



## Legal Changes of August 2021

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
- Environment law
- PPP & Concessions
- Public Procurement

[20 years of Business Catalysts](#). Founded in 2001, Voicu & Filipescu provides valuable expertise to its clients, being involved over time in large-scale projects for the local and regional business environment.

The dedicated VF task force addressing [Coronavirus \(COVID-19\) concerns](#) continues to be active in providing legal solutions and strategies for the benefit of companies impacted by the health crisis. [Read more here](#).

[Chambers and Partners Europe, 2021 edition](#) recommends Voicu & Filipescu for our lawyer's activity in the field of dispute resolution.

[Legal500 EMEA 2021 edition](#) recommends Voicu & Filipescu for our lawyers' activity in 6 practice areas: Corporate and , Commercial, Employment, PPP and Procurement, Real Estate and Construction, Restructuring and Insolvency and TMT.

[IFLR 1000, 2021 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.





## data protection - legal changes published in August 2021

### I. Romania

#### 1. PENALTIES GRANTED BY THE NATIONAL SUPERVISORY AUTHORITY

##### 1.1 ANSPDCP. A fine of 10,000 RON fine was imposed on the Association of Road Assistance A-Car Vaslui in application of Law no. 190/2018 by the National Supervisory Authority

Following a complaint about the fact that the A-Car Vaslui Road Assistance Association processes personal data of minors (images), through the [www.a-carvaslui.ro](http://www.a-carvaslui.ro) website, the National Supervisory Authority conducted an investigation that was completed in July.

The controller failed to respond to the requests of the authority, therefore it received a warning for violating art. 58 para. (1) lit. a) and letter e) of Regulation (EU) 2016/679 (hereinafter referred to as "GDPR"), pursuant to art. 13 of Law no. 190/2018.

Moreover, the Road Assistance Association A-Car Vaslui failed to comply with the measures stipulated in the remediation plan communicated by the National Supervisory Authority, therefore pursuant to Article 14 para. (1) of Law no. 190/2018, said controller was sanctioned by fine in the amount of 10,000 ROL under art. 14 para. (5) lit. e) of Law no. 190/2018, reported corroborated with art. 58 para. (1) points (a) and (e) of GDPR.

##### 1.2 ANSPDCP. Actamedica SRL was sanctioned by fine of 3,000 EURO for violating GDPR

ANSPDCP found that Actamedica SRL violated the provisions of art. 12 para. (3), Art. 15 para. (1), Art. 28 para. (1), Articles 32 and 33 of the GDPR.

As a result of the investigation, it turned out that a notification was sent to an individual about the loss of his biological samples and an amount of money sent through a courier company, the parcel reaching the recipient damaged. Upon requesting to be informed of what personal data were presented to him on this occasion and if ANSPDCP was notified about this incident, in the reply sent, the controller indicated to the individual the contact details of the company's attorney and an e-mail address from the courier company to which to express his claims.

Also, the National Supervisory Authority found that Actamedica SRL failed to adopt sufficient security measures, according to art. 28 para. (1) and 32 of the GDPR, adapted to the type of the processed personal data, which led to a security incident. In this context, it was found that the provisions of Article 28 para. (1) and Article 32 of the GDPR were breached; as such, the controller Actamedica SRL was sanctioned for minor offences by fine in the amount of 9,836.6 RON (the equivalent of 2,000 EURO), for violating art. 28 para. (1) and Article 32 of the GDPR; by fine in the amount of 4,918.3 RON (the equivalent of 1,000 EURO) for violating article 33 of the GDPR; by warning, for breach of the provisions of Article 12 para. (3) and Article 15 para. (1) of the GDPR.



## 2. ANNUAL REPORT OF ANSPDCP FOR 2020

At the beginning of August, the National Supervisory Authority published the Annual Activity Report for 2020, a document that can be consulted on the Authority's website (at the address that can be accessed here: [https://www.dataprotection.ro/?page= Comunicat Presa 06 08 2021&lang=ro](https://www.dataprotection.ro/?page=Comunicat_Presa_06_08_2021&lang=ro)).

According to the information communicated by the National Supervisory Authority, during 2020, a number of 1151 requests for points of view on various aspects of the interpretation and application of GDPR were addressed to the National Supervisory Authority by operators and their proxies, in the public and private domain, by other entities, as well as by individuals.

There were issued opinions on a number of 65 draft normative acts elaborated by institutions and public authorities involving complex aspects of the processing of personal data, pursuant to Art. 57 para. (1) point .c) of GDPR.

As regards the monitoring and control activity, in 2020 the Authority received a total of 5480 complaints, referrals and notifications on security incidents, on the basis of which 694 investigations were opened.

As a result of the investigations, 29 fines were imposed in the total amount of 892,115.95 RON. At the same time, 64 warnings were applied and 65 corrective measures were ordered.

The 2020 annual report also contains case files / cases related to the investigation activity, as well as the most relevant points of view issued by the National Supervisory Authority. The Authority's activity in 2020 can be considered constant compared to the previous year, despite the difficulties generated by the pandemic. Individuals appear to have become more aware of and careful with their rights under the GDPR.

## II. European Union

### 1. REGULATORY

#### **1.1 The European Data Protection Board (EDPB) recently issued the document entitled 'Overview on resources made available by Member States to the Data Protection Authorities and on enforcement actions by the Data Protection Authorities'**

The European Data Protection Board (EDPB) published a report on the resources that the EU Member States make available to their Data Protection Authorities (DPA) and on the enforcement actions initiated by those DPAs.

The EDPB report releases statistics on both financial and human resources that the EU Member States provide to the authorities at Member State level responsible for monitoring compliance with data protection laws.

In addition, the report provides statistics on national and cross-border enforcement cases initiated by data protection authorities



For each EU Member State, the report also provides information on the applicable legal deadlines to handle data subject complaints, the procedural rights of complainants and controllers, and the existing costs to appeal decisions under Article 78 GDPR.

### **1.2 The European Data Protection Board adopted on July 15, 2021 its first urgent binding decision pursuant to Art. 66(2) of the GDPR**

As a reminder, the decision follows a request from the Hamburg Supervisory Authority after it ordered a provisional ban on the processing activities of a controller.

The EDPB concludes that the conditions to demonstrate the existence of an infringement and an urgency are not met. Therefore, the controller's Lead Supervisory Authority does not need to adopt any final measures in this case, but is requested to carry out a statutory investigation as a matter of priority.

### **1.3 50th Plenary Session of the European Data Protection Board**

The plenary, held online on 7 July 2021, adopted the following documents:

- Guide no. 2/2021 on virtual voice assistance (final form after public consultation);
- Guide no. 7/2020 regarding the concept of controller and processor (final form after public consultation);
- Guide on codes of conduct as a transfer tool, open for public consultation.

The purpose of the Guide on codes of conduct as a transfer instrument is to clarify the application of the provisions of art. 40 para. (3) in conjunction with article 46 para. (2) letter e) of the GDPR, including by presenting specific examples.

More information is available at: [https://edpb.europa.eu/news/news\\_en](https://edpb.europa.eu/news/news_en)

## **2. PENALTIES GRANTED IN THE E.U.**

### **2.1 Luxembourg's National Commission for Data Protection issued a fine of € 746 million against Amazon for alleged violations of the EU General Data Protection Regulation, the largest fine so far in the EU**

The fine received by Amazon, granted on July 16, 2021, was the result of a 2018 collective complaint filed by French privacy rights group La Quadrature du Net on behalf of 10,000 other people, regarding obtaining consent for targeted advertising. The CNPD also asked the American tech giant to review some of its business practices.

According to the statements made by the company, it intends to defend itself against the fine received, so the fine is not yet final and binding.



## 2.2 Spanish DPA fines supermarket chain with €2.52 million for unlawful use of facial recognition

The Spanish DPA, the *Agencia Española de Protección de Datos* (the "AEPD"), has fined Mercadona S.A. ("M") by €2.52 million following an investigation into the use of facial recognition systems in M's supermarkets. M had used a form of video surveillance which had facial recognition capability. The system compared a sample from an image of a person against a database of samples already associated with the identity of that person for every person who entered one of M's supermarkets. M said that it was using the system in order to detect individuals with criminal convictions or restraining orders (in particular those who received a restraining order for a store-based assault) and therefore relied on the "public interest" exemption under Article 6 of the GDPR to process this personal data. The public interest which M identified was the safety of the people, goods, and premises which accords with a particular national law in Spain.

The AEPD found that the data constituted special category data as it was biometric data used for the identification of living individuals within a large number of processing operations. M was unable to rely on the public interest exception, under Article 9, as the relevant national law must also specify the circumstances, limits, rules and measures for applying the exception and should be proportionate.

## 2.3 Italian DPA fines Deliveroo €2.5 million

The Italian Data Protection Authority ("DPA"), *Garante per la protezione dei dati personali* ("Garante") has fined Deliveroo Italy s.r.l. ("Deliveroo") by €2.5 million for the unlawful processing of the personal data of approximately 8,000 Deliveroo riders. Garante carried out an on-site inspection of Deliveroo in June 2019 which established that Deliveroo was operating a centralised computer system which scored riders based on several factors (such as weekend availability). Garante was concerned that Deliveroo was not sufficiently transparent regarding how this personal data was used to distribute work to its riders via its scoring algorithm. Garante also raised concerns that this personal data, which included precise geo-location data of its riders which was captured every 12 seconds, was kept for up to six months for each rider.

As a result, Garante considered that Deliveroo breached the principles of storage limitation, data minimisation, transparency and lawfulness under Article 5 of the GDPR. In addition to imposing the fine on Deliveroo, Garante required Deliveroo to implement corrective measures including: preparing appropriate documentation about how it processed personal data; preparing data protection impact assessment records; providing transparency about how the data collected on riders would be used; and verifying, on a periodic basis, the accuracy of the results of the algorithm to minimise the risk of distorted or discriminatory effects.



## employment - legal changes published in August 2021

**Order of the Minister of Labour no. 596/2021 regarding the approval of the application form and of the documents provided in art. 11 para. (1) letter b) and d) of the Government Emergency Ordinance no. 132/2020 regarding the 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. 673 of July 8, 2021, in force from the same date.

The Order approved the template of the application, of the sworn affidavit and of the list, documents which the employers who implemented the measure of reducing the working time of the employees by maximum 80% of the daily duration (on the background of establishing the state of emergency/ alert/ siege ) must submit for the settlement of the allowances granted to the employees during the reduction of the working time.

**Order of the Minister of Labour No. 595/2021 on the approval of the template of the application and the sworn affidavit for obtaining the allowance provided for by Article 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 the SARS-CoV-2 coronavirus, as well as to stimulate employment growth**, was published in the Official Gazette of Romania, Part I, no. 681 of July 9, 2021, in force from the same date.

The Order approved the template of the applications and sworn affidavits that must be submitted by the persons who are to benefit from the allowance in the amount of 41.5% of the average gross salary provided by the Law of the state social insurance budget for 2021 no. 16/2021 in case of reduction of working time and/ or income achieved, determined by the implementation of the state of emergency/ alert/ siege: **(i)** the persons who have concluded individual labour agreements based on Law no. 1/2005 on the organization and functioning of cooperation; **(ii)** professionals, as they are defined by the Civil Code and **(iii)** natural persons who obtain income exclusively from copyright and related rights, as regulated by Law no. 8/1996 on copyright and related rights.

The new approved forms will be used to claim rights starting with June 2021.

**Order of the Minister of Health no. 1204/99/2021 for supplementation of the Order of the Minister of Health and the Minister of Internal Affairs no. 874/81/2020 on the establishment of the obligation to wear a protective mask, epidemiological triage and mandatory hand disinfection to prevent contamination with SARS-CoV-2 virus during the state of alert** was published in the Official Gazette of Romania, Part I, no. 683 of July 9, 2021, in force from the same date.

The Order provides that, by way of exception to Article 1 (which establishes that "*As from 15.05.2021, it is mandatory to wear protective masks in enclosed public spaces, means of public transport, at the workplace, commercial premises and in open public spaces, such as, but not limited to, markets, carnivals, fairs, flea markets, shopping spaces, public transport stations, and other areas with the potential for creating crowds established by decision of the county/ Bucharest municipal committee for emergencies*"), **it is not compulsory to wear a**



**protective mask for the persons situated in closed workplaces**, provided that a maximum of 10 persons for whom 10 days have elapsed since the completion of the complete vaccination scheme and that a distance of 1 meter between them is provided, and public or other workers are not allowed in those areas. **The exception does not apply to common enclosed spaces** (such as, for example, dining rooms, hallways or stairs).

**Order of the Minister of Labour and Social Protection no. 585/2021 on the amendment and supplementation of the framework template of the individual employment contract, as set out in the Annex to the Order of the Minister of Labour and Social Solidarity no. 64/2003** was published in the Official Gazette of Romania, Part I, no. 712 of July 19, 2021, in force from the same date.

The amendments to the framework template of the individual employment contract are as follows:

- the amendment of **letter F** of the framework template, which now has the following content: *"The duties of the job are provided in the job description, annex to the individual employment contract, except for micro-enterprises with up to 9 employees, defined in art. 4 para. (1) letter a) of Law no. 346/2004 on stimulating the establishment and development of small and medium enterprises, with subsequent amendments and completions, which will fill in a short characterization/ description of the activity: .....* ".
- a new obligation of employers towards employees has been introduced, namely to 'inform the employee of the obligation to join a privately managed pension fund' (letter **M point 4 letter c'** of the framework template).

This obligation applies only to the persons provided in Article 30 of Law no. 411/2004 regarding the privately managed pension funds. We are talking about the persons up to 35 years old, who are insured according to the provisions of art. 5 para. (1) of Law no. 19/2000 on the public pension system and other social insurance rights and which contributes to the public pension system. For them, there is an obligation to join a pension fund.

On the other hand, persons up to 45 years of age who are already insured and contribute to the public pension system may opt to join such a fund, but are not obliged to do so (paragraph 2 of Article 30 of Law no. 411/2004).

**Law no. 208/2021 for the approval of the Government Emergency Ordinance no. 36/2021 on the use of advanced electronic signature or qualified electronic signature, accompanied by the electronic time stamp or qualified electronic time stamp and the employer's qualified electronic seal in the field of labour relationships, and for the amendment and supplementation of some normative acts** was published in the Official Gazette of Romania, Part I, no. 720 of July 22, 2021, in force starting with July 25, 2021.

The Law approved the Government Ordinance no. 36/2021, but with certain amendments. Thus, the following changes were made to ***the Labour Code***:

- Is established that the parties may choose to use, at the conclusion, amendment, suspension or, where appropriate, at the termination of the individual employment contract, an advanced electronic signature or a qualified electronic signature. In this way, the obligation for the advanced or qualified electronic signature



to be accompanied by the time stamp and the electronic seal is eliminated, as provided in the initial version of the Government Ordinance no. 36/2021.

Regarding the preparation of all documents/ acts in the field of employment relationships resulting from the conclusion of the individual employment contract, during its performance or at the termination of the individual employment contract, there is provided a greater freedom of choice, being established that the employer may choose to use the electronic signature, advanced electronic signature or qualified electronic signature or electronic seal of the employer, under the conditions laid down in the applicable internal regulations and/or collective labour agreement.

**Therefore, for the documents/ acts in the field of employment relationships (requests for leave, statements, forms, etc.) the simple electronic signature, not just advanced or qualified signature, may be used. On the other hand, either the advanced or the qualified (not the simple) signature of the individual employment contract and everything related to its modification (addenda) may be used.**

The reasons behind these changes are that the request for three constituent elements (signature, time stamp and seal) for the recognition of an electronic document as original substantially complicates the electronic signature process, requiring a degree of security far beyond the market requirements and of the European regulations for electronic documents. At the same time, acquiring the electronic seal is a long and difficult process, the costs associated with its purchase being substantial.

- In order to simplify the control procedures, the provision has been introduced according to which **the competent control bodies have the obligation to accept**, for verification and control, individual employment contracts and addenda, as well as documents/ acts in the field of labour relationships/ security and occupational health concluded in electronic format, with electronic signature, according to the law, without requesting them in letter format; also, at their request, the documents concluded with electronic signature may be transmitted in electronic format also prior to the control.

Regarding **the expenses**, it is clarified that the employer may bear, for itself and its employees, in order to fulfill their legal obligations, the costs of purchasing the electronic signatures used for the signing of documents/ acts in the field of labour relationships/safety and health at work. In relation with these expenses incurred by the employer, it is pointed out that they represent deductible expenses for determining the tax result.

Regarding the **Law no. 81/2018 on teleworking activity**, a new contravention was introduced, namely *“non-compliance with the provisions of art. 7 letter c) on the employer's obligation to ensure that the teleworker receives sufficient and adequate training in the field of occupational safety and health, in particular in the form of information and working instructions on the use of display screen equipment: on employment, at the introduction of a new work equipment, at the introduction of any new work procedure”*, which is sanctioned with a fine of Lei 2,000.

With regard to **the Occupational Safety and Health Law no. 319/2006**, it is provided that the occupational safety and health training to be provided to employees by the employer (as provided for in Article 20 of the Law) must be carried out during the working hours, either inside, outside of the company/ establishment, or online. It maintained the clarification that the proof of such training can be carried out in electronic or paper form, depending on the method chosen by the employer, as determined by the internal regulations. In the case of using



the electronic form, the proof of training may be signed with a simple electronic signature, advanced electronic signature or a qualified electronic signature (no longer being provided the requirement that the signature to be accompanied by the time stamp or electronic seal).

**Law no. 221/2021 for the supplementation of Law no. 55/2020 on certain measures to prevent and combat the effects of the COVID-19 pandemic** was published in the Official Gazette of Romania, Part I, no. 732 of July 26, 2021, in force from July 29, 2021.

The new provisions introduced in the Law no. 55/2020 establish that **the persons vaccinated against COVID-19 shall benefit, on request, of the following rights:**

- a) one paid day off, not included in the annual rest leave, for each dose of vaccine performed, in the case of public and private employees;
- b) one day of exemption for attending classes, for each dose of vaccine performed, in the case of pupils and students;
- c) one day of leave, for each dose of vaccine performed, in the case of active military personnel and professional soldiers and ranked professionals.

The rights of the above-mentioned persons are granted on the basis of the vaccination certificate issued in accordance with the law. In case the day off coincides with the day of vaccination, the persons concerned shall be required to submit the vaccination certificate on the first working day following vaccination.

These rights are also granted to one of the parents or the legal representative of the child up to 18 years of age, as well as of the person with disabilities up to 26 years old, on the day of vaccination of the child, respectively of the person with disabilities.

The above are not applicable in the situation where the persons provided in let. a) or c) above are vaccinated at the workplace with the employer's involvement. Last but not least, it is clarified that, in order not to significantly affect the activity of the employer, the employees have the obligation to inform the employer about the options for scheduling the days off to be requested, in order to ensure optimal operation of its activity.

**Joint Order of the Minister of Health and the President of the National Health Insurance House no. 1.398/729/2021 for amending and supplementing the Norms for the application of the provisions of the Government Emergency Ordinance no. 158/2005 on sick leave and social security benefits, approved through the Order of the Minister of Health and the President of the National Health Insurance House no. 15/2018/1.311/2017** was published in the Official Gazette of Romania, Part I, no. 745 of July 30, 2021, in force from the same date.

Through the Order, the rules for granting the sick leave have been amended. Thus, the sick leave for temporary incapacity for work (for ordinary diseases) will be granted, in at least two stages, the first of which cannot exceed 4 calendar days, if the certificate is granted by the family physician.



In the first stage, the sick leave may only be issued for 4 calendar days, if the certificate is granted by the family physician, or within 15 calendar days, if provided by the specialist physician. If, after the completion of the initial leave, the employee's temporary incapacity for work is maintained, despite the treatment followed or the investigations carried out, a further sick leave may be released within 7 days, if signed by the family physician, or for a maximum of 30 days, if issued by the specialist physician.

If, after leaving the hospital and after the expiry of the initial medical leave granted, the patient's health does not allow the resumption of work, the family physician, on the basis of the medical letter issued by the attending physician in the hospital, may extend the sick leave by a maximum of 7 calendar days for the same condition. Next, if the temporary incapacity for work is maintained, the family physician will be required to refer the patient to the specialist for reassessment and issue of another sick leave.

According to the Order, the family physicians will be able to grant cumulative medical leave for temporary incapacity for work up to 28 days per year (in the previous regulation, it was stipulated that the maximum cumulative duration of the medical leave granted by the family physician for an insured person for temporary incapacity for work could not exceed 30 calendar days in the last year). Once this limit has been reached, the issue of sick leave certificates may be made only by the specialist physician.

The Order also sets out the modality in which the physicians will monitor those on sick leave for temporary incapacity for work (for ordinary diseases). To do this, the physicians will draw up a plan to follow the course of the disease, which will include more information listed by the Order.

In addition, the Order provides for the amendment of the rules for the application of Government Emergency Ordinance no. 158/2005 on sick leave and social security benefits, so that the rule can also apply that, if the quarantine measure is established on return to the territory of Romania, for a person who has travelled for personal gain to an area where there is an epidemic, epidemiological or biological risk, with a highly pathogenic agent, only the allowance for the first 5 days of quarantine shall be borne from the State budget.

**Government Decision no. 826/2021 on the extension of the state of alert on the territory of Romania starting with August 11, 2021, as well as on the establishment of the measures that apply during it to prevent and combat the effects of the COVID-19 pandemic** was published in the Official Gazette of Romania, Part I, no. 767 of August 6, 2021, in force from the same date.

The Decision establishes that, starting with August 11, 2021, the state of alert is extended by another 30 days throughout the country.

It is regulated that, in public spaces, markets, fairs, flea markets, public transportation stations, commercial spaces, public transport means and at the workplace, it may be made compulsory to wear a protective mask, in order to cover the nose and mouth, under the conditions established by the joint order of the Minister of Health and the Minister of Internal Affairs.

Also, for all public or private institutions and economic operators, the obligation to order the organization of work at home or in teleworking regime is maintained, where the specificity of the activity allows, under the



conditions of art. 108-110 of the Labor Code, as well as those established by Law no. 81/2018 on the regulation of the teleworking activity.

If the employee cannot carry out the activity by teleworking or work from home and in order to avoid crowding of public transport, employers in the private system, central and local public authorities and institutions, regardless of the way of financing and subordination, as well as autonomous administrations, national companies and companies where the share capital is wholly or majority owned by the state or by an administrative and territorial division, having a number of more than 50 employees, have the obligation to organize the work schedule so that the staff is divided into groups that start, respectively finish the activity at a difference of at least one hour.

It is also established that the organization of the activity at the workplace will be carried out in compliance with the legal provisions issued by the competent authorities regarding the prevention of contamination with the SARS-CoV-2 virus and to ensure the safety and health at work of the workers, taking into account also the degree of vaccination of the employees at that workplace, certified by the certificate of vaccination against Sars-Cov-2 virus presented by the employees for whom 10 days have passed since the completion of the complete vaccination scheme, as well as the number of employees who are in the period between the 15<sup>th</sup> day and the 180<sup>th</sup> day after the confirmation of infection with the SARS-CoV-2 virus and who hold and submit to the employer a certificate issued by the family doctor.

**Government Decision nr. 836/2021 for the amendment of Government Decision no. 1.133/2020 on the establishment of the contingent of foreign workers newly admitted to the labor market in 2021** was published in the Official Gazette of Romania, Part I, no. 780 of August 12, 2021, in force from the same date.

Through this Decision, the contingent of foreign workers newly admitted to the Romanian labor market was doubled: from 25,000 (as originally established by G.D. no. 1.133/2020) to 50,000.



## environment law- legal changes published in August 2021

**Government Ordinance no. 2/2021 on the landfill of waste** was published in the Official Gazette, Part I no. 820 of 26 August 2021, entering into force on the same day.

The ordinance introduces a new legal framework for carrying out the landfilling activity, with the aim of progressively reducing the disposal by landfilling of waste that can be recycled or recovered and introducing measures to prevent and reduce the negative effects on the environment and the health of the population;

The ordinance introduces three classes of landfills, namely: landfills for hazardous waste (this category includes explosive waste, oxidizing, flammable, irritating, harmful, toxic, carcinogenic, corrosive, infectious, mutagenic, sensitizing and eco-toxic waste; landfills for non-hazardous waste (all waste that does not fall within the category of hazardous waste and landfills for inert waste (wastes which do not undergo any significant physical, chemical or biological transformation, do not dissolve, burn or react in any way physically or chemically, are not biodegradable and do not affect the materials with which they come into contact in a way that can lead to environmental pollution or harm human health). It is prohibited for landfill operators to mix waste in order to meet the acceptance criteria for a given class of landfills;

The applicant for an environmental permit/integrated environmental permit for a landfill must provide evidence of the existence of a financial environmental guarantee before the start of disposal operations. This guarantee is proof that all the requirements relating to the safety of the deposit and the protection of the environment and the health of the general public arising from the permit are met. The guarantee must be maintained throughout the period of operation, closing and post-closing monitoring of the deposit and is constituted in the form of a bank letter of guarantee or other guarantee instrument, corresponding to the value of the works established by the technical project of the deposit or by depositing a percentage share of 10% of the value of the works established by the technical project of the deposit, in an account at the disposal of the Environmental Fund Administration.

**Government Emergency Ordinance no. 92/2021 on the waste regime** was published in the Official Gazette, Part I no. 820 of 26 August 2021, entering into force on the same day.

This Emergency Ordinance aims to ensure a high level of protection of the environment and the health of the population.

Among the main measures established by the Ordinance are: prevention and reduction of waste generation and its efficient management, reduction of adverse effects caused by the generation and management of waste; reducing the overall effects of resource use and increasing the efficiency of their use as essential elements for ensuring the transition to a circular economy and guaranteeing long-term competitiveness;

In order to prevent, reuse, recycle and other types of waste recovery, the central public authority for environmental protection promotes or, as the case may be, proposes legislative measures or guidelines, recommendations, by which the producer of the product, the authorized natural person or the legal person who,



on a professional basis, designs, produces, processes, treats, sells or imports products is subject to an extended producer responsibility regime.

The measures provided for include the following list:

- encouraging the design of products and product components that have a low environmental impact and generate a low amount of waste during further production and use, and to ensure the recovery and disposal of products that have become waste;
- encouraging the production, development and marketing of products and components of multi-use products containing materials resulting from recycling, which are technically sustainable and which, after they have become waste, can be properly recovered and disposed of, in conditions that are safe for the environment and public health;
- accepting returned products and waste resulting from the products are no longer used and ensuring their subsequent management without causing harm to the environment or population health, as well as assuming financial responsibility
- making available information on the reusable and recyclable nature of products available to the public;
- the impact of products throughout their life cycle, the waste hierarchy and, where appropriate, the potential for multiple recycling;

It shall be prohibited for the producer or holder of the waste to reclassify hazardous waste as non-hazardous waste by diluting or mixing it in order to reduce the initial concentrations of hazardous substances to a level below the level prescribed for a waste to be defined as hazardous;

The Ordinance establishes certain obligations for establishments and enterprises that recover waste, including having specially designed spaces for the storage of waste under conditions that guarantee the reduction of the risk to human health and the deterioration of the quality of the environment; to avoid the formation of stocks of waste to be recovered, as well as of products resulting from recovery that could generate environmental pollution phenomena or pose risks to the health of the population; to adopt the best available techniques in the field of waste recovery;

Economic operators collecting or transporting waste are required to visually check that it is properly separated and to take it separately and not to mix it during transport with other waste or materials with different properties.

The authorities of the local public administration of the administrative-territorial units or, as the case may be, the administrative-territorial subdivisions of the municipalities, respectively their intercommunity development associations, as the case may be, have the following obligations

- ensure separate collection at least for waste paper, metal, plastic and glass from municipal waste, to establish whether the management of this waste is carried out under a single contract for the delegation of the sanitation service or on several types of materials/contract/separate contracts for all types of materials/by type of material and to organise the award according to the decision taken;



- achieve a level of preparedness for re-use and recycling of at least 50 % of the total mass generated, minimum for waste paper, metal, plastic and glass from household waste or, where appropriate, from other sources, in so far as such waste streams are similar to waste from households;
- to achieve, by 2025, a minimum level of preparation for reuse and recycling of municipal waste of 55% of the mass;
- to reach, by 2030, a minimum level of preparation for reuse and recycling of municipal waste of 60% of the mass;
- to achieve, by 2035, a minimum level of preparation for reuse and recycling of municipal waste of 65% of the mass;
- to establish and include in the specifications, in the contracts for delegating the management of the sanitation service and in the regulations of the sanitation service performance indicators for each activity within the sanitation service, so as to achieve the recycling targets and penalties for not achieving them;

The holders on whose behalf building or dismantling authorizations have been issued according to the provisions of Law no. 50/1991 on the authorization of the execution of construction works, republished, with subsequent amendments, have the obligation to manage construction and dismantling waste, so as to reach a level of preparation for reuse, recycling and other material recovery operations, including backfilling operations using waste to replace other materials, of at least 70% of the mass of non-hazardous waste from construction and disposal activities;

The ordinance also provides for certain obligations for the economic operators authorized from the point of view of environmental protection for the activity of waste disposal, including

- ensure the complete disposal of the waste entrusted to them;
- use the best available techniques and not entailing excessive costs for the disposal of waste;
- to introduce in the disposal plant only the waste mentioned in the authorization issued by the county agency for environmental protection, NEPA, as the case may be, and to comply with the disposal technology approved by them.

Waste management must be carried out without endangering the health of the general public and without harming the environment, in particular without causing risks of contamination to air, water, soil, fauna or flora; without creating discomfort due to noise or odors; without adversely affecting the landscape or areas of special interest.



## PPP & concessions - legal changes published in August 2021

**Government Ordinance no. 3/2021 amending and supplementing certain normative acts in the field of public procurement** was published in the Official Gazette of Romania, Part I, no. 821 dated August 27, 2021, entering in force on August 30, 2021.

Emergency Ordinance no. 3/2021 (hereinafter referred to as "**G.E.O. 3/2021**" or the "**Emergency Ordinance**") amended a series of primary normative acts in the field of public and sectoral procurement, as well as concessions.

As regards Law no. 100/2016 on concessions of works and services, the amendments brought by G.E.O. 3/2021 relate to the notion of "*subcontractor/sub-entrepreneur*". It is defined as any economic operator that is not part of a concession contract and that performs certain parts or elements of the works / services, being responsible in front of the contractor for the organization and development of all the necessary steps for this purpose. It is also expressly stipulated that making available for use of a machinery or the supply of materials/goods under a concession contract is not considered to represent a subcontracting operation.

At the same time, the economic operator declared as the winner has no longer the obligation of presenting tax certificates for all secondary offices / working units; the obligation was replaced by a statement on its own responsibility regarding the fulfillment of the obligation to pay taxes, fees or contributions due to the general consolidated budget.

Also, the period within which the contracting authority/entity has the obligation to make public the decision to cancel the procedure for the award of the concession contract, accompanied by the justification for the annulment of the award procedure, has been reduced to 1 day after the adoption of the annulment decision.

Last but not least, a clarification was introduced in case of application of a contravention sanction to the contracting authority, namely that it may order the adoption of measures against the person/persons involved in the concession process that was the subject of the contravention, only if the courts find that they have fulfilled or omitted the fulfillment, with guilt, consisting of serious fault, of any act or fact in connection with the exercise, under the law, of their duties.



## public procurement - legal changes published in August 2021

**Government Emergency Ordinance no. 3/2021 amending and supplementing certain normative acts in the field of public procurement** was published in the Official Gazette of Romania, Part I, no. 821 dated August 27, 2021, entering in force on August 30, 2021.

The Emergency Ordinance no. 3/2021 (hereinafter referred to as "**G.E.O 3/2021**" or the "**Emergency Ordinance**") amended a series of primary normative acts in the field of public and sectoral procurement (as well as concessions), as we will indicate below.

### Law no. 98/2016

The new Emergency Ordinance brings a series of amendments to Law no. 98/2016 on public procurement, as follows:

- the definition of subcontractor / sub-entrepreneur has been changed; thus, it is defined as any economic operator that is not part of a public procurement contract and that performs certain parts or elements of the works / services, being responsible in front of the contractor for the organization and development of all the necessary steps for this purpose; it is also specified that making available for use of a machinery or the supply of materials/goods under a public procurement contract is not considered to represent a subcontracting operation;
- among the elements that the contracting authority requires the tenderer/candidate to specify in the tender, there are the categories of services/works in the contract that it intends to subcontract, as well as the percentage or value corresponding to the activities indicated in the tender as being carried out by subcontractors;
- the economic operator declared as the winner has no longer the obligation of presenting tax certificates for all secondary offices / working units; the obligation was replaced by a statement on its own responsibility regarding the fulfillment of the obligation to pay taxes, fees or contributions due to the general consolidated budget;
- the period within which the contracting authority has the obligation to make public the decision of cancelling the procedure for awarding the public procurement contract/framework agreement, accompanied by the justification for the cancellation of the award procedure, has been reduced from 3 days to 1 day after the cancellation decision is taken;
- the term within which the contracting authority is obliged to annul an act/to issue an act/to adopt the necessary measures to restore legality as a result of a decision issued by the National Council for Solving Complaints/court has been reduced from 20 working days to 10 working days from the date of its communication;
- it has been established that, for procedures with several lots, in duly justified cases and with the approval of the head of the contracting authority, the term for drawing up the report of the procedure may be extended only once, with a term not exceeding 50 working days;
- a clarification was introduced in case of application of a contravention sanction to the contracting authority, namely that it may order the adoption of measures against the person/persons involved in the concession process that was the subject of the contravention, only if the courts find that they have fulfilled or omitted the fulfilment, with guilt, consisting of serious fault, of any act or fact in connection with the exercise, under the law, of their duties.

### Law no. 99/2016

The amendments brought by G.E.O. 3/2021 to Law **no. 99/2016** on sectoral procurement are mainly the same as those made to Law no. 98/2016 and briefly indicated above.



## Law no. 101/2016

**Law no. 101/2016** on remedies and complaints in the field of award of public procurement contracts, sectoral contracts and concession of works and services contracts, as well as for the organization and functioning of the National Council for Solving Complaints was amended and supplemented as follows:

- in the case of an administrative-judicial complaint, it has been established that the contracting authority has the obligation to conclude the contract with the successful tenderer, after the pronouncement of a solution to maintain the result of the award procedure by the National Council for Solving Complaints, even if the appeal against that decision was lodged against that decision and the case has not been definitively resolved and, in any event, only after the expiry of the legal waiting period provided for in Article 59 para.(1);
- in the case of a judicial claim, it has been established that the contracting authority has the obligation to conclude the contract with the successful tenderer after the pronouncement of a solution to maintain the result of the award procedure by the court, even if the decision has been appealed and the case has not been definitively resolved and, in any event, only after the expiry of the legal waiting period provided for in Article 59 para. (1); the decision of the court of first instance is enforceable and it is not possible to order the suspension of its enforcement;
- with regard to the second appeal, it is mentioned that the failure to submit the statement of defense within the time limit entails the forfeiture of the right to invoke exceptions other than those of public order (previously the sanction of the impossibility to propose further evidence was provided; no new evidence can be submitted in addition to that administrated in front of the first court);
- the maximum threshold of the bail to be paid in the case of lodging a complaint by administrative-judicial means has been modified in the event that the estimated value of the contract is equal or higher than the thresholds provided in Article 7 para. (1) of Law no. 98/2016; in this case, the bail is 2% of the estimated value of the contract, but not more than Lei 220,000 for the complaints submitted at the stage up to the deadline for submission of requests for participation / bids, respectively not more than Lei 2,000,000 (the previous threshold was Lei 880,000) for the complaints submitted at the stage after the deadline for submission of requests for participation / bids.

## Government Emergency Ordinance no. 98/2017

Government Ordinance no. 3/2021 brings a series of amendments to the Government Emergency Ordinance no. 98/2017 on the function of ex ante control of the process of awarding contracts / framework agreements for public procurement, of contracts / framework sectoral agreements and of contracts for works concession and service concession ("**O.U.G. 98/2017**"), and among the most important we mention:

- it is established that the contracting authority may decide to publish the contract notice / simplified contract notice / concession notice / competition notice, with or without remedying the deviations found by ANAP through the conditional clearance for conformity issued as a result of the ex-ante control exercised, the clearance for conformity issued being published automatically by SEAP;
- it is mentioned that the clearances for conformity issued by ANAP can be challenged only together with the administrative acts of the contracting authority in relation to which they were issued, based on the provisions of Law no. 101/2016.



### **Final provisions**

O.U.G. 3/2021 also establishes that Laws no. 98/2016, no. 99/2016, no. 101/2016 and G.E.O no. 98/2017 will be republished the Official Gazette of Romania, Part I, and the texts will be re-numbered.

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

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