wish to exercise this right in equal terms as men. Thus, as a result of the provisions of art. 56 para. (1) lit. c) the first sentence of Law no. 53/2003, the regulation with social reparatory effect for women, contained in art. 53 par. (1) the first sentence of Law no. 263/2010, is transforming into a discriminatory regulation that affects the exercise of women's right to work as opposed to men's.

Therefore, the Court considered that the cessation of women's employment relationship at a lower age than men can and should remain their option, in the current social context. The transformation of this legal benefit into a consequence of determining *ope legis* the termination of the individual labour contract, acquires unconstitutional valences, to the extent that it ignores a woman's will to be treated equally with a man.

In conclusion, the Constitutional Court admitted the exception of unconstitutionality of the provisions of art. 56 para. (1) letter c) the first sentence of Law no. 53/2003 - the Labour Code and established that they are constitutional in so far as the phrase "standard age conditions" does not exclude the possibility of the woman to request the continuation of the performance of the individual labour contract under identical conditions with the man, respectively until the age of 65 years old.

## energy - legal changes published in July 2018

**Law no. 167/2018 amending and supplementing the Law on Electricity and Natural Gas no. 123/2012 was published in the Official Gazette of Romania, Part I, no. 604 of July 16, 2018 and is applicable from 19 July 2018.**

The normative act amends and supplements the Law on Electricity and Natural Gas no. 123/2012, published in the Official Gazette of Romania, Part I, no. 485 of July 16, 2012, providing inter alia the following:

- (i) ANRE ensures the information level increase and awareness of the electricity final customers' rights in relation to the economic operators participating in the electricity market and undertakes all the necessary measures for the provision of practical information;
- (ii) Concerning the execution of concession contracts concluded by the distribution operators, the law directly provides the investments made by co-financing from the distribution operator's own funds, from the local budgets and from the state budget, as well as from the funds of the natural and legal persons who have required connection to the network in that area, for electricity works required for that specific concession area, whether such investments are not economically justified for the distribution operator;
- (iii) A new obligation on the supplier is provided, according to which the supplier has the obligation to acquire electricity in order to cover the consumption of its clients, with priority for the customers of the universal service in its portfolio;
- (iv) The supplier shall not have the right to unilaterally terminate the contracts for the supply of electricity concluded with the final customers.

**Law no. 171/2018 regarding the approval of Government Emergency Ordinance no. 64/2016 for the amendment and completion of the Law on Electricity and Natural Gas no. 123/2012 was published in the Official Gazette of Romania, Part I, no. 611 of July 17, 2018 and is applicable as of July 20, 2018.**

The normative act approves Government Emergency Ordinance no. 64/2016 for the amendment and completion of the Law on Electricity and Natural Gas no. 123/2012, published in the Official Gazette of Romania, Part I, no. 801 of October 11, 2018.

According to GEO no. 64/2016, between January 1, 2018 and December 31, 2021, each natural gas producer, in so far as it contracts the sale of natural gas in a calendar year, is required to conclude, during that calendar year, contracts on the Romanian centralized markets, transparently and non-discriminatory, in accordance with the regulations issued by ANRE, for the sale of a minimum quantity of natural gas from its own production, which cannot be less than the one represented by a percentage quota determined by Government decision, from the quantity of natural gas for which it concludes sales and purchase contracts in the respective calendar year as a seller.

Furthermore, during the period January 1, 2018 - December 31, 2021, each natural gas supplier who does not have the quality of a producer, insofar as it contracts the sale/purchase of natural gas in a calendar year, has the obligation to conclude, in that calendar year, contracts on centralized markets in Romania, transparently and non-discriminatory, in accordance with the regulations issued by ANRE, for:

- a) the purchase of a minimum amount of natural gas which cannot be less than the one represented by a percentage quota determined by a Government decision from the quantity of natural gas for which it concludes natural gas purchase and sale contracts in the respective calendar year, as a buyer;
- b) the sale of a minimum quantity of natural gas to wholesale customers, which cannot be less than the one represented by a percentage quota, determined by Government decision, of the quantity of natural gas for which it concludes contracts for sale of natural gas, in the respective calendar year, with the wholesale customers, as the seller.

**Law no. 184/2018 for the approval of Government Emergency Ordinance no. 24/2017 regarding the amendment and completion of the Law no. 220/2008 establishing the system for the promotion of energy production from renewable energy sources and for the amendment of some normative acts was published in the Official Gazette of Romania, Part I, no. 635 of July 20, 2018 and is applicable from 23 July 2018.**

The normative act approves Government Emergency Ordinance no. 24/2017 regarding the amendment and completion of the Law no. 220/2008 establishing the system for promoting the production of energy from renewable energy sources and amending some normative acts, published in the Official Gazette of Romania, Part I, no. 224 of 31 March 2017 and the following amendments and additions are made, among others:

- (i) It defines "prosumer" as the final customer who owns electrical power plants, including cogeneration, whose specific activity is not electricity production, that consumes and can store and sell electricity from renewable sources produced in its building, including an apartment building block, a residential area, a shared service facility, commercial or industrial site or the same closed distribution system, provided that in the case of autonomous non-household renewable energy sources these activities do not constitute their primary commercial or professional activity;
- (ii) It is provided that in December, ANRE will establish by order an obligatory annual green certificate acquisition quota for the following year, considering the estimated final consumption of electricity for the following year so that the estimated average annual impact on the final consumer invoice to be EUR 12.5/MWh in 2019, EUR 13/MWh in 2020 and 2021 and EUR 14.5/MWh starting with 2022. RON value of such impact is determined considering a foreign exchange rate calculated as an arithmetic mean between the monthly values of the average exchange rate established by the National Bank of Romania for the first 11 months of the current year;
- (iii) Starting with 2018, ANRE shall issue by order, as of March 1 of each year, the mandatory green certificate purchase quota for the previous year, based on the final electricity consumption of the previous year, so that the average impact on the final consumer is no more than EUR 11.7/ MWh in 2018, EUR 12.5/MWh in 2019, EUR 13/MWh in 2020 and 2021 and EUR 14.5/MWh starting with 2022. RON value is calculated at the average exchange rate set by the National Bank of Romania for the previous year and the price of green certificates used for the previous year is calculated as the weighted average price of green certificates on the anonymous centralized market green certificates spot transactions of the previous year.

**Law no. 202/2018 amending and supplementing the Law on Electricity and Natural Gas no. 123/2012 was published in the Official Gazette of Romania, Part I, no. 647 of July 25, 2018 and is applicable from July 28, 2018.**

The normative act (i) modifies Law 123/2012, by excluding of its scope accumulators, mobile sets, electrical equipment placed on vehicles of any kind, except for electric traction units consisting of electric locomotives, EMUs trams and subway frames and (ii) adds a renewable energy source, namely the energy obtained from the energy recovery braking of the electrical traction units.

## litigation and arbitration - legal changes published in July 2018

**Decision of the High Court of Cassation and Justice no. 12/2018 regarding the examination of the appeal in the interest of the law submitted by The Leading Board of Cluj Court of Appeal regarding the interpretation of the provisions of Law no. 165/2013 on the measures for completing the restitution in kind or equivalent of buildings and lands abusively taken over during the communist regime in Romania, as further modified and amended (Law no. 165/2013), with respect to the possibility of granting, in the case of buildings and lands abusively taken over, assets other than those included in the list of assets drawn up in accordance with the provisions of Art. 221 par. (5) of the Norms for the application of Law no. 165/2013, approved by the Government Decision no. 401/2013 (Norms for the application of Law No 165/2013), as supplemented by Government Decision no. 89/2014, was published in the Official Gazette of Romania, Part I, no. 570 of July 6, 2018 and is applicable from the same date.**

HCCJ has been notified for a judgment to ensure the interpretation and uniform application of the provisions of Law no. 165/2013 on the possibility of offsetting, for buildings and lands abusively taken over, of assets other than those included in the list of assets drawn up in accordance with the provisions of Art. 221 par. (5) of the Norms for the application of Law no. 165/2013. The HCCJ stated that in the interpretation and uniform application of the provisions of Art. 1 par. (2) of the Law no. 165/2013 regarding the measures for the completion of the restitution in kind or equivalent of the buildings and lands abusively taken over during the communist regime in Romania, corroborated with art. 221-223 of the Norms for the application of Law no. 165/2013, assets other than those mentioned in the list drawn up by the entity invested with the settlement of the request made on the basis of Law no. 10/2001 *on the legal regime of buildings and lands abusively taken over from 6 March 1945 to 22 December 1989* may be compensated, if the entitled person proves their availability.

**Decision of the Constitutional Court of Romania no. 354/2018 regarding the admission of the objection of unconstitutionality of the provisions of art. 2523 par. (3) the final sentence from The Code of Criminal Procedure, was published in the Official Gazette of Romania, Part I, no. 579 from July 9, 2018 and is applicable from the same date.**

Through the objection of unconstitutionality, it is argued that the provisions of art. 2523 par. (3) the final sentence of the Code of Criminal Procedure are unconstitutional because they do not provide for the possibility of appealing the decision by which the court orders the sale of seized movable goods. The Court stated that the exclusion from court scrutiny of the decision by which the court, during the trial, rules upon the sale of a seized mobile good, leads to a violation of the principle of free access to justice, since the persons concerned are covered by an effective procedural guarantee to defend their property right affected by the introduction of this measure. At the same time, the Court found that whereas, in the course of the criminal prosecution, the decision of the judge of rights and freedoms on the sale of seized movable goods can be appealed, both with regard to the sale disposal and the performance manner of this measure[ see art. 2522 par. (4) and Art. 2524 par. (1) the first sentence of the Code of Criminal Procedure], during the trial, the decision of the court

on the sale of seized movable goods may be appealed, only in respect of the manner in which such decision is executed, meanwhile the measure of selling seized movable goods is not subject to be appealed (see Art. 2524 par. (1) third sentence of the Code of Criminal Procedure]. For these reasons, the Constitutional Court upheld the objection of unconstitutionality, finding that the legislative solution contained in art. 2523 par. (3) the final sentence of the Code of Criminal Procedure, which does not allow the appeal against the court decision on the measure of selling seized movable goods is unconstitutional.

**Decision of the High Court of Cassation and Justice no. 52/18.06.2018 regarding the examination of the joined complaints formulated by the Bucharest Court of Appeal - Civil Section IV in case file no. 41.380/299/2016, the High Court of Cassation and Justice - Civil Section I in case file no. 6.892/101/2014 and Bucharest Court of Appeal - Civil Section V in case file no. 529/2/2018, for the issuance of a preliminary ruling, was published in the Official Gazette of Romania, Part I, no. 609 of July 17, 2018 and is applicable from the same date.** The HCCJ has determined that in a non-retrospective interpretation and application of the Decision no. 369 dated May 30, 2017, issued by the Constitutional Court of Romania, to the litigations started before the date of such decision's publication in the Official Gazette of Romania (July 20, 2017), the remedies shall be those provided by the law in force at the date of commencement of the proceedings (respectively the unmodified form of the provisions of art. XVIII par. (2) of Law no. 2/2013]. As a result, the effects of the unconstitutionality decision will concern all court judgments delivered after the date of its publication, but in proceedings commenced after 20 July 2017.

Thus, the HCCJ has stated that in interpreting and applying the provisions of art. 27 of the Civil Procedure Code, with reference to art. 147 par. (4) of the Romanian Constitution, the effects of the Decision no. 369 of May 30, 2017, issued by the Constitutional Court of Romania are made on the judgments delivered after its publication in the Official Gazette of Romania, in pecuniary litigations of up to RON 1,000,000.00 commenced after the publication of the decision (July 20, 2017). According to the provisions of art. 521 par. (3) of the Civil Procedure Code, this decision is binding.

**Decision of the Constitutional Court of Romania no. 453/2018 regarding the admission of the objection of unconstitutionality of the provisions of the single article points 2 to 5 and point 10 of the Law for amending and completing the Law no. 254/2013 regarding the execution of the punishments and the deprivation of liberty ordered by the judicial bodies during the criminal trial was published in the Official Gazette of Romania, Part I, no. 617/July 18, 2018 and is applicable from the same date.** The CCR admitted the objection of unconstitutionality formulated by the High Court of Cassation and Justice, the United Sections, and stated that the provisions of the single article, points 2 to 5 and point 10 of the Law for amending and completing the Law no. 254/2013 on the execution of sentences and detention measures ordered by the judicial bodies during the criminal proceedings are unconstitutional.

**Decision of the Constitutional Court of Romania no. 418/2018 regarding the admissibility of the objection of unconstitutionality of the provisions of art. 29 para. (1) letter c) of Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for measures to**

**prevent and combat the financing of terrorism in the interpretation given by the Decision of the High Court of Cassation and Justice no. 16 of June 8, 2016, regarding the issuance of a preliminary decision for the resolution of certain legal issues related to the money laundering offense was published in the Official Gazette of Romania, Part I, no. 625/July 19, 2018 and is applicable from the same date.** The CCR accepted the objection of unconstitutionality raised by Mureș Tribunal- the Criminal Section, *ex officio*, in case files no. 2.100/102/2013 and no. 5.873 / 102/2013 and stated that the provisions of art. 29 para. (1) letter c) of Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for measures to prevent and combat the financing of terrorism in the interpretation given by the Decision of the High Court of Cassation and Justice no. 16 of June 8, 2016 on a preliminary ruling in respect of the active subject of the offense (point 2 of the decision's device) are unconstitutional.

**Decision of the Constitutional Court of Romania no. 290/2018 regarding the admissibility of the objection of unconstitutionality of the provisions of art. 127 par. (1) and (2) of the Civil Procedure Code was published in the Official Gazette of Romania, Part I, no. 638 of July 23, 2018 and is applicable from the same date.** CCR accepted the objection of unconstitutionality raised by Laura Ileana Gal, Florin Dănuț Ciucaș and Bihor Media Society - S.R.L. Oradea in case file no. 17.133/271/2015 pending to Oradea Court of Appeal - Civil Section and stated that the phrase "of the jurisdiction of the court in which it operates" of art. 127 par. (1) of the Civil Procedure Code, as well as the phrase "which carries out its activity in the court competent to hear the case" of art. 127 par. (2) of the Civil Procedure Code are unconstitutional. Moreover, the CCR accepted the objection of unconstitutionality raised by the Vâlcea Bar in case file no. 30.098/3/2014/a1 of the Bucharest Tribunal-Section II, administrative and fiscal contentious and stated that the provisions of art. 127 par. (1) and (2) of the Civil Procedure Code are constitutional insofar as they concern also the court as an applicant/defendant.

**Law no. 212/2018 for amending and supplementing the Law on administrative contentious no. 554/2004 and other normative acts was published in the Official Gazette of Romania, Part I, no. 638 of July 23, 2018 and is applicable as of August 2, 2018.** By this act, the Parliament of Romania amends a multitude of provisions of Law no. 554/2004, such as: art. 7, paras. (1), (3) and (5), art. 7, introductory wording and letter (b) of par. (6) and art. 8, paras. (1) and (2), it repeals some provisions and introduces some new ones. Moreover, the following provisions are amended by the same act: art. 53 of Law no. 101/2016 on remedies and redress in the award of public procurement contracts, sector contracts and works concession and service concession contracts, as well as the organization and functioning of the National Council for Solving Complaints, art. 35 of Law no. 165/2013 regarding the measures for the completion of the process of restitution, in kind or equivalent, of the buildings abusively taken over during the communist regime in Romania, art. 8 of Law no. 164/2014 regarding some measures for speeding up and finalizing the process of solving the requests formulated under Law no. 9/1998 regarding the granting of compensations to the Romanian citizens for the goods that were passed into the ownership of the Bulgarian state following the application of the Treaty between Romania and Bulgaria, signed in Craiova on September 7, 1940, and of Law no. 290/2003 regarding the granting of reparations or compensations to the Romanian citizens for their property, seized, detained or remaining in Bessarabia, Northern Bucovina and Herța Land, as a result of the state of war and the application of the Peace Treaty between Romania and the Allied Powers, Associated, signed in Paris on February 10,

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1947, and for the amendment of some normative acts and art. 272 of Law no. 207/2015 on the Fiscal Procedure Code, published in the Official Gazette of Romania, Part I, no. 547 of July 23, 2015, as amended and supplemented, paragraphs 2 to 5.

## public procurement - legal changes published in July 2018

**Government Emergency Ordinance no. 55/2018 for the amendment and supplementation of Government Emergency Ordinance no. 114/2011 on the award of certain public procurement contracts in the fields of defense and security** was published in the Official Gazette of Romania, Part I, no. 549 of July 2, 2018, with effect from that date.

According to the Emergency Ordinance, a number of provisions of GEO no. 114/2011 on the award of certain public procurement contracts in the fields of defense and security are amended, being established, among others, the following:

- the contracting authority has the obligation to request from the bidders to deposit a bid bond in order to participate at the contract award procedure, in case the present Emergency Ordinance requires the publication of a notice or invitation to tender and the estimated value of the contract is higher than the threshold provided in art. 56; the tender documentation must contain the following information: (a) the amount of the bid bond, as specified in the notice/ invitation to tender, in fixed amount up to 2% of the estimated value of the contract; (b) the period of validity of the bid bond, which shall be at least equal to the minimum period of validity of the tender, as required by the tender documentation;
- the contracting authority has the obligation to request the prior approval of the Romanian Parliament for the initiation of the award procedure if the estimated value of the contract, excluding VAT, is equal to or higher than the equivalent in Lei of EUR 100,000,000; the Romanian Parliament, through its joint defense, public order and national security committees, shall give its opinion on the request within 30 days of its receipt; in case the Romanian Parliament rejects the above mentioned request, the contracting authority does not initiate the award procedure;
- the contracting authority has the right to directly purchase products, services or works, insofar as the value of the acquisition does not exceed the equivalent in Lei of EUR 100,000 for each purchase of products, services or works; the procurement is based on a supporting document;
- the contracting authority has the right to apply the call for tenders procedure only if the estimated value, excluding VAT, of the public procurement contract is less than the equivalent in Lei of the following thresholds: (a) for the supply contract: EUR 443,000; (b) for the service contract: EUR 443,000; (c) for the works contract: EUR 5,548,000.

GEO no. 55/2018 also contains transitional provisions providing that, in the case of the ongoing public procurement contracts and framework agreements and in case of the ongoing procedures at the date of entry into force of the Emergency Ordinance, are applicable the legal provisions in force at the date of conclusion, respectively on the date of their initiation.

**Order of the National Agency for Public Procurement (NAPP) no. 707/2018 on the establishment of a mechanism for increasing the competitiveness of companies holding majority or full state ownership through public procurement/sectorial procurement** was published in the Official Gazette of Romania, Part I, 597 of July 13, 2018, entering into force on the same date.

As stated in the Order, the contracting authorities/entities, after publishing the contract notice/simplified notice, are required to send an invitation to each of the economic operators listed in the annex to the Order, depending on the area of the public procurement/sectorial contract to be awarded.

The Annex contains the List of economic operators with majority or full state ownership by domains, subdomains and activities authorized by statute (main and secondary) – in agreement with the Order of the President of the National Institute of Statistics no. 337/2007 regarding the updating of the Classification of activities in the national economy, divided in sections, divisions, groups and classes according to the NACE classification.

**Government Decision no. 502/2018 on the organization and functioning of the National Office for Centralized Procurement and for amending and supplementing some normative acts** was published in the Official Gazette of Romania, Part I, 614 of July 17, 2018, entering into force on the same date.

The Decision establishes that the National Office for Centralized Procurement (NOCP) is a public institution with legal personality, subordinated to the Ministry of Public Finance, financed entirely from the state budget.

According to the Government Decision, NOCP is designated as a centralized procurement unit providing activities under the provisions of GEO no. 46/2018 on the establishment, organization and operation of the National Office for Centralized Procurement. As a centralized procurement unit, NOCP performs the following functions:

- a) strategy, which ensures the development and implementation of the strategy of the product and service groups, so as to ensure the fulfillment of the main objectives stipulated in art. 4 from GEO no. 46/2018;
- b) organizing and implementing centralized award procedures;
- c) administration and efficient and transparent management, in compliance with the legal provisions in force, of goods, budgets and allocated funds;
- d) specialised assistance to contracting authorities in connection with the conclusion of subsequent public procurement contracts for products and services purchased in a centralized system.

**Law no. 212/2018 for amending and supplementing the Law on administrative litigation no. 554/2004 and other normative acts** was published in the Official Gazette of Romania, Part I, 658 of July 30, 2018 and entered into force on August 2, 2018.

The new Law regulates the amendment of art. 53 of the Law no. 101/2016 on remedies in respect of the award of public procurement contracts, sectorial contracts and concession contracts for works and concessions of services, as well as for the organization and functioning of the National Council for Solving Complaints, establishing in para. (1) that the trials and claims for compensation for damage caused in connection with the award procedure, as well as those concerning the voidability or nullity of the contracts, shall be settled in first instance, urgently and above all, by the administrative

and fiscal litigation department of the tribunal in whose jurisdiction the contracting authority has its headquarters, by specialized public procurement panels of judges.

At the same time, two new paragraphs (1<sup>1</sup> and 1<sup>2</sup>) are included in the same art. 53, which provides that:

- the trials and claims arising from the execution of administrative contracts are settled in first instance, urgently and above all, by the civil court of common law in whose jurisdiction the registered seat of the contracting authority is located (paragraph 1<sup>1</sup>);
- the actions referred to in paragraph (1) and (1<sup>1</sup>) may also be introduced in the courts of the place where the contract is concluded if an establishment belonging to the contracting authority is operating in that place.

## real estate - legal changes published in July 2018

**Law no. 185 of July 18, 2018 for the approval of the Government Emergency Ordinance no. 31/2018 regarding the amendment and supplementing of the Cadastre and Real Estate Publicity Law no. 7/1996** was published in the Official Gazette of Romania, 1<sup>st</sup> Part, no. 638 of July 23, 2018.

The act's object is the approval with amendments and supplements of the Government Emergency Ordinance no. 31/2018 regarding the amendment and supplementing of the Cadastre and Real Estate Publicity Law no. 7/1996 ("**GEO no. 31/2018**").

GEO no. 31/2018 was issued in order to ameliorate the deficiencies observed in the daily activity of the National Agency for Cadastre and Real Estate Publicity ("**ANCPI**"), as well as to introduce regulations regarding general data protection.

Furthermore, under GEO no. 31/2018, the detailing and supplementing of the legal norms regarding the financing of systematic registration works initiated by the administrative-territorial units, specifically to mention the fact that cadastral sectors which shall be considered as object of systematic registration agreements concluded with town halls, as a result of the conclusion of financing agreements with ANCPI, may include buildings located *extra muros* or buildings located *extra muros* and *intra muros*.

Additionally, in order to reduce the bureaucracy of the procedures connected to the performance of systematic registration works performed under the national program, the commencement of the cadastral works and the closing of old registers shall not be further performed by an order of the general director of ANCPI.

**Law no. 196 of July 20, 2018 regarding the establishment, organisation and functioning of the owners' associations and the administration of condominiums** was published in the Official Gazette of Romania, 1<sup>st</sup> Part, no. 660 of July 30, 2018.

In the context of the higher diversity of condominiums, a new definition of the concept of condominium was necessary in order for a new legal framework to be created, which is necessary for the protection of the rights of all owners which, besides individual properties, hold in common ownership different parts of the building. As such, the new law treats the condominium *lato sensu*, whether it is the case for housing in collective buildings or individual houses located in common fields or other forms of concretely-bordered real estate. Furthermore, by regulating the condominiums, the administration of buildings shall improve for buildings containing several plots and, implicitly, several owners, and such owners shall be held liable.

The legal act follows the consolidation of the principle according to which real estate ownership involves obligations and not just rights, such obligations being tied preponderantly with the functional conservation of the building, the insurance of a high quality of life and the reduction of consumption and insuring energy efficiency.

As a novelty, the law introduces the obligation on behalf of the owners' associations to establish the annual reparations fund, as well as the current expenses fund.

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Additionally, the law regulates the lessee's associations and the conditions under which such associations may administer the common areas in the condominiums.

Regarding the administration of buildings, the law details and clarifies the power of the administrator, of the president, of the executive committee, of the auditors, as well as the type of relations between them and the procedures to approve the decisions regarding the performance of rehabilitation works of buildings and the limitation of the energy consumption.

In order to coordinate the process of building rehabilitation, rehabilitation works of housing venues containing several extensions/entrances shall be performed in a unitary basis, and not over building segments. For condominiums of the collective multi-story housing type, the change of the building facade may be performed only in a unitary way over the entire condominium, regardless the number of the owners' associations established on the entrances or extensions, on the basis of technical documents drafted according to law, by the architects with signature right and observing the legal applicable provisions regarding permitting of building construction works.

The law shall fully repeal the legal framework of the owners' associations established by Law no. 230/2007 regarding the establishment, organisation and functioning of the owners' associations, entering into force on the date of September 30, 2018.

For additional details on this material, please do not hesitate to contact us.

**Voicu & Filipescu SCA**

31 General Ernest Brosteanu Street

010527, Bucharest, Romania

Tel: +40 21 314-02-00

Fax: +40 21 314-02-90

E-mail: [office@vf.ro](mailto:office@vf.ro)

Web: [www.vf.ro](http://www.vf.ro)

