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**News in Laws – Legal Monthly Newsletter**
**December 2019**

## When banking law becomes a shell game

*by Dumitru Rusu, Partner Voicu & Filipescu*

Earlier this year I had written another opinion article on what was then called among the bankers as "Antibanking Laws" or the "Zamfir Laws", commenting, in the context where complaints of unconstitutionality had already been formulated regarding those draft laws, criticisms regarding the superficiality of the explanatory memoranda. The draft laws were aimed at capping the interest rates (the effective annual interest rate) applied to consumer credit agreements (at various ceilings), limiting the amounts recoverable by collection agencies and the repayment amount at a maximum of double the assignment price, etc.

## Legal Changes of November 2019

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:

- Banking & Finance
- Corporate
- Data Protection
- Litigation & Arbitration
- Public Procurement

## VF News

Article "Simplified procedures for authorization of construction works" by Voicu & Filipescu Partner Roxana Neguțu and Alexandra Davidoiu, Senior Partner, published on Juridice.ro. Click here to read the article.

Voicu & Filipescu is pleased to announce that two of the transactions in which the Firm was involved in 2018 were included among the most important deals on the Romanian M&A market in the research made by the specialists of the Ziarul Financiar newspaper for the 2019 edition of their Top Deals Directory. Click here to read the details.

Chambers and Partners Europe, 2019 edition recommends Voicu & Filipescu for Corporate and M&A practice.

IFLR 1000, 2020 edition recommends Voicu & Filipescu for our lawyer's activity in three practice areas: M&A, Banking and Finance and Project Development. Also, Mr. Dumitru Rusu – Partner, head of the Banking and Finance practice, was selected as a *Highly Regarded Lawyer* for the practice areas of Capital Markets and Banking.

Legal500 EMEA 2019 edition recommends Voicu & Filipescu for our lawyers' activity in 6 practice areas: Corporate, Commercial and M & A, Employment, PPP and Procurement, Real Estate and Construction, Restructuring and Insolvency and TMT. Daniel Voicu, Mugur Filipescu, Marta Popa, Roxana Negutu, Raluca Mihai, and Mariana Popa are also recommended by the prestigious guide for their activity.

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# WHEN BANKING LAW BECOMES A SHELL GAME

*Dumitru Rusu, Partner, Head of Banking & Finance Practice*

## Episode 1 - The confirmed superficiality of a parliamentary procedure

Earlier this year I had written another opinion article on what was then called among the bankers as "Antibanking Laws" or the "Zamfir Laws", commenting, in the context where complaints of unconstitutionality had already been formulated regarding those draft laws, criticisms regarding the superficiality of the explanatory memoranda. The draft laws were aimed at capping the interest rates (the effective annual interest rate) applied to consumer credit agreements (at various ceilings), limiting the amounts recoverable by collection agencies and the repayment amount at a maximum of double the assignment price, etc.

The unconstitutionality complaints include both extrinsic reasons (i.e. procedural aspects and legislative technique, including lack of clarity) but also intrinsic reasons (merits). I do not insist on these reasons, they are supported in the referral document itself, which can also be viewed in the section corresponding to the parliamentary debate in the Chamber of Representatives.

I must mention that in March this year the complaints were admitted by the Constitutional Court, indeed on reasons of form (extrinsic). Notable are the court's findings regarding "*the lack of motivation of the legislative solutions proposed and adopted, failure to request of the opinion of the Economic and Social Council, as well as [..] contradictory regulations, lacking coherence and clarity*". The legislative process regarding the respective bills has ceased.

## Episode 2 - Literary creativity effort

Although the Constitutional Court had admitted the above mentioned constitutionality complaints, in May 2019, ALDE Senator Daniel Zamfir, submitted to the Senate the Legislative Proposal regarding the protection of consumers against usury and other forms of abuse of economic power, no. B219 / L406 (https://senat.ro/legis/lista.aspx?nr_cls=L406&an_cls=2019).

We do not make the analysis of the consistency of the explanatory memoranda, but it is relevant that this time the opinion of the Economic and Social Council was requested, which issued a negative opinion on July 02, 2019, punctuating the following:

- *„The draft law is in fact a resumption of three other previous bills that have been declared unconstitutional by the RCC. Amongst the arguments regarding the unconstitutionality of the three projects, we found, apart from the lack of the CES opinion, the lack of an impact study. However, the new draft was also submitted to Parliament without an impact study";*
- *„Although it claims that it will create benefits for consumers, the draft is likely to give rise to massive dysfunctions in the lending market, which will ultimately affect all consumers and the economy in general".*

However, the negative opinion of the Legislative Council, issued on June 27, 2019, is also relevant. Among many other criticisms we mention those retained by the Legislative Council regarding the language used in the explanatory statement, as follows:

*„As a whole, the Explanatory Statement does not use a language specific to the legislation style, but certain expressions improper for a presentation and motivation instrument, sometimes incorrect, of which we exemplify: "the feeling of irrelevance and social uselessness is aggravated by the lack of a social safety net.", "can inflate interest rates on public loans", "an endless loop of deceit and deception", "the purpose of excessive interest repression legislation", "parasitic money", "a guilty form of speculation of the debtor's state of need and vulnerability", "Exceptional profits that are drawn from this trading of people's misery", etc.*

Moreover, the Legislative Council also criticizes that "*the legislative text must be formulated clearly, fluently and intelligibly, without syntactic difficulties and obscure or equivocal passages. Terms with an affective load should not be used. The form and aesthetics of the text should not prejudice the legal style, the precision and the clarity of the provisions*", taking as a (negative) example notions and phrases such as "*interest interest*"," *legal act which is the creator of debt*", "*currency shock*", " *speculative assignment of claims*", "*the purpose of thwarting the assignee's speculation intent*", "*the social utility of the contract*", etc.

**Episode 3 - The shell game begins**

On September 18, 2019, Senator Daniel Zamfir, who recently joined the PSD party (affiliate member), withdrew the draft law described above. But the very next day, September 19, 2019, he submitted four new draft laws on consumer protection, aimed at the same issues, namely capping interest on loans, conversion to lei of loans in foreign currency, foreclosures and assignments of debts:

(a) Draft law on consumer protection against excessive interest rates, no. B452/2019 (https://senat.ro/legis/lista.aspx?nr_cls=b452&an_cls=2019)

(b) Draft law on consumer protection against speculative assignment of receivables, no. B453/2019 (https://senat.ro/legis/lista.aspx?nr_cls=b453&an_cls=2019)

(c) Draft law on consumer protection against currency risk in loan agreements, no. B454/2019 (https://senat.ro/legis/lista.aspx?nr_cls=b454&an_cls=2019)

(d) Draft law on consumer protection against abusive or unexpected foreclosures no. B455/2019 (https://senat.ro/legis/lista.aspx?nr_cls=b455&an_cls=2019)

These have the same themes as the draft laws for which the Constitutional Court admitted the complaints of unconstitutionality in March 2019.

From the requested opinions we find that the ones of the Economic and Social Council have been submitted, which, although they endorse favorably, they mention, in relation to all the drafts, that "*the application of such*

*measures without carrying out studies that highlight solutions for the fair sharing of risk and benefits between the parties can lead to major imbalances that will negatively influence the economic processes*".

The aforementioned drafts were withdrawn by the initiator on October 28, 2019. Why though ? To be continued in Episode 4.

**Episode 4 - Full speed ahead**

In slightly refined and supplemented forms, the legal initiatives of Senator Zamfir were taken over by a large group of PSD senators and representatives, on October 23, 2019, by submitting to the Senate for draft laws on the same topics and with the exact same names:

(a) Draft law on consumer protection against excessive interest rates, no. L586/2019 (https://senat.ro/legis/lista.aspx?nr_cls=L586&an_cls=2019)

(b) Draft law on consumer protection against speculative assignment of receivables, no. L583/2019 (https://senat.ro/legis/lista.aspx?nr_cls=L583&an_cls=2019)

(c) Draft law on consumer protection against currency risk in loan agreements, no. L584/2019 (https://www.senat.ro/Legis/lista.aspx?nr_cls=L584&an_cls=2019)

(d) Draft law on consumer protection against abusive or unexpected foreclosures no. L585/2019 (https://www.senat.ro/Legis/lista.aspx?nr_cls=L585&an_cls=2019)

Existing public information does not show the existence of impact studies in this procedure either.

In these circumstances, it is somewhat surprising to have quickly obtained favorable opinions, both from the Legislative Council, with comments, of form and expression, but also with the note that certain promoted solutions are already regulated and the amendment of those regulations would have been preferable - on November 05, 2019 - and from the Economic and Social Council - on November 12, 2019.

The legislative circuit in the Senate was closed very quickly by approving the draft laws in committees on December 04, 2019 (with amendments) and in the plenary session on December 11, 2019.

Next, the draft laws are sent for debate to the Chamber of Representatives.

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# banking & finance - legal changes published in November 2019

## Law no. 209/2019 on the payment services and for amending certain acts was published in the Official Gazette, Part I no. 913 of November 13, 2019, and is effective as of December 13, 2019

Law no. 209/2019 transposes the European Directive 2015/2366 ("PSD 2"), establishing a series of additional obligations and requirements for payment service providers in order to guarantee the most efficient payment services and to protect the confidentiality and to improve the security of customers' banking data.

Payment institutions already authorized by the National Bank of Romania at the date of entry into force of this law have a period of 6 months as of that date to comply with the new requirements established in accordance with the provisions of Title II.

The National Bank of Romania will communicate to the payment institutions, within 60 days from the entry into force of this law, whether from the analysis of the information provided by them before the entry into force of the law it becomes apparent that said institutions fulfill the newly established legal requirements.

The payment service providers have the obligation to ensure the compliance with the new provisions of the ongoing contracts within 60 days as of the date of entry into force of the Law.

The Romanian legal persons or, as the case may be, the natural persons with the registered headquarters in Romania attesting with relevant and conclusive documents that they started to provide, before January 12, 2016, only payment initiation services or information services regarding the accounts, shall continue to carry out these activities in Romania until the expiration of a period of 6 months from the date of entry into force of the Law, the continuation of the activity after the expiry of such term requiring authorization or registration.

Upon the entry into force of this law, the Government Emergency Ordinance no. 113/2009 regarding payment services is repealed.

## Law no. 210/2019 regarding the electronic money issuance activity was published in the Official Gazette, Part I no. 914 of November 13, 2019, taking effect on December 13, 2019

The new law updates the legislative framework in this matter and establishes both the authorization conditions for carrying out the electronic money issuance activity and the sanctions applicable in case the legal provisions are breached. The novelty brought by this law concerns the correlation of the legislative framework regarding the electronic money issuance activity with the new law regarding the payment services.

The electronic money institutions already authorized by the National Bank of Romania at the date of entry into force of this law have a period of 6 months as of the date of entry into force of this law to comply with the new requirements established by it.

The National Bank of Romania will communicate to the electronic money institutions within 60 days from the entry into force of this law, whether from the analysis of the information provided, voluntarily, by them before the entry into force of the present law it becomes apparent that said institutions comply with the new legal requirements.

Upon the entry into force of this law, Law no. 127/2011 regarding the electronic money issuance activity is repealed.

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# corporate - legal changes published in November 2019

## New amendments have taken effect regarding the procedure for issuing the fiscal certificate

**Order no. 3008/2019 for amending and supplementing the Order of the President of the National Agency for Fiscal Administration no. 3.654 / 2015 regarding the approval of the procedure for issuing the fiscal certificate, the certificate of budgetary obligations, as well as their templates and content, was published in the Official Gazette, Part I no. 945 of November 26, 2019.**

This order makes some important changes regarding the approval of the procedure for issuing the fiscal certificate, the certificate of budgetary obligations, as well as their template and content, as follows:

(i) The method used by notaries public for requesting the fiscal certificate for individuals undergoing heritage debate is modified. Thus, the notaries will submit the request for the issuance of the fiscal certificate by electronic means of communication in accordance with the act that regulates them or in paper format at the registry of the competent fiscal body, in case of malfunction of these electronic means;

(ii) The content of the fiscal certificate does not include the fiscal obligations for which facilities were granted and are in progress, according to the law, if for them the payment deadline provided for in the facility granting act has not elapsed, or is within payment deadline provided in art. 194 par. (1) let. d) of the Fiscal Procedure Code, as well as the other fiscal obligations, which are conditions for maintaining the validity of the fiscal facilities, if they are still within the extended deadlines as provided in art. 194 par. (1) of the same act;

(iii) Also, four other categories of amounts and tax obligations are introduced, that are not included in the contents of the fiscal certificate;

(iv) It regulates the situation where the fiscal certificate is affected by a clerical error, when an act of rectification of the clerical error is issued, which is communicated to the taxpayer.

(v) It is provided that the fiscal certificate can be issued and communicated in electronic format through: (a) the virtual private space; (b) the PatrimVen computer system; (c) The computer system made available to credit institutions;

(vi) Also, the annexes which present a template of fiscal certificate and a template of application for issuing the fiscal certificate are amended.

# data protection - legal changes published in November 2019

## The National Supervisory Authority for Personal Data Processing has sanctioned ING with a fine of 80,000 euros for GDPR violation

Thursday, November 28, 2019, the National Supervisory Authority for the Processing of Personal Data informed that it has completed on November 4, 2019 an investigation at ING Bank N.V. Amsterdam - Bucharest Branch, following a notification, finding that the controller violated the provisions of Article 25 paragraph (1) in conjunction with Article 5 paragraph (1) letter f) from the GDPR, which led to the application of an administrative fine in the amount of 80,000 euros, according to a statement.

In this respect, the controller did not ensure compliance with the principles of privacy by design and privacy by default, because it did not adopt appropriate technical and organizational measures regarding the integration of appropriate safeguards in the automated data processing system during the settlement process of card transactions, affecting a number of 225,525 customers whose payment operations were doubled during the period 08-10.10.2018, also in conjunction to the provisions of Article 32 paragraph (1) letter d) of the GDPR.

Article 5 paragraph (1) letter f) of the GDPR establishes one of the data processing principles, namely that the data must be "processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality')".

At the same time, according to Article 32 paragraph (1) letter d) of the GDPR, among the appropriate technical and organizational measures that the controller must take in order to ensure a level of security appropriate to the risk, there is the one regarding the existence of a process for periodic testing and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the processing.

## The National Supervisory Authority for Personal Data Processing sanctioned TAROM with a fine of 20,000 euros for GDPR violation

On Friday, November 29, 2019, the National Supervisory Authority for Personal Data Processing communicated that it completed on November 7, 2019 an investigation at the controller SC CNTAR TAROM SA and found that it violated the provisions of Article 32 paragraph (4) in conjunction with Article 32 paragraph (1) and paragraph (2) of the GDPR, according to a statement.

The investigation was carried out as a result of the notification of the Supervisory Authority by SC CNTAR TAROM SA on September 13, 2019 regarding a personal data security breach.

The controller SC CNTAR TAROM SA has been sanctioned with an administrative fine of 95,194 lei, the equivalent of 20,000 EURO.

The sanction was applied to the operator due to the fact that it did not implement appropriate technical and organizational measures to ensure that any natural person acting under its authority and having access to personal data, only processes them at its request. Related to this aspect, the controller has not taken any appropriate measures to ensure a level of security corresponding to the risk generated by the unauthorized disclosure or the unauthorized access to the personal data transmitted, stored or otherwise processed.

This situation led to the unauthorized access, by an employee, of the reservation application and the photographing of a list containing the personal data of 22 TAROM passengers/clients and to the unauthorized disclosure of this list online.

## The Polish authority imposed a fine of 47,000 Euros for GDPR violation

On Wednesday, November 6, 2019, the President of the Polish Personal Data Protection Office imposed an administrative fine of over PLN 201,000 (approx.. 47,000 EUR) for obstructing the exercise of the right to withdraw consent to the processing of personal data.

The company - ClickQuickNow Sp. z o.o. did not implement appropriate technical and organizational measures that would enable easy and effective withdrawal of consent to the processing of personal data and the exercise of the right to obtain the erasure of personal data (the "right to be forgotten"). Thus, it violated the principles of lawfulness, fairness and transparency of processing of personal data, specified in the GDPR

In his decision, the authority also pointed out that the company processed, without any legal basis, the data of data subjects, who are not its customers and from whom the company received objections to processing their personal data.

## The National Supervisory Authority for Personal Data Processing sanctioned Vodafone with a fine of 10,000 lei for GDPR violation

On Wednesday, November 13, 2019, the National Supervisory Authority for Personal Data Processing reported that on October 15, 2019, an investigation was completed at the operator of Vodafone Romania S.A. and found the violation of the provisions of Article 13 paragraph (1) letter q) of Law no. 506/2004, corroborated with Article 13 paragraph (5) of Law no. 506/2004 and with Article 8 of OG 2/2001, according to a statement.

The controller Vodafone România S.A. was given an administrative fine of 10.000 lei.

The sanction was applied because the controller did not consider the option of a claimant to no longer receive marketing messages, and any other messages other than those concerning the costs and security of the calls, an

option brought to the attention of the controller. Although after his request he received a confirmation of being unsubscribed from the marketing communications sent by the controller, he received on his e-mail address another unsolicited message from Vodafone Romania S.A., thus violating the provisions of Article 12 paragraph (1) of Law no. 506/2004 regarding unsolicited communications.

In this context, the company was advised to observe the request of the claimant not to receive marketing messages or any other messages other than those regarding the costs and security of the calls. At the same time, it was recommended to the controller to take the necessary measures to comply with the provisions of Article 12 of Law no. 506/2004, for the purpose of sending marketing messages through electronic means of communication only with the express prior consent of the recipients.

## The start date of the calculation of the deadline for communicating a response to the data access requests under the GDPR

Following the ECJ judgment in Case C-171/03 Maatschap Toeters and M.C. The Verberk Productschap Vee en Vleesof, the UK Authority (ICO) has updated its recommendations on data subjects' requests.

Upon setting the deadline for communicating a response to data access requests, the day on which the data access request is received will be considered "Day 1". Thus, the deadline for responding to a request for access to data received on November 5 is fulfilled on December 4 (and NOT on December 5).

The same reasoning must be applied for the calculation of the response time and regarding the exercise of the other rights by the data subjects, regulated by the GDPR.

## Law 190/2018 on implementation measures of Regulation (EU) 2016/679 has been amended

Law 233/2019 amended the provision regarding the non-applicability of the rights of the data subjects, namely that they do not apply if the personal data is processed for scientific or historical research purposes or for *statistical purposes*, to the extent that the rights mentioned in these articles are likely to make it impossible or severely affect the achievement of the specific purposes, and the respective derogations are necessary for the fulfillment of these purposes.

**Law no. 233/2019 for amending Article 8 paragraph (1) of Law no. 190/2018 regarding implementation measures for Regulation (EU) 2016 / was published in the Official Gazette, Part I no. 956 of November 28, 2019 and entered into force on the date of publication.**

Between 12-13 November 2019, the fifteenth Plenary of the European Data Protection Board took place.

The following topics were discussed in the Plenary:

- Guidelines 3/2018 on the territorial scope of the GDPR (art. 3) - final form, after public consultation

  The Committee adopted the final form of the guidelines intended to clarify the applicability of Article 3 of the General Regulation on Data Protection (GDPR), taking into account the feedback received during the public consultation stage. This instrument contains many examples, being intended to ensure a uniform interpretation and application of the provisions of Article 3 of the GDPR at the level of all Member States, in various situations.

- Guidelines 4/2019 on Article 25 Data Protection by Design and by Default – under public consultation

  The guidelines contain important aspects regarding the effective interpretation and application of the principles of privacy by design and by default, highlighting the controllers' obligations to take the appropriate technical and organizational measures to ensure the effective observance of the principles of personal data processing and the rights of the data subjects. Also, this document presents operational examples in the specific context of certain processing.

This Guide is under public consultation for 8 weeks, during which proposals and feedback can be submitted.

The third EU-US Privacy Shield Assessment (Privacy Shield) Report was also approved.

## The National Supervisory Authority for Personal Data Processing has sanctioned BNP Paribas Personal Finance SA (CETELEM IFN S.A.) with a fine of 9508 Lei for GDPR violation

On Friday, November 22, 2019, the National Supervisory Authority informed that it has completed an investigation at the controller BNP Paribas Personal Finance SA Paris Bucharest Branch (CETELEM IFN S.A.), finding the violation of the provisions of Article 12 paragraph (3) of the GDPR, according to a statement.

The controller BNP Paribas Personal Finance SA was given an administrative fine of 9508 lei, the equivalent of 2000 EURO.

The investigation was initiated as a result of complaints alleging that the controller did not respond to the requester within the time limit provided by Article 12 paragraph (3) of the GDPR, although it had requested the deletion of certain personal data reported in the credit bureau's records system.

According to Article 12 paragraph (3) of the GDPR, the controller has the obligation to respond to the requests of the data subjects without unjustified delays and at the latest within one month from the receipt of the request.

Also, a corrective measure was applied to the controller BNP Paribas Personal Finance SA, which consisted in the adoption of measures, at the company level, regarding the resolution of requests from data subjects, so that, in all cases, the provisions of Article 12 of Regulation (EU) 2016/679 be observed.

## The National Supervisory Authority for the Processing of Personal Data has sanctioned FAN COURIER with a fine of 11,000 Euro for violating the provisions of the GDPR

On Monday, November 25, 2019, the National Supervisory Authority for Personal Data Processing informed that, on October 28, 2019, it finalized an investigation at the controller FAN COURIER EXPRESS SRL and found that it violated the provisions of Article 32 paragraph (1) and paragraph (2) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC (GDPR), according to a statement.

The controller FAN COURIER EXPRESS SRL was given an administrative fine in the amount of 52,325.9 lei, the equivalent of 11,000 EURO.

The sanction was applied to the controller because it did not implement adequate technical and organizational measures to ensure a level of security corresponding to the risk of processing generated, in particular, accidentally or illegally, by the destruction, loss, modification, unauthorized disclosure or unauthorized access to the personal data transmitted, stored or otherwise processed, which led to the loss of personal data (name, surname, card number, security code (CVV), card holder address, personal numeric code, identity card series and number , IBAN account number, approved credit limit, correspondence address) and the unauthorized disclosure/ access of the personal data. 1100 data subjects were affected by the security breach although the controller had the obligation to take the adequate security measures for personal data according to the provisions of Article 5 paragraph (1) letter f) of the GDPR.

## National Supervisory Authority for Personal Data Processing sanctioned Royal President with a fine of 2,500 euros for GDPR violation

On Friday, November 29, 2019, the National Supervisory Authority for Personal Data Processing informed that on November 18, 2019, it completed an investigation at the controller Royal President S.R.L., finding the following:

- violation of the provisions of Article 12 paragraph (3) and (4) and Article 15 of the GDPR;
- violation of Article 5 paragraph (1) letter f) and Article 32 paragraph (1) letter b) of Regulation (EU) 679/2016.

The controller Royal President S.R.L. was given a warning for violation of the provisions of Article 15 and Article 12 paragraphs (3) and (4) of Regulation (EU) 679/2016 and a fine in the amount of 11,932.25 lei, the equivalent of 2500 EURO for infringing Article 5 paragraph (1) letter f) and Article 32 paragraph (1) letter b) of Regulation (EU) 679/2016.

The sanctions were applied following a complaint alleging that Royal President S.R.L. refused to solve a request to exercise the right of access provided by Article 15 of the General Data Protection Regulation, as well as the fact that it disclosed personal data without the consent of the data subject.

During the investigation, the controller Royal President S.R.L. could provide evidence for solving the request for the exercise of the right of access within the term provided by Article 12 paragraph (3) of Regulation (EU) 2016/679.

It was also found that the personal data collected through the accommodation card were not processed in a way that would ensure their security, by taking appropriate technical or organizational measures, in order to prevent any unauthorized disclosure by infringing the provisions of Article 5 paragraph (1) letter f), Article 32 paragraph (1) letter b) and of Article 32 paragraph (2) of Regulation (EU) 2016/679.

At the same time, a corrective measure was applied to the controller, which consisted in the elaboration and implementation of an internal procedure regarding the protection of personal data of the beneficiaries of the accommodation services, by reference to the provisions of Article 32 of Regulation (EU) 2016/679.

## The Belgian authority issued 2 new fines for GDPR violation

The Belgian data protection authority has applied a fine of 5,000 euros to a mayor and a municipal officer in two separate cases.

These fines were applied after they improperly used personal data to send political advertisements so that the mayor would be re-elected during the 2018 Belgian local elections. For the Belgian Litigation Chamber, the behavior of public officials should be exemplary.

## The German authority sanctioned a real estate company for violating the GDPR

On October 30, 2019, the Berlin Commissioner for Data Protection and Freedom of Information issued a fine of approximately EUR 14.5 million against Deutsche Wohnen SE for GDPR violations

During the on-site inspections of June 2017 and March 2019, the Supervisory Authority found that this company used an archiving system to store the personal data of tenants, which did not provide the possibility to remove unnecessary data. Tenants' personal data have been stored without checking whether storage is allowed or necessary. In some of the individual cases examined, personal data of the tenants that were kept for a long period

were identified, although these were no longer necessary to meet the purpose initially set. This discovery targeted the personal and financial information of the tenants, such as income statements, self-disclosure forms, extracts from employment and vocational training contracts, tax data, social insurance and health insurance data, and bank statements.

The Data Protection Commissioner of Berlin recommended an urgent adjustment of the archiving system for the first inspection in 2017. However, in March 2019, more than a year and a half after the first inspection and nine months after the start of the GDPR's applicability, the company has not yet been able to demonstrate database cleanup or legal reasons for continuing storage. The company made only preliminary preparations to remedy the deficiencies.

In addition to sanctioning this structural violation, the Data Protection Commissioner of Berlin imposed fines between 6,000 and 17,000 euros on the company for inadmissible storage of personal data of tenants in 15 individual cases.

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# litigation and arbitration - legal changes published in November 2019

## Decision of the High Court of Cassation and Justice no. 17/2019 regarding the examination of the appeal in the interest of the law formulated by the Attorney General of the Prosecutor's Office attached to the High Court of Cassation and Justice regarding "The admissibility of the second appeal against the decisions by which revision requests based on the provisions of art. 509 paragraph (1) point 8 of the Code of civil procedure have been resolved" was published in the Official Gazette of Romania, Part I no. 899 of November 7, 2019 and is applicable from the same date.

The Court admitted the appeal in the interest of the law, establishing that, in the unitary interpretation and application of the provisions of art. 513 par. (6) of the Civil Procedure Code, the second appeal against the decision resolving the request for a revision based on the argument provided by art. 509 par. (1) point 8 of the same code is admissible, whether or not the judgment under revision is final.

## Decision of the High Court of Cassation and Justice no. 245/2019 regarding the examination of the related referrals made by the Bucharest Court of Appeal - Civil Section III and for cases involving minors and family and Civil Section IV, in the cases no. 45.709/3/2017 and no. 8.316/3/2018, in order to issue a preliminary ruling on a matter of law, was published in the Official Gazette of Romania, Part I no. 934 of November 20, 2019 and is applicable from the same date.

The Court admitted the formulated notice, establishing that, in the interpretation and application of the provisions of art. 35 paragraph (2) of Law no. 165/2013 regarding the measures for completing the process of restitution, in kind or by equivalent, of the buildings taken over abusively during the communist regime in Romania, with the subsequent amendments and additions, the term of 6 months does not apply to the requests made against the refusal of the entities invested by law to solve the notification, other than those provided by art. 35 paragraph (3) of Law no. 165/2013. Also, the obligation of the invested entity according to the law for the settlement, by administrative means, of the legal notifications formulated, either by restitution in kind or by granting reparative measures by equivalent, is maintained even in the conditions of non-exercise of the judicial procedure provided by art. 35 of Law no. 165/2013.

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# public procurement - legal changes published in November 2019

**Decision of the High Court of Cassation and Justice no. 38/2019 regarding the unraveling of some legal issues** was published in the Official Gazette of Romania, Part I, no. 902 of November 8, 2019 and is applicable from the same date.

The Cluj Court of Appeal, Section III, administrative and fiscal litigation, has notified the High Court of Cassation and Justice regarding the issuance of a preliminary ruling for the unravel of the following question of law: "*What is the interpretation to be given to the notions of "estimated contract value", and "established contract value", within the meaning of the provisions of art. 611 paragraph (1) of Law no. 101/2016 on remedies and court actions regarding the awarding of public procurement contracts, sectoral contracts and works and services concession contracts, as well as for the organization and operation of the National Council for Solving Complaints, with subsequent amendments and additions?*".

Thus, the referring court showed that, starting from the meaning of the terms of *estimated value* and *established value*, it would be natural to consider that the value of a contract is estimated throughout the award procedure, even after the moment when the successful bidder is designated, taking into account that at that time the conclusion of the contract and consequently, its value, are not yet certain.

Although the High Court of Cassation and Justice rejected as inadmissible the referral of the Cluj Court of Appeals, because it was found that the question of law discussed had not received a contrary interpretation until now, and, moreover, the case law is unanimous regarding the application of art. $61^1$ paragraph (1) of Law no. 101/2016, we consider, however, that it is worth upholding the conclusions of the High Court of Cassation and Justice set out in the recitals of its decision.

As a consequence, after analyzing the national case law on this question of law, including a final decision of the referring court, the High Court of Cassation and Justice notes that the unanimous orientation of the courts is as follows: in the interpretation of art. $61^1$ par. (1) of Law no. 101/2016, also referred to in par. (2) of the same article, the phrase "*estimated contract value*" refers to the contract value to be awarded, that is, the one published in the SEAP, while "*the established contract value*" refers to the contract value that was concluded, which is the value written in the contract.

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