

FDI Screening Regulation in Romania Implementation of Regulation (EU) 2019/452

by *Dumitru Rusu, Partner Voicu & Filipescu*

Discreetly and without impact on either media or on general public awareness, on 11 October was entering into force the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.

[Read more here...](#)

Legal Changes of September 2020

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:

- Data Protection
- Employment
- Litigation & Arbitration
- Public Procurement

+ VF News

Voicu & Filipescu assisted one of the main banking associations in the United States in a major crossborder financing transaction involving a Romanian company. [Click](#) here to read the article.

VF has organised a [dedicated task force to address coronavirus \(COVID-19\) concerns](#). Legal implications and strategies for companies. [Read more here.](#)

Voicu & Filipescu is pleased to announce that two of the transactions in which the Firm was involved 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.

[Legal500 EMEA 2020 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.

[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.

[Chambers and Partners Europe, 2019 edition](#) recommends Voicu & Filipescu for Corporate and M&A practice.

FDI Screening Regulation in Romania

Implementation of Regulation (EU) 2019/452

by Dumitru Rusu, Partner Voicu & Filipescu

Discreetly and without impact on either media or on general public awareness, on 11 October was entering into force the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (the “**Regulation**”) (<https://eur-lex.europa.eu/eli/reg/2019/452/oj>).

The Regulation establishes a framework for the screening by Member States of foreign direct investments into the Union on the grounds of **security or public order** and for a mechanism for cooperation between Member States, and between Member States and the Commission, with regard to foreign direct investments likely to affect security or public order.

In determining whether a foreign direct investment is likely to affect security or public order, Member States and the Commission may consider its potential effects on, inter alia:

- (a) **critical infrastructure**, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure;
- (b) **critical technologies** and dual use items as defined in point 1 of Article 2 of Council Regulation (EC) No 428/2009, including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies;
- (c) **supply of critical inputs**, including energy or raw materials, as well as food security;
- (d) **access to sensitive information**, including personal data, or the ability to control such information; or
- (e) **the freedom and pluralism of the media**.

Romania has declared a pre-existing investment screening mechanism implemented by the Competition Council and the National Defence Council (*Consiliul Suprem de Aparare al Tarii - CSAT*) as corresponding to Regulation (EU) 2019/452

(https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157946.pdf).

The pre-existing investment screening mechanisms on areas potentially affecting the national security

There was a long time existing investments screening mechanism in Romania, in the currently applicable form since 2012, not particularly for foreign direct investments (FDIs) but for any acquisition, by domestic, EU or non-EU investors, potentially affecting the “national security”. It is considered acquisition any direct acquisition of shares or other form of taking control over businesses or assets in the relevant areas.

The screening is exercised by CSAT through the Competition Council (art. 46 para 9-12 of the Competition Law 21/1996, republished, and application norms, corroborated with CSAT Resolution no. 73/2012) and approval / rejection is issued either by CSAT or, if CSAT deems necessary, is included on the Government agenda which may approve / reject a specific transaction.

The **areas under scrutiny** are: citizens and community security, frontier security, energy, transportation, critical inputs and supply, critical infrastructure, security of IT and communication systems, financial and taxation activity, banking and insurance activity, production and movement of armament, ammunition, explosives and toxic materials, industrial security, disasters management, agriculture and environment protection, privatisation of state owned companies or of the management of such companies.

Approval / rejection, or recommendation to the Government for the approval / rejection, is based on discretionary assessment of CSAT – can be rejected if CSAT believes that the revised transaction might present risks for the national security. CSAT may request opinions from state intelligence structures and public authorities directly involved in the corresponding sector.

Although in broad lines the areas under current scrutiny in Romania overlaps with the areas from the Regulation, given also their quite generality, it worth to mention that Regulation brings on the table some **new aspects** such as the freedom and pluralism of the media or access to sensitive information, as well as specific definitions of critical technologies.

The Regulation being of direct application and while Romania has declared the current mechanism as corresponding to that one referred by the Regulation, it is therefore a logical conclusion that the potential investments of non-EU investors in the new areas would enter under the existing scrutiny mechanism.

Adjustment and supplementation of the Investment Screening Mechanism

The Romanian Government has initiated a draft Emergency Ordinance for the implementation of the Regulation and adjustment and supplementation of the pre-existing mechanism, which is now under public consultation (<http://e-consultare.gov.ro/w/consultare-publica-proiectul-de-ordonanta-de-urgenta-privind-masurile-de-punere-in-aplicare-a-regulamentului-ue-452-2019-al-parlamentului-european-s%CC%A6i-al-consiliului-din-19-martie-2019/>)

What brings new the draft Government Emergency Ordinance?

The draft ordinance creates an inter-institutional consultative body named the Screening Commission for Foreign Direct Investment (CEISD) that will review all foreign direct investment plans and bans or propose bans for those that pose potential threats for security or public order.

CEISD works in the Government and it is established by decision of the Prime-Minister. It shall include representatives of the prime minister's office, Presidency, Ministry of Economy, Energy and Business Environment, Ministry of Finance, Ministry of Foreign Affairs, Ministry of National Defence, Ministry of Justice, Ministry of Internal Affairs, Romanian Intelligence Service (SRI), Foreign Intelligence Service (SIE), and Competition Council.

CEISD is a **deliberative and pre-screening body**, being also entitled to take decision. However, in case of identification of potential threats to national security or disagreement between members, the opinion of CSAT should be required, CSAT being also entitled to escalate the case to the Government.

The draft ordinance also provides requesting the approval of the Cyber Security Operational Council (*Consiliul Operativ de Securitate Cibernetica - COSC*), in situation where foreign direct investments target or involve IT&C technologies that may affect or harm Romania's security or public order. COSC is an inter-institutional executive body responsible with the operational aspects of the National Cyber Security Strategy, working within Romanian Intelligence Service (SRI).

A new aspect brought by the draft ordinance, in line with the Regulation, is the establishment not only of a pre-approval process, with simple or conditional approval or rejection, but also of a monitoring activity and **potential later withdrawal of the authorisation**, with potential protective measures such as suspension of the ownership rights and further forced sale of the participations in public tenders can be applied.

Furthermore, the draft enactment contains specific provisions for undertakings operating **in the mass-media industry**. This includes companies holding an audio-visual license at national or regional level and periodic publications with an average circulation of at least 5,000 printed copies per day in the last calendar year or a web portal with a minimum of 10,000 'accesses' per month.

Let's see the final form of the Government Ordinance approved and published.

data protection - legal changes published in September 2020

I. NEW GUIDELINES ADOPTED BY EDPB

At the Plenary Session of the European Data Protection Board (EDPB), held online on 2 September 2020, new guidelines were adopted:

- [Guide no. 7/2020 on the concept of concepts of controller and processor in the General Regulation on Data Protection - version for public consultation](#)

This Guide aimed to clarify, from the perspective of the General Regulation on Data Protection, the notions of controller, joint controller and processor, key concepts in the application of personal data protection rules, related to the provisions of art. 4 of the RGDP and considering their role in establishing the corresponding obligations.

- [Guide no. 8/2020 on the targeting of social media users - version for public consultation](#)

The document contains the presentation of concrete situations in order to be of real benefit to the companies in the activity carried out.

II. ROMANIA

1. ANSPDCP. HEALTH PRESS GROUP S.R.L. WAS SANCTIONED WITH A FINE OF 9,671.40 LEI, THE EQUIVALENT OF 2,000 EURO

On **September 8, 2020** The National Supervisory Authority has completed an investigation at the operator Sanatatea Press Group S.R.L. and found the **violation of personal data security measures** established by the provisions of art. 32 para. (1) and (2) in conjunction with art. 5 para. (1) lit. f) of the General Regulation on Data Protection.

The investigation was initiated following the **submission by the controller of a notification of a personal data breach**.

The violation of data security consisted in the fact that, during the organization of **an online event** by Sanatatea Press Group SRL, **the login data of some persons were erroneously transmitted to other e-mail addresses than those with which they had created an account on the platform**.

This situation led to the disclosure and unauthorized access to the data of other participants in the event (email addresses, usernames), with effects for a number of **1300 users** of the operator's platform.

In this context, according to art. 5 para. (1) lit. f) of the General Data Protection Regulation, the controller was obliged to process the data *"in a way that ensures adequate security of personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, by taking appropriate technical or organizational measures ("integrity and confidentiality")"*.

2. ANSPDCP HAS PUBLISHED A DRAFT DECISION ON ADDITIONAL REQUIREMENTS FOR THE ACCREDITATION OF CERTIFICATION BODIES

On **September 10, 2020**, the National Supervisory Authority published a Draft Decision of ANSPDCP on the **Additional Requirements for the accreditation of certification bodies** pursuant to art. 43 of Regulation (EU) 2016/679

This project is subject to public debate in accordance with Law no. 52/2003 regarding the decisional transparency in the public administration, republished, being accessible [here](#).

The additional requirements for the accreditation of certification bodies pursuant to art. 43 of Regulation (EU) 2016/679 were prepared in consultation with the **Romanian Accreditation Association - Renar and are submitted for the opinion of the European Data Protection Committee**, in accordance with art. 64 of Regulation (EU) 2016/679.

3. ANSPDCP PUBLISHED THE ACTIVITY REPORT FOR 2019.

On September 28, 2020, the National Supervisory Authority published on its website the **Annual Report**, which contains a summary of the Authority's activities, being structured in accordance with the main competencies of the ANSPDCP, in the following chapters: **chap. I** - general presentation, **chap. II** - the activity of approval, consultation and public information, **chap. III**-monitoring and control activity, **chap. IV** - activity in the field of international relations and chap. V - economic management of the Authority.

At the same time, this Report contains **statistical markers** highlighted in each chapter, including graphics compared to previous years, such as: the number of investigations performed in total or differentiated (ex officio, respectively based on complaints), the number of complaints and notifications received, the number corrective measures applied (including fines), number of views issued, pending litigation, codes of conduct analyzed, number of press releases, number of corporate rules/IMI.

Also, the 2019 Annual Report contains **case files/cases** related to the investigation activity, as well as the most relevant points of view issued, which reflect the complexity of the activity carried out, by reference to the attributions of our institution.

The activity report of ANSPDCP for 2019 can also be consulted [here](#).

4. ANSPDCP. AN ASSOCIATION OF OWNERS FROM NĂVODARI WAS SANCTIONED WITH WARNINGS AND A FINE IN THE AMOUNT OF 2,417.55 LEI (EQUIVALENT TO 500 EURO).

On **August 4, 2020** The National Supervisory Authority has completed an investigation at the Owners Association Bl. FC 5, Năvodari city, Constanța county, in which it found a violation of certain provisions of the General Regulation on Data Protection.

As such, the owners' association was sanctioned:

- for the illegal processing of the image of a natural person, coming from the video surveillance system of the association, by posting on the notice board of the building, in violation of the principles of personal data processing provided by art. 5 of the RGPD, corroborated with art. 6 para. (1) of the RGPD, by reference to the provisions of art. 83 para. (5) lit. a) from RGPD - **fine in the amount of 2417.55 lei (equivalent to 500 euros);**
- for not adopting security, technical and organizational measures, adequate for the protection of personal data collected through the video surveillance system, in accordance with the provisions of art. 25 and 32 of the RGPD, by reference to the provisions of art. 83 para. (4) lit. a) of the RGPD – **warning;**

- for the lack of a complete information of the data subjects whose personal data they process through the video surveillance system held, according to the requirements of art. 12 and 13 of the RGPD, by reference to the provisions of art. 83 para. (5) lit. b) of the RGPD - **warning**.

At the same time, the following **corrective measures** were applied to the owners' association:

- to ensure the complete information of the data subjects, by providing all the information provided by art. 12-13 of the RGPD, in a visible place, near the installed surveillance cameras, within 15 days from the date of communication of the minutes
- to ensure the compliance with RGPD of processing operations by adopting security measures, technical and organizational, appropriate for the protection of personal data collected through the video surveillance system, including in terms of viewing images through the monitor located in the lobby and deactivation application that allows remote access to images via the Internet, by establishing, within the General Assembly of the Owners Association, a limited number of people who have access to this system, the rights that can be allocated to each of them, the provision of clear processing instructions for persons processing data under the authority of the association

The sanctions were applied as a result of a complaint by which the petitioner complained about the access, use and disclosure by various persons, without legal grounds, of images with his person, from the video surveillance system of the owners' association.

III. EUROPEAN UNION

1. FINLAND. A COMPANY WAS FINED 7,000 EUROS FOR TRANSMITTING ELECTRONIC COMMERCIAL COMMUNICATIONS WITHOUT THE CONSENT OF THE DATA SUBJECTS AND FOR IGNORING THE RIGHTS OF THE DATA SUBJECTS.

The Finnish Data Protection Authority announced on 25 September, 2020, that it sanctioned the company Acc Consulting Varsinais-Suomi (Independent Consulting Oy) for conducting **direct electronic marketing**, as well as for **neglecting the rights of the data subject**.

The control was started following complaints submitted by the data subjects. They reported receiving direct marketing messages from the company without their consent. Some of the respondents responded to the marketing message sent as an SMS, requesting that they no longer receive messages. Despite the request, the data subjects continued to receive direct marketing messages from the controller. Therefore, the controller did not implement the right of the data subjects to object in accordance with the GDPR.

The Data Protection Authority imposed a **fine of EUR 7,000 and corrective measures** consisting in the obligation to change its methods of operation and to implement the exercise of the data subject's rights in accordance with the GDPR.

2. NORWAY. THE DATA PROTECTION AUTHORITY HAS ORDERED THE SANCTIONING OF THE NORWEGIAN PUBLIC ROADS ADMINISTRATION

The Norwegian Data Protection Authority sanctioned the Norwegian Public Roads Administration with a **fine of EUR 37,400** for the processing of personal data for purposes that were incompatible with the purposes initially mentioned and for not deleting the videos after 7 days.

The fine was applied in view of the extensive processing of personal data through the use of fixed road cameras to monitor the contracting parties, employees, subcontractors and employees of the subcontractors.

The use of such **images to document breaches of contract** a few months after the occurrence of the incidents is incompatible with the original purpose, which was to make immediate security measures possible. Therefore, it is not permitted to use these videos to track contracts.

3. POLAND. WARSAW UNIVERSITY OF LIFE SCIENCES WAS FINED PLN 50,000

On **September 11, 2020**, the Polish Personal Data Protection Authority announced that it had found a violation of personal data by the Warsaw University of Life Sciences and imposed **a fine of PLN 50,000 on this entity**.

On November 2019, the President of the Authority received a notification regarding the violation of personal data of candidates for studies at the University. The notification was related to the theft of a private laptop of the university employee, an employee who also used this device for commercial purposes, including the processing of personal data of candidates for studies for the purpose of recruitment activities.

In determining the amount of the fine, the Supervisory Authority took into account the fact that the personal data breach concerned candidates for studies in the last five years, covered a wide range of data and that the number of persons affected could be up to 100. It was also important for determining the amount of the fine that the controller had no knowledge of the processing of personal data on the employee's private computer.

Moreover, during the proceedings it was established that **the university did not implement adequate organizational and technical measures** to ensure the security of the processing of personal data of candidates for studies.

In this case, the Data Protection Officer (DPO) performed his tasks without taking due account of the risk associated with the processing operations. The data protection officer was not involved by the university in the recruitment process for studies covering the operation of the IT system for this activity.

In applying the fine, the President of the Authority took into account **mitigating circumstances**, such as: good cooperation with the Supervisory Authority both during the inspection and during administrative procedures, taking measures to remedy the breach and ensure security in future data processing.

4. HUNGARY. THE HUNGARIAN DATA PROTECTION AUTHORITY HAS FINED THE PUBLISHER OF FORBES MAGAZINE

The Hungarian National Data Protection Authority fined Mediarey Hungary Services Zrt., the ***publisher of Forbes magazine*** in Hungary in two cases, by ***two fines of 4.5 million forints***.

In the first case, the Authority established that in connection with the printed and online versions of Sept. 2019 of the Forbes publication which contains the largest family companies and the printed and online versions from January 2020 of Forbes publication, which contains the 50 richest Hungarians, did not inform the data subjects in advance of the results of the legitimate interest verification and the publisher infringed Article 6 (1) (f) of the General Data Protection Regulation.

Furthermore, the Authority established that by failing to provide the applicants with adequate information on all the essential circumstances of the data processing and on the applicants' right to exercise their rights under the GDPR, the publisher infringed Article 5 para. (1) lit. (a), Article 5 para. (2), Article 12 para. (1) and para. (4), Article 14, Article 15 and Article 21 para. (4) of the General Data Protection Regulation.

In the second case, the Authority found that by failing to properly assess the legitimate interest in the print and online versions of the Forbes publication containing the largest family businesses published in January 2019 and the print and online versions of the Forbes publication containing the largest rich 50 Hungarians published in September 2019, the publisher violated Article 6 para. (1) lit. (f) of the General Data Protection Regulation. Furthermore, the Authority found that by not providing the applicants with adequate information on all the essential circumstances of the processing and on the applicants' rights, the publisher infringed Article 5 para. (1) lit. (a), Article 5 para. (2), Article 12 paragraphs 1 and 4, Article 14 and Article 21 (1) and (4) of the General Data Protection Regulation.

The two sanctions have already been challenged and the court is due to rule on their legality.

5. POLAND. THE DATA PROTECTION AUTHORITY FINED THE GENERAL INSPECTORATE OF POLAND WITH A FINE OF PLN 100,000

The sanction was applied as a result of the ***violation of the principle of legality of the processing*** of personal data due to the intentional provision, ***without a legal basis***, on GEOPORTAL2 (geoportal.gov.pl) of personal data in the form of land book numbers.

The inspectorate refused to carry out an inspection and provided only the documentation specifying the organizational measures applied to ensure data security and the evidence demonstrating the appointment of the data protection officer.

During the procedure, the Inspectorate did not indicate a legal provision that would constitute the legal basis for its activity. Moreover, none of the legal provisions governing its activity allows it to make available the data obtained within GEOPORTAL2. In the opinion of the President of the Authority, the Inspectorate General of Poland, aware of the lack of a clear legal basis for data processing, concluded agreements with the Cadastre Offices on the basis of which it obtained information on land for publication on GEOPORTAL2. The Authority considered that such a basis should result from commonly binding legal provisions.

In view of the above, the President of the Authority considered that the personal data were made available on GEOPORTAL2 without a legal basis. Such an action results in a breach of Article 5 para. (1) lit. (a) and Article 6 para. (1) of the GDPR.

The scope of the data disclosed in the land register of individuals includes, among others, name, surname, parents' name, personal identification number, property address. The publication of such data allows the identification of the person whose data are contained in the land register. By publishing land registry numbers on Geoportal2, access to the information contained in them can be obtained by any interested Internet user. This type of situation can expose a very large number of people (persons concerned) to the theft of their identity.

6. POLAND. DATA PROTECTION AUTHORITY IMPOSES A REPRIMAND ON A SCHOOL FOR PROCESSING STUDENTS' PERSONAL DATA

The Authority for the Protection of Personal Data imposed a **reprimand** for the processing of personal data of students, without legal basis, in connection with **the survey** conducted by a school in the school year 2019/2020. The survey entitled "Assessment of the situation of the student at home and school" examined the personal situation of students.

In connection with the survey, the school processed the personal data of students, including minors, in particular first and last name, indication of legal guardians (parents), family status (single parent, whole family), information about the death of the guardian (parent), separation of legal guardians (parents), their education and professional situation, the number of persons in the household, the financial situation, the state of health and the dependencies of the legal guardians (parents), the housing situation and information on social benefits.

The processing of students' personal data included **the collection, storage and destruction of such data**. All returned copies of the survey were destroyed by an official commission. According to the findings of the inspection, the personal data included in the investigations were not entered into the electronic telecommunications systems, were not recorded on electronic data carriers or other carriers of information, including on paper. After collecting the surveys, the teachers did not make scans or paper copies of them, nor did they make any additional documents containing personal data related to the surveys. Since the date of the inspection, the personal data of the students obtained in connection with the surveys have not been processed

According to the evidence obtained as a result of the inspection, the investigations were carried out in a manner that precludes the unauthorized disclosure of the data contained therein.

By conducting a survey among students, **the school violated the principle of legality of data processing**, according to which personal data must be processed legally, fairly and transparently for the data subject. The above principle has been developed in the content of Article 6 para. (1) lit. (c) of the GDPR, according to which processing is lawful only if - and to the extent that - processing is necessary to comply with a legal obligation to which it is subject. the controller is satisfied.

The President of the Authority considered that, in the circumstances set out in this case, a reprimand was sufficient. The unintentional nature of the infringement was considered to be a mitigating circumstance. The school principal immediately took a number of corrective measures, such as: destroying survey forms or refraining from conducting surveys by some teachers, organizing training for staff to raise awareness about personal data protection issues, and analyzing the incident. conducting the survey among students, taking into account the risk to the rights and freedoms of individuals. Moreover, on the basis of the circumstances of the case, there is no reason to consider that the persons concerned suffered damage as a result of the event.

employment - legal changes published in September 2020

Order of the Minister of Health no. 1546/938/2020 regarding the amendment of the annexes no. 1 and 2 to the Order of the Minister of Health and of the President of the National Health Insurance House no. 1092/745/2020 for the approval of the single template of the medical leave certificate and of the instructions regarding the use and the way of filling in the medical leave certificates on the basis of which the indemnities are granted to the insured persons from the social health insurance system and from the accident insurance system and occupational diseases was published in the Official Gazette of Romania, Part I, no. 820 of September 7, 2020, entering into force on the same date.

The Order amended the unique template of medical certificate. It is also established that the issuance of the medical leave certificate will be made on the basis of the certificate from the payer, except for medical-surgical emergencies or group A infectious diseases, provided in the list approved through a Government decision, as well as in case of infectious diseases for which the measure of isolation is implemented, established through a Government decision as well.

In addition, instructions are introduced on how to fill in the medical leave certificates in the event of quarantine or isolation.

Order of the Minister of Labour and Social Protection no. 1375/2020 for the approval of the application and declaration on their own responsibility templates provided in art. 2 para. (3) of the Government Emergency Ordinance no. 147/2020 on granting days off for parents to supervise the children, in case of limitation or suspension of teaching activities that involve the actual presence of children in schools and early childhood education units, following the spread of SARS-CoV-2 coronavirus was published in the Official Gazette of Romania, Part I, no. 832 of September 10, 2020, entering into force on September 13, 2020.

The Order approved the templates of the application and the declaration on their own responsibility that the parent must submit to the employer in order to benefit from the paid days off for the entire period in which it is decided to limit or suspend the teaching activities that involve the actual presence of children in schools and in the pre-school early education units, according to the provisions of the Government Emergency Ordinance no. 147/2020.

Order of the Minister of Labour and Social Protection no. 1376/2020 for establishing the manner of granting the financial support and the categories of goods that can be purchased according to art. 6 para. (1) of the Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as to stimulate employment growth was published in the Official Gazette of Romania, Part I, no. 832 of September 10, 2020, entering into force on September 13, 2020.

The Order establishes the manner of granting the financial support and the categories of goods that can be purchased according to art. 6 para. (1) of the Government Emergency Ordinance no. 132/2020 (support consisting in granting of Lei 2,500 for each employee in order to purchase packages of goods and technological services necessary for the activity of teleworking; this amount is granted for employees who worked in teleworking regime during the state of emergency for at least 15 working days).

The categories of goods that can be purchased using the above-mentioned aid are the following:

- 1) Laptop/notebook computer systems;
- 2) Tablets;
- 3) Smartphone;
- 4) Peripheral input and output equipment related to the goods provided in points 1-3 from above;
- 5) Equipment necessary for the internet connection related to the goods provided in points 1-3 from above;
- 6) Licenses related to the operating systems and software applications related to the goods provided in points 1-3 necessary for carrying out the activity in teleworking regime, in accordance with the provisions of Law no. 81/2018 on teleworking activity.

In order to provide support for teleworkers, the employers must send, by electronic means, respectively by uploading on the platform aici.gov.ro, to the employment agencies of the county/municipality of Bucharest where they have their registered office, the following documents, for which they assume their responsibility for the correctness and veracity of the data entered: **(i)** an application signed and dated by the legal representative, according to the template provided in Annex no. 2; **(ii)** a statement on one's own responsibility, given by the legal representative, according to the template provided in Annex no. 3; **(iii)** the list of teleworkers for whom the amount is requested, according to the template provided in Annex no. 4.

The payment from the unemployment insurance budget of the amounts granted to the employers for teleworkers is made within the funds allocated for this purpose, in the order of submission of the applications, until December 31, 2020, by transfer to the bank accounts opened by the employers, within 10 days from the date of registration of the complete documentation.

Subsequently, within 30 days from the granting of the amounts, the employers have the obligation to send, by uploading on the platform aici.gov.ro, to the employment agencies of the county/municipality of Bucharest, which performed payment of the amounts, the following supporting documents, scanned: **(i)** the tax invoices issued by the suppliers of technological goods and services; **(ii)** tax receipts or account statements proving the payment of invoices; **(iii)** the records of the materials of the nature of the inventory objects given for the use of the teleworkers, drawn up according to the template provided in annex no. 3 to the Order of the Minister of Public Finance no. 2634/2015 regarding the financial-accounting documents, and/or, as the case may be, the movement vouchers of the fixed assets given for the use of the employees, drawn up according to the template provided in annex no. 3 to the Order of the Minister of Public Finance no. 2634/2015, and/or, as the case may be, the situation with the technological services that the employer provides to each teleworker.

In case of non-compliance with the obligation to submit the supporting documents regarding the purchase of the categories of goods for teleworkers, within 30 days from the expiration of the deadline for submission of the supporting documents, the employers must fully refund the amount granted to the treasury account of the employment agencies who paid the amounts.

Order of the National Agency for Employment no. 593/2020 on the approval of the Procedure for the settlement of amounts for the payment of the indemnity for each day off granted under the conditions of art. 1 of the Government Emergency Ordinance no. 147/2020 on granting days off for parents to supervise children, in case of limitation or suspension of teaching activities that involve the actual presence of children in schools and early childhood education units, following the spread of SARS-CoV-2 coronavirus, of the supporting documents, as well as of their template was published in the Official Gazette of Romania, Part I, no. 836 of September 11, 2020, entering into force on September 14, 2020.

According to the Procedure, for the settlement of the amounts for the payment of the indemnity for each free day granted under the conditions of art. 1 of the Government Emergency Ordinance no. 147/2020, the employers must submit to the employment agencies of the county/municipality of Bucharest in whose territorial area they or their branches/working units, as the case may be, carry out their activity an application, drawn up according to the template provided in Annex no.1, which will be dated and signed by the legal representative.

This application must be accompanied by: **(i)** the list of employees who have benefited from the leave, as well as the indemnity granted during this period, drawn up according to the template provided in Annex no. 2; **(ii)** the copies of payroll and time sheets showing the indemnity for each day off; **(iii)** the statement on its own responsibility of the employer's legal representative stating that the list of the employees who have benefited from days off contains the persons who meet the conditions regulated by the emergency ordinance, drawn up according to the template provided in Annex no. 3; **(iv)** the proof of payment of tax and social security contributions, social health insurance, and work insurance contribution related to the indemnity for each day off.

The application together with the justifying documents specified above shall be sent by the employers electronically or in letter format to the county/Bucharest employment agencies, within 30 days from the date of payment of the contributions and taxes related to the indemnity.

Verification by the employment agencies of the fulfillment of the conditions provided by the Government Emergency Ordinance no. 147/2020 is made on the basis of the nominal lists with children, respectively with the persons highlighted on units of early preschool education, education or day services, drawn up according to the template provided in Annex no. 4, sent by the public institutions in whose coordination or subordination are the educational units or day services within a maximum of 10 days from the decision to limit or suspend the courses in the educational unit or the activities of the day services.

The settlement of the amounts for the payment of the indemnity for each day off is made by transfer to the bank accounts opened by the employers, within 15 days from the date of registration of the supporting documents. In the

event that employment agencies request written clarifications and/or additional documents, the term of 15 days will start from the date of registration of the respective clarifications/documents.

Government Decision no. 782/2020 on the extension of the state of alert on the Romanian territory starting with September 15, 2020, as well as the establishment of the measures applied during it to prevent and combat the effects of the COVID-19 pandemic was published in the Official Gazette of Romania, Part I, no. 842 of September 14, 2020, entering into force on the same date.

According to the Decision, starting with September 15, 2020, the state of alert is extended by 30 days on the entire territory of Romania.

As such, the provision is maintained according to which in closed public spaces, commercial spaces, means of public transport and at the workplace, the obligation to wear a protective mask is established, under the conditions established by the joint order of the Minister of Health and the Minister of Internal Affairs.

Order of the Minister of Labour and Social Protection no. 1340/2020 regarding the approval of the application and of the declaration on one's own responsibility for requesting the indemnity provided by art. 3 of the Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as to stimulate employment growth was published in the Official Gazette of Romania, Part I, no. 844 of September 15, 2020, entering into force on September 18, 2020.

The Order approved the templates of the application and the declaration on their own responsibility for **(i)** the professionals, as they are defined by the Civil Code, which are to benefit from the payment of the indemnity provided in art. 3 of the Government Emergency Ordinance no. 132/2020; **(ii)** the persons who have concluded individual employment agreements based on Law no. 1/2005 regarding the organization and functioning of the cooperation, which is to benefit from the payment of the indemnity provided in art. 3 of the Government Emergency Ordinance no. 132/2020 (the indemnity consists of 41.5% of the average gross earnings, in case of temporary reduction of the activity determined by the establishment of the state of emergency/alert/siege).

Order of the Minister of Labour and Social Protection no. 1392/2020 regarding the approval of the application and of the documents provided in art. 4 para. (2) of the Government Decision no. 719/2020 for the approval of the settlement and payment procedure of the amounts granted based on the Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as to stimulate employment growth was published in the Official Gazette of Romania, Part I, no. 850 of 16 September 2020, entering into force on 19 September 2020.

The Order approved the templates of the application, the statement on their own responsibility and the list to be submitted by the employers who wish to benefit from the settlement of a part of the salary granted to employees who conclude individual employment contracts for a fixed period of up to 3 months (more precisely, 41.5% of the salary related to the days worked in these jobs is settled, for a working period of 8 hours/day, but not more than 41.5% of the average gross earnings per country).

Order of the Minister of Labour and Social Protection no. 1393/2020 regarding the approval of the application and of the documents provided in art. 1 para. (2) of the Government Decision no. 719/2020 for the approval of the settlement and payment procedure of the amounts granted based on the Government Emergency Ordinance no. 132/2020 on support measures for employees and employers in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus, as well as to stimulate employment growth

was published in the Official Gazette of Romania, Part I, no. 850 of 16 September 2020, entering into force on 19 September 2020.

The Order approved the templates of the application, the statement on their own responsibility and the list to be submitted by employers for the settlement of the indemnity granted to employees in case of reduction of working time by maximum 50% of the duration provided in the individual employment contract in case of reduction of the working time determined by the establishment of the state of emergency/alert/siege. The employees affected by this measure receive an indemnity of 75% of the difference between the gross basic salary provided for in the individual employment contract and the gross basic salary for the hours actually worked as a result of the reduction in working time, in addition to the due salary entitlements, calculated at the actual time worked.

Order of the Minister of Labour and Social Protection no. 1426/2020 on amending the Order of the Minister of Labour and Social Protection no. 741/2020 for the approval of the template of the documents provided in art. XII para. (1) of the Government Emergency Ordinance no. 30/2020 for amending and supplementing some normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation determined by the spread of SARS-CoV-2 coronavirus, with amendments and completions brought by Government Emergency Ordinance no. 32/2020 for the amendment and completion of the Government Emergency Ordinance no. 30/2020 for amending and supplementing some normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus and for establishing additional social protection measures

was published in the Official Gazette of Romania, Part I, no. 865 of September 22, 2020, entering into force on the same date.

The Order amends the Annex to the Order of the Minister of Labour and Social Protection no. 741/2020 for the approval of the template of the documents provided in art. XII para. (1) of the Government Emergency Ordinance no. 30/2020, namely the documents to be submitted by the employers to the employment agencies to obtain the amounts granted

as indemnities to the employees whose employment contracts have been suspended during the state of emergency or alert (in restricted areas) or in case of suspension of the activity as a result of the epidemiological investigation carried out by the public health directorates (situation provided by G.E.O. no. 120/2020).

Thus, the templates of the following documents are amended: application, statement on its own responsibility and the list of persons whose employment contract has been suspended (so as to be correlated with the provisions of G.E.O. no. 120/2020).

Order of the Minister of Health no. 1602/946/2020 for the amendment and supplementation of the Norms for the application of the provisions of the Government Emergency Ordinance no. 158/2005 on holidays and social health insurance benefits, approved by the Order of the Minister of Health and the President of the National Health Insurance House no. 15/2018/1311/2017 was published in the Official Gazette of Romania, Part I, no. 865 of September 22, 2020, entering into force on the same date.

The Order provides for the completion of the legal framework of social health leave and allowances, so as to address the situations encountered in practice, respectively the non-granting of medical leave to those persons in isolation, patients who have not been evaluated in a hospital or unit attached to it.

Thus, it is established that for the insured person for whom the measure of isolation has been established in a health unit or in an alternative location attached to a health unit and which can be discharged, provided the isolation at home or at the location declared by the person to be isolated, the attending physician of the hospital who cared for and discharged the patient issues the medical leave certificate for the duration of hospitalization and may grant medical leave for discharge until the maximum term of the isolation period or for a period established by him/her, according to the order of the Minister of Health for the approval of the plans regarding the application by the county and Bucharest public health directorates, by the National Institute of Public Health, as well as by the sanitary units of the measures in the field of public health in situations of epidemiological risk of infection with SARS-CoV-2 virus.

Also, the situation when the date of hospitalization of the insured person is after the date of collection of the first sample confirming the infectious disease is stipulated. In this case, for this period, the medical leave certificate is granted by the family physician, based on the document issued by the public health directorate, which includes information on the date of collection of the first sample, the date of confirmation of the infectious disease and the date of hospitalization of the sick person.

In the case of the insured person confirmed with an infectious disease, for which the measure of isolation has been instituted at home or at a declared location, on the recommendation of the physician who carried out its assessment without hospitalization, in order to ascertain and maintain the risk of transmitting an infectious disease, he/she benefits from medical leave granted by the family physician, for the entire period recorded in the document issued by the public health directorate, which includes information on the physician who assessed the case, as well as the recommendation regarding the establishment of the isolation measure, specifying the period for which this measure is ordered.

Order of the Minister of Labour and Social Protection no. 1432/2020 on amending and supplementing the Order of the Minister of Labour and Social Protection no. 741/2020 for the approval of the template of the documents provided in art. XII para. (1) of the Government Emergency Ordinance no. 30/2020 for amending and supplementing some normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation determined by the spread of SARS-CoV-2 coronavirus, with amendments and completions brought by Government Emergency Ordinance no. 32/2020 for the amendment and completion of the Government Emergency Ordinance no. 30/2020 for amending and supplementing some normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus and for establishing additional social protection measures was published in the Official Gazette of Of Romania, Part I, no. 873 of September 24, 2020, entering into force on the same date.

The Order amends the annexes of the Order of the Minister of Labour and Social Protection no. 741/2020 for the approval of the template of the documents provided in art. XII para. (1) of the Government Emergency Ordinance no. 30/2020, so that there is a clear delimitation of them.

Thus, the Annex 1 of Order no. 741/2020 contains the template of the documents required to be submitted by the employers to the employment agencies in order to obtain the amounts granted as indemnities to the employees in case of reduction or temporary interruption of activity totally or partially due to the effects of the SARS-CoV-2 coronavirus epidemic, during the state of emergency/alert (in restricted areas), and Annex 2 contains the template of the documents required to be submitted by the employers to employment agencies to obtain the amounts granted as indemnities to the employees in case of suspension of activity due to epidemiological investigation performed by the public health directorates (situation provided by G.E.O. no. 120/2020).

Law no. 213/2020 for the amendment and completion of Law no. 53/2003 - The Labour Code was published in the Official Gazette of Romania, Part I, no. 893 of September 30, 2020, entering into force on October 3, 2020.

The Law brings a series of amendments and completions to the Labour Code, covering four major aspects, namely:

- assisting during the negotiation, conclusion or modification of the individual employment contract or during the conciliation of an individual labor dispute;
- human resources and salary activity;
- conciliation within individual labor disputes;
- disciplinary investigation procedure.

More details on this topic can be found by accessing the following link: <https://www.vf.ro/legal-alert-october-2020/>

litigation and arbitration - legal changes published in September 2020

The Decision of the European Court of Human Rights dated February 26, 2020 in the Case of Ana Ionescu and others against Romania (Application no. 19.788/03 and 18 other applications) was published in the Official Gazette, Part I no. 870 of 24 September 2020 and is applicable from the same date. The applicants stated that they had obtained final judgments finding that the nationalization of their property by the former communist regime had been illegal and that they had not ceased to be the rightful owners of those properties. Despite the fact that their property titles were not challenged, the applicants were unable to regain possession of the property, as the latter had been sold by the State to third parties. The applicants did not receive compensation for those properties. Through its rectified decision dated June 13, 2019, the Court declared that the heads of request formulated pursuant to art. 1 of Protocol no. 1 were found admissible, except for the end of the request made in Application no. 12.838/07, and the rest of the heads of claim were found inadmissible and, deciding that art. 1 of Protocol no. 1 of the Convention is applicable, established: a) that the respondent State must pay to the applicants, within three months from the date of the judgment, in accordance with art. 44 § 2 of the Convention, the amounts indicated in the annexed list, plus any taxable amount, which must be converted into the national currency of the respondent State at the exchange rate applicable on the date of payment and b) that, of upon expiry of that period and until payment has been made, these amounts shall be increased by a simple interest rate at a rate equal to the marginal lending rate of the European Central Bank applicable during that period and increased by three percentage points, rejecting the applications. grant equitable redress for the other claims made by the applicants.

The above judgment of the Court was **revised by the Decision of 3 March 2020 in the Case of Ana Ionescu and Others v. Romania (Application No. 19.788/03 and 18 other applications), published in the same Official Gazette**, the Court establishing that: the defendant state must pay jointly and severally to Ms. Emma Albu and to the other applicants in Application no. 36.384/03 (Mrs. Daniela Șandru, Mr. Traian Petru Mihăilă and Mrs. Ileana Viorica Oancea), within three months from the date of the decision, in accordance with art. 44 § 2 of the Convention, the amounts indicated in point 4 of the annexed list, for pecuniary damage, non-pecuniary damage and legal costs, plus any taxable amount, to be converted into the national currency of the respondent State at the exchange rate applicable on the date of payment; (b) that, from the expiry of that period until the payment has been made, these amounts must be increased by a simple interest rate at a rate equal to the marginal lending rate of the European Central Bank applicable during that period, plus three percentage points.

Decision of the High Court of Cassation and Justice no. 14/2020 regarding the referral of the Board of Galati Court of Appeal with the resolution of the appeal in the interest of the law regarding a legal issue was published in the Official Gazette, Part I no. 875 of 25 September 2020 and is applicable from the same date. The High Court admitted the appeal in the interest of the law formulated by the Board of Galati Court of Appeal and, consequently, established that in the unitary interpretation and application of the provisions of art. 472 and art. 491 of the Code of Civil Procedure, the incidental appeal or second appeal cannot be limited to the object of the main appeal or second appeal, but it can concern any other solutions contained in the operative part of the contested decision and/or its considerations.

public procurement - legal changes published in September 2020

Law no. 199/2020 on electronic invoicing in the field of public procurement was published in the Official Gazette of Romania, Part I, no. 825 of September 9, 2020, entering into force on October 9, 2020.

The Law no. 199/2020 (the "**Law**") transposes the Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in the field of public procurement, stating that:

- The Law is applicable in the case of electronic invoices issued as a result of the execution of contracts awarded under Law no. 98/2016 on public procurement, Law no. 99/2016 on sectoral procurement, Law no. 100/2016 on works concessions and service concessions and of the G.E.O. no. 114/2011 on the award of certain public procurement contracts in the fields of defense and security, whose value is equal to or greater than the thresholds provided by law and to which there is an obligation to publish a notice of participation/concession and/or an award notice in the Official Journal of the European Union;
- the contracting authorities and entities may also apply the provisions of the Law in the case of electronic invoices issued as a result of the execution of the above-mentioned contracts whose value is lower than the thresholds provided by law in relation to which there is an obligation to publish a participation/concession notice and/or an award notice in the Official Journal of the European Union;
- the Law does not apply to electronic invoices issued as a result of the execution of contracts classified according to law or if the award and execution of the public procurement contract required the imposition, according to the legal provisions, of special security measures to protect essential security interests of the state.

The Law establishes the criteria that the semantic data of the main elements related to an electronic invoice must comply with, as well as the conditions that the recipient of the electronic invoice (contracting authority, contracting entity or centralized purchasing unit with attributions in this respect) must meet.

According to the Law, the main elements of an electronic invoice are the following:

- a) process and invoice identifiers;
- b) the date of the invoice;
- c) information on the identification of the taxable person who delivered the products, provided the services or executed the works;
- d) information on the buyer;
- e) information on the payment beneficiary;
- f) information on the seller's tax representative;
- g) identification of the type of the products delivered, services provided or works executed;

- h) reference to the public/sectoral procurement contract, for the concession of works and services, as well as, as the case may be, to the public procurement contract in the fields of defense and security;
- i) details regarding the delivery of products/provision of services/execution of works;
- j) payment instructions;
- k) information on loans or debits;
- l) information on the positions on the invoice;
- m) invoice totals;
- n) breakdown of VAT.

At the same time, the electronic invoice must comply with the content established by the special normative acts and will mandatorily contain the time stamp certifying the moment of issuance.

The contracting authorities and entities must receive and process an electronic invoice in accordance with the European standard for electronic invoicing and any of its syntax, verifying the legality, authenticity, origin and integrity of the content of invoices issued in electronic form, in accordance with the legal provisions in force.

In addition, it is expressly provided that contracting authorities and entities must receive and process the information regarding the electronic invoices related to public/sectoral procurement contracts, works or service concessions or defense and security procurement contracts, in accordance with the Law. This information may be transmitted or received and processed in the Electronic Public Procurement System - SEAP, in accordance with the OCDS standard, to ensure the transparency of the information related to those contracts.

The provisions of the Law do not affect the provisions of Title VII of the Fiscal Code regarding the VAT.

Decision of the Romanian Digitization Authority no. 501/2020 for the approval of the Norms on ensuring access to the Electronic Public Procurement System (SEAP) for performing the control of public procurement procedures was published in the Official Gazette of Romania, Part I, no. 857 of September 18, 2020, entering into force on the same date.

The rules on ensuring access to SEAP for the control of public procurement procedures establish the technical framework for ensuring access to SEAP for managing authorities, intermediate bodies, as well as bodies with audit, verification and control role.

To this end, there are established the rules for the registration in the SEAP of managing authorities, intermediate bodies and audit bodies.

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

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