



## Legal Changes of November 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
- Dispute resolution

*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 - legislative changes published in November 2021

### I. ROMANIA

#### 1. SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY

##### **1.1 ANSPDCP. S.P.E.E.H. Hidroelectrica S.A. was sanctioned for violating the provisions of Article 32 para. (1) lit. b) and para. (2) of the GDPR with a fine in the amount of LEI 24,739.50 (the equivalent of EUR 5,000)**

Following the investigation, the Data Protection Authority found that the controller did not implement appropriate technical and organizational measures to ensure a security level corresponding to the risk envisaged by the processing, which resulted in the unlawful accessing or disclosure to wrong recipients of the personal data of 325 targeted persons.

At the same time, it was found that the processing of personal data of three of the company's clients was performed after they had exercised the right to erasure their data and withdrawal their consent for the processing. For the violation of the provisions of Article 5 para. (1) lit. a) and Article 6 para. (1) of the GDPR, the controller was sanctioned with a reprimand.

The following corrective measures were applied to the controller:

- the review and update of the security and organizational measures implemented as well as the implementation of some measures regarding the periodic training of the persons acting under its authority, regarding the obligations incumbent on them according to the GDPR;
- the identification and implementation of some measure to ensure that the personal data processed are accurate and updated, considering the purposes for which they are processed.

The investigation was initiated as a result of several notifications of personal data breaches that were transmitted by the controller, based on the GDPR.

##### **1.2 ANSPDCP. IKEA ROMÂNIA S.A. was sanctioned for violating the provisions of Article 32 para. (1) lit. b) and para. (2) of the GDPR with a fine in the amount of LEI 4,948.80 (the equivalent of EUR 1,000)**

In the investigation, the Data Protection Authority found that the controller has organized a drawings contest at which the children of the Ikea Family members participated. The participants have uploaded on the online platform dedicated to the members their own drawings, together with the participation forms that contained their personal data, the data of the parents/legal guardians, inclusive their consent.

Following the investigation, it was found that the data breach incurred resulted in the unauthorized disclosure of the personal data of the Ikea Family members (first name, last name and age of the children, first name, last name, city, country, e-mail address, Ikea Family member number and



holographic signature of the parent/legal guardian) on the online platform dedicated to the Ikea Family Members from Romania, accessible only to the latter, for approximately 40 hours with a number of 114 persons being affected (half of them children).

In this context, the Data Protection Authority highlighted that, according to Recitals 38 of the GDPR, "Children deserve specific protection regarding their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child".

**1.3 ANSPDCP. VODAFONE S.A. was sanctioned for violating the provisions of Article 32 para. (1) lit. b) and para. (4) of the General Data Protection Regulation with a fine in the amount of LEI 7,421.25 (the equivalent of EUR 1,500)**

The investigation was initiated as a result of several notifications of personal data breaches transmitted by the controller, based on the provisions of the GDPR and the Regulation (EU) No 611/2013 of 24 June 2013 (on the measures applicable to the notification of personal data breaches).

Regarding to security breaches notified under the GDPR, the Data Protection Authority found that the controller did not implement appropriate technical and organizational measures to ensure that any person acting under the authority of the controller or of the processor and who has access to personal data, will not process those data except on instructions from the controller, unless required to do so by Union or Member State law.

The security breaches led to unauthorized disclosure and/or unauthorized access to personal data of a number of 6 targeted persons.

**1.4 ANSPDCP. VALORIS CENTER S.R.L was sanctioned for violating the provisions of Article 29 and Article 32 para. (1) lit. b) and para. (4) of the GDPR with a fine in the amount of LEI 9,898.00 (the equivalent of EUR 2,000)**

As a result of the investigation, it turned out that the breach of security occurred due to the fact that a call center employee of the processor, Valoris Center S.R.L., has provided, out of an error, to a controller's customer, an excel file containing the data of the customers of the respective controller that have the Internet Banking service.

The investigation found that the processor, Valoris Center S.R.L., did not implement appropriate measures to ensure that any person acting under his authority and who has access to personal data, will not process those data except on his instructions, which led to unauthorized disclosure and/or unauthorized access to personal data, such as: e-mail, username, user's personal identification



number, telephone number, customer's name, customer's code and PIN number) of a number of 11,169 targeted persons.

The investigation was initiated as a result of a notification of personal data breach that was transmitted by a controller, based on the provisions of Article 33 of the GDPR.

## II. EUROPEAN UNION

### 1. REGULATIONS

#### 1.1 EDPB issues guidance on international transfers

At the Plenary Session of the European Data Protection Board, held on November 19, 2021, was adopted the Guidelines no. 05/2021 on the interplay between Article 3 of the GDPR and the provisions on international data transfers under Chapter V of the GDPR.

The Guidelines aim to assist organizations subject to the GDPR in identifying whether a data processing activity constitutes an international data transfer under the GDPR, as the GDPR does not define the term, setting forth three main criteria to be considered in determining whether a processing activity qualifies as an international data transfer under the GDPR, namely:

- The data exporter (controller or processor) is subject to the GDPR for the given processing activity;
- The data exporter discloses by transmission or otherwise makes the personal data subject to the processing of an importer (a controller or processor);
- The data importer is in a third country (or is an international organization), irrespective of whether the data importer or its processing activities are subject to the GDPR in respect of the given processing in accordance with Article 3.

The EDPB welcomes comments on the draft Guidelines by January 31, 2022. The public consultation is available at: [https://edpb.europa.eu/our-work-tools/documents/public-consultations/2021/guidelines-052021-interplay-between-application\\_en](https://edpb.europa.eu/our-work-tools/documents/public-consultations/2021/guidelines-052021-interplay-between-application_en)).

### 2. EUROPEAN UNION – SANCTIONS GRANTED IN THE EU

#### 2.1 The Dutch Supervisory Data Protection Authority ("AP") imposed to Transavia airline a fine of EUR 400,000 for breaches of the GDPR provisions

In 2019, the Transavia airline suffered a data breach, in which a hacker gained access to Transavia's systems through two accounts held by the company's IT department. This could have potentially allowed the hacker to access data such as names, dates of birth, gender, email addresses, phone numbers, flight information and booking numbers of 25 million passengers.

Following the investigation, the AP found that the controller had breached its duty to implement technical and organizational measures to ensure a level of security appropriate to the risk to data



subjects, which resulted in the unlawful accessing of the personal data of 83,000 targeted persons. In 367 cases, the data included medical information of people who had requested, for example, wheelchair transportation or additional services because they were blind or deaf.

## **2.2 The Dutch Supervisory Data Protection Authority ("AP") imposed to the Minister of Finance a fine of EUR 2,75 million for breaches of the GDPR provisions**

In the context of childcare benefit applications, tax offices had processed data on the dual nationality of applicants for several years. However, the AP found that the data on dual nationality of Dutch citizens would not have been necessary when assessing an application for childcare benefits.

The Minister of Finance pointed out that the personal data had also been processed for the purpose of combating organized fraud and for automatic classification in the authority's risk system.

However, the AP concluded that even for these purposes, the processing would not have been necessary and, for this reason, the tax and customs' administration should have deleted the data on dual nationality as early as January 2014.

Following the investigation, the AP found that the dual citizenship data of a total of 1,4 million people had been unlawfully processed due to the lack of a valid legal basis.

## **2.3 The Cypriot Data Protection Commissioner ("Cypriot DPC") imposed to WS WiSpears Systems Ltd. a fine of EUR 925,000 for breaches of the GDPR provisions**

Following the investigation, the Cypriot DPC found that the controller had collected various data from individuals (Media Access Control addresses and International Mobile Subscriber Identity data) without their knowledge as part of tests and presentations of technologies.

For the non-compliance with general data processing principles and the violation of the principle of legality, objectivity and transparency in the processing of personal data, WS WiSpears Systems Ltd. was sanctioned with a fine of EUR 925,000.



## employment - legal changes published in November 2021

**Order of the Minister of Labour and Social Protection no. 1004/2021 for the approval of the application form and the statement on their responsibility provided in art. 7 para. (2) of the Government Emergency Ordinance no. 111/2021 establishing support measures for employees and other social categories in the context of restriction, suspension or limitation of economic activities as a result of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus** was published in the Official Gazette of Romania, Part I, no. 1046 of November 2, 2021, in force from the same date.

The Order approved the template of the application and the statement on their own responsibility for individuals established by the article 6 para. (1) and para. (2) of the Government Emergency Ordinance no. 111/2021, respectively for:

- professionals provided by article 3 para. (2) of the Law no. 287/2009 regarding Civil code, republished, as subsequently amended and supplemented;
- individuals whose income is exclusively obtained from copyright and related neighboring rights, as regulated by Law no. 8/1996 on Copyright and Neighboring Rights, republished, as subsequently amended and supplemented;
- individuals that concluded individual employment agreements according to the Law no. 1/2005 regarding the organization and functioning of cooperatives, republished, as subsequently amended and supplemented;
- athletes, coaches, doctors, medical assistants, massage therapists, kiotherapists, researchers, as provided by Law on physical education and sport no. 69/2000, as subsequently amended and supplemented.

The Order is based on the provisions of article 6 para. (1) and para. (2), article 7 para. (2) and article 9 of Government Emergency Ordinance no. 111/2021 establishing support measures for employees and other social categories in the context of restriction, suspension or limitation of economic activities as a result of the epidemiological situation caused by the spread of SARS-CoV-2 coronavirus.

**Order of the Minister of Labour and Social Protection no. 790/2021 for supplementation of the Order of the Minister of Labour and Social Protection no. 2004/2018 for the approval of the framework template of certificate and internship contract, as well as the request form for the employment bonus** was published in the Official Gazette of Romania, Part I, no. 1045 of November 2, 2021, in force from the same date.

In accordance with the provisions of article no. 30 of Law no. 176/2018 regarding internship, as subsequently amended and Endorsement Report no. 2.336/DGF of 15.07.2021 and also in accordance with the provisions of article no. 15 para. (3) of Government Decision no. 81/2020 on functioning and organization of Minister of Labour and Social Protection there were introduced amendments regarding the framework template of the certificate



and internship contract, as well as the request form for the employment bonus, which are provided in the annexes to the Order.

**Law no. 269/2021 for the amendment of Law no. 62/2011 on Social Dialogue and Law no. 53/2003 (the Labor Code)** was published in the Official Gazette of Romania, Part I, no. 1076 of November 10, 2021, entering into force on November 13, 2021.

The amendment made to the provisions of article 268 para. (1) letter (a) of Law no. 53/2003 upon the entry into force of Law no. 269/2021 aims, on the one hand to increase by 15 days the period of 30 calendar days within which requests for the settlement of a labour conflict can be initiated (the 45-days period was anyway provided in the Law on Social Dialogue, generating debates in practice) as well as, to establish a new starting moment from which the time period laid down by the provisions in force for submitting the request will begin to run, represented by the date on which the interested party became aware of the measure ordered, compared to the date on which the employer's unilateral decision has been communicated to the interested party, as provided for in the version prior to the amendment. Also, it is expressly provided that there also can be challenged in such manner commitments to pay certain amounts.

In other words, with the entry into force of Law no. 269/2021, where there is an interest in submitting a request for the settlement of a labour conflict, the interested party shall observe the provisions of article 268 para. (1) letter (a) of the Labour Code which establish the following: the requests shall be made **within 45 calendar days from the date on which the interested party became aware of the measure ordered regarding the conclusion, execution, modification, suspension or termination of the individual employment contract, including the commitments to pay certain amounts.**

At the same time, the provisions of **article 211 para. (a)** of Law no. 62/2011 on Social Dialog, which refers to the period of 45 calendar days during which unilateral measures of execution, modification, suspension or termination of an individual employment contract, including commitments to pay certain amounts may be challenged, **are repealed** once the Law no. 269/2021 enters into force.

In our view, this amendment is opportune since it definitively settles the controversy existing in the judicial practice regarding the time limit within a measure considered to be illegal in the context of a labour conflict can be challenged by the interested party.



## dispute resolution - legal changes published in November 2021

**Decision of the High Court of Cassation and Justice no. 51/2021 regarding the examination of the request formulated by Oradea Court of Appeal - Criminal Section and for cases with minors, in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 1050 of November 3, 2021 and is applicable from the same date.** The High Court admitted the request made by Oradea Court of Appeal - Criminal Section and for cases with minors in order to issue a preliminary ruling for resolving a matter of law and, consequently, established that the typicality of the crime of violation of privacy in the manner incriminated by art. 226 para. (2) of the Criminal Code is not conditioned by the possession of sounds, conversations or images unlawfully made, by photographing, capturing or recording images, listening with technical means or audio recording of a person in a house, in a room or in their outbuilding or a private conversation.

**Decision of the High Court of Cassation and Justice no. 43/2021 regarding the request that forms the object of the File no. 643/1/2021 regarding the examination of the request formulated by Bucharest Tribunal - Civil Section V, in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 1051 of November 3, 2021 and is applicable from the same date.** The High Court admitted the request formulated by Bucharest Tribunal - Civil Section V in order to issue a preliminary ruling for resolving a matter of law and, consequently, established that, in interpreting and applying the provisions of art. 2.279 and of art. 2.321 of the Civil Code, corroborated with art. 120 of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, the letter of guarantee issued by a credit institution constitutes an enforceable title only if it is issued as a guarantee of a credit agreement.

**Decision of the Romanian Constitutional Court no. 561/2021 regarding the admission of the constitutional challenge of the provisions of article I of the Law amending article 369 of Law no. 286/2009 on the Criminal Code was published in the Official Gazette, Part I no. 1076 of November 10, 2021 and is applicable from the same date.** The Constitutional Court admitted the constitutional challenge formulated by the President of Romania and found that the provisions of article I of the Law amending article 369 of Law no. 286/2009 on the Criminal Code are unconstitutional. Article 369 of Law no. 286/2009 regarding the Criminal Code in its amended form had the following content: *„Public incitement, through any means, to violence, hate or discrimination regarding a certain category of individuals or against of an individual provided that it is part of a certain category of individuals is punished by prison from 6 months to 3 years or by fine.”*

**Decision of the High Court of Cassation and Justice no. 20/2021 regarding the issuance of an appeal in the interest of the law regarding the request formulated by the Management Board of the High Court of Cassation and Justice was published in the Official Gazette, Part I no. 1083 of November 11, 2021 and is applicable from the same date.** The High Court admitted the request made by the Board of the High Court of Cassation and Justice in order to issue an appeal in the interest of the law and, consequently, established that in the unitary interpretation and application of the provisions of art. 651 para. (1),



art. 666, art. 712, art. 714 and art. 112 of the Code of Civil Procedure, the territorially competent enforcement court to resolve the actual appeal against enforcement filed by one of the debtors referred to in the enforceable title is the court that approved the enforcement of that title, unless the law provides otherwise.

**Decision of the High Court of Cassation and Justice no. 18/2021 regarding the issuance of an appeal in the interest of the law regarding the request formulated by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice was published in the Official Gazette, Part I no. 1108 of November 22, 2021 and is applicable from the same date.** The High Court admitted the request made by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice in order to issue an appeal in the interest of the law and, consequently, established that in interpreting and applying the provisions of article 45 para. (5) of the Criminal Code, in matter of the criminal treatment of concurrent offenses, the application of the accessory punishment presumes its establishment first in addition to the initial main punishment and, then, in addition to the resulting main punishment.

**Decision of the High Court of Cassation and Justice no. 21/2021 regarding the issuance of an appeal in the interest of the law regarding the request formulated by the Management Board of the High Court of Cassation and Justice was published in the Official Gazette, Part I no. 1114 of November 23, 2021 and is applicable from the same date.** The High Court admitted the request made by the Board of the High Court of Cassation and Justice in order to issue an appeal in the interest of the law and, consequently, established that in the unitary interpretation and application of the provisions of art. 107, art. 113 para. (1) point 9 and art. 116 of the Code of Civil Procedure the phrase "*place of occurrence of damage*" in claims initiated by the collective copyright management bodies, having as object the users' obligation to pay the due remunerations for the public communication / unauthorized broadcasting of trade phonograms or published for commercial purposes or of their reproductions and / or artistic performances in the audiovisual field, corresponds to the place where the wrongful act was committed, and not to the place where the payment of the damage was made.

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