

Legal Changes of December 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:

- Banking & Finance
- Data Protection
- Employment
- Insurance
- Litigation & Arbitration
- Public Procurement

+ VF News

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.](#)

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.

banking & finance - legal changes published in December 2020

National Bank of Romania Regulation no. 11/2020 for amending and supplementing of the National Bank of Romania Regulation no. 5/2013 on prudential requirements for credit institutions, published in the Official Gazette, Part I no. 1296 as of 28 December 2020, in force as of 28 December 2020.

The new Regulation mainly ensures the transposition of the provisions of the Directive 878/2019/EU - CRD V, implementing the meaning of certain expressions contained in the Regulation (EU) no. 575/2013, with additions, and implements, by normative provisions, the provisions contained in the European Banking Authority (EBA) Guide regarding the valuation of the adequacy of the members of the management body and of the persons holding key positions - EBA/GL/2017/12, in the EBA Guide regarding the activity management framework - EBA/GL/2017/11, in the EBA Guide on credit risk management practices of credit institutions and accounting for expected credit losses (EBA/GL/2017/06) and in the EBA Guide on managing interest rate risk associated with activities outside the trading book (EBA/GL/2018/02).

New provisions are introduced regarding the following:

- the assessment of the adequacy of the members of the management body and of the persons holding key positions;

Persons in office at the date of entry into force of this Regulation shall be required to comply with the new adequacy requirements within one year.

The term of one year also applies for compliance with the provisions regarding the number of independent members within the management body in its supervisory function, determined according to the principle of proportionality.

- the implementation of the internal control framework, the risk management framework, the control functions and the conditions for it to be considered independent; (ii) the risk management function and its roles, (iii) the establishment of the compliance function (the compliance function coordinator must be a member of senior management); (iii) the internal audit function; (iv) business continuity management framework (possibility to set up a specific independent business continuity function);
- the internal process of assessing the adequacy of capital and risks liquidity; liquidity and financing risks; operational risk and reputational risk; capital and liquidity planning;

Credit institutions shall develop or adapt, as appropriate, policies, procedures, mechanisms, processes and practices regarding the business management framework, the internal capital adequacy and liquidity assessment process and crisis simulations, within 6 months of entry into force of this Regulation.

For reporting purposes according to the new requirements of art. 6811 alin. (3) - Annex 10, the first report to the National Bank of Romania - Supervision Department is sent for the reference date December 31, 2020.

- active involvement of the management body; implementing effective policies on conflicts of interest; implementation of appropriate policies and procedures for internal reporting by staff of current or potential

breaches of regulatory requirements or internal requirements, through a specific independent and autonomous channel (independent internal warning procedures).

National Bank of Romania Regulation no. 12/2020 on the authorization of credit institutions and changes in their situation, published in the Official Gazette, Part I no. 1291 of December 24, 2020, in force as of December 24, 2020.

The new Regulation implements, by normative provisions, the provisions contained in the Joint Guidance issued by the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority on the prudential assessment of acquisitions and the increase of qualified holdings in the financial sector (JC/GL/2016/01).

The new Regulation introduces provisions regarding, inter alia:

- the procedure, documentation and conditions regarding the authorization of banks, savings and lending banks in the housing field, mortgage credit banks and credit cooperative organizations, Romanian legal entities, generically called credit institutions, as well as Romanian branches of credit institutions from third countries;
- the conditions under which changes can be made in the situation of the above mentioned entities, in order to ensure prudential supervision;
- the procedure and conditions for prior approval of the merger and division operations in which the above mentioned entities are involved;
- the conditions, requirements and documentation regarding the authorization of the credit-bridge institutions;
- the procedure, documentation and conditions for notifying a proposed acquisition in the situation of implementing the business sale instrument, according to art. 223 para. (1) lit. a) of Law no. 312/2015 on the recovery and resolution of credit institutions and investment firms, as well as for the amendment and completion of some normative acts in the financial field, hereinafter referred to as Law no. 312/2015, of the institution-bridge resolution instrument, according to art. 239 para. (1) lit. a) of Law no. 312/2015, and of the internal recapitalization instrument of the same law.

The new Regulation repeals the following normative acts:

- NBR Regulation no. 11/2007 on the authorization of credit institutions, Romanian legal entities, and of the Romanian branches of credit institutions from third countries;
- NBR Regulation no. 6/2008 regarding the changes in the situation of credit institutions, Romanian legal entities, and of the Romanian branches of credit institutions from third countries;
- NBR norms no. 5/2000 on the merger and division of banks;
- NBR norms no. 6/2003 regarding the merger and division of credit cooperatives;
- NBR Regulation no. 1/2007 on the register of credit institutions.

data protection - legal changes published in December 2020

I. ROMANIA

1. NSAPDP. Banca Transilvania SA was sanctioned with a fine in the amount of EURO 100,000 for the unauthorized disclosure and access to certain personal data

On the 17th of December 2020, the National Surveillance Authority for Data Protection Processing ("the Authority") published a statement regarding the completion of an investigation at the operator Banca Transilvania SA which was sanctioned with **a fine in the amount of RON 487,380 (equivalent to EURO 100,000)**.

The investigation was launched following the receipt of **complaints** regarding the breach of confidentiality and security of personal data. It was found that **the statement requested by the operator from a customer of his client regarding the way in which he intended to use a certain amount of money that he wanted to withdraw from his account took place in the public space (online)**. This statement was distributed **among several employees** of Banca Transilvania on work e-mail addresses. One of the employees listed the e-mail containing the customer's statement, as well as the e-mail containing the internal conversation between the operator's employees. Another employee photographed the listed document with his mobile phone and distributed it through **the WhatsApp application**. Subsequently, the listed document was posted and distributed on the social network **Facebook and on a website**.

This situation has led to the unauthorized disclosure and access to certain personal data (name and surname, e-mail addresses, behavioral data, personal preferences, financial transaction value, place of work, position and place of work, telephone number service) of 4 targeted individuals (one client and 3 own employees), although according to art. 5 lit. f) of the General Regulation on Data Protection, the operator had the obligation to respect the principle of integrity and confidentiality of personal data.

2. NSAPDP. ATU Sector 4 Bucharest has been sanctioned with a warning for the use of audio-video surveillance equipment

On December 22, 2020, the Authority announced that it sanctioned ATU Sector 4 Bucharest (the Administrative Territorial Unit Sector 4) represented by the Mayor, for the General Directorate of Local Police Sector 4 **with a warning, accompanied by the corrective measure, ordered by the remediation plan**, to ensure compliance of processing operations performed by use of "BADGE" audio-video surveillance means.

The investigation was launched following the receipt of a complaint regarding the violation of data protection legislation and it was found that the General Directorate of Local Police Sector 4 processes personal data through portable audio-video surveillance means, type "BADGE", used by the staff of the Directorate in missions and activities carried out in the field, in the context in which the local police officers were hierarchically obliged to wear these means of audio-video surveillance during the working hours.

At the time of the investigation, it was found that there are no legal provisions governing the use of portable audio-video surveillance systems in the activity of local police officers.

3. NSAPDP. C&V Water Control S.A. was sanctioned with a fine in the amount of RON 9,746 because it did not respond to the Authority's request

On December 22, 2020, the Authority announced that it sanctioned C&V Water Control S.A. with **a fine in the amount of RON 9,746, the equivalent of the amount of EURO 2,000**, as a result of the fact that this operator did not provide the information requested by the Authority.

At the same time, the corrective measure was applied to the operator to transmit to the Authority all the information requested through the previous addresses.

4. NSAPDP. The city of Cluj-Napoca was sanctioned with a warning for the use of portable audio-video surveillance means

On December 22, 2020, the Authority announced that it sanctioned the **Municipality of Cluj-Napoca, represented by the Mayor, for the General Directorate of Local Police Cluj-Napoca with a warning**, as the staff of the General Directorate of Local Police Cluj-Napoca, carrying out specific missions and activities, processed personal data by **using the portable audio-video system type "Body-Worn Camera"** (which processes the image and voice), starting with October 2019, without a legal obligation of the operator and without fulfilling any other condition provided in art. 6 para. (1) of the RGPD. The sanction of the warning was *accompanied by the application of a corrective measure, through the remediation plan.*

5. NSAPDP. Qualitance QBS SA was fined EURO 1,000 for violating the provisions of the GDPR

On December 29, 2020, the Authority announced that it sanctioned Qualitance QBS SA with a fine in the amount of RON 4,867.50 (equivalent to EURO 1,000).

The investigation was initiated following the receipt of complaints alleging that the operator had sent information by e-mail to 295 persons (candidates who provided their personal data for recruitment on the operator's website or through online applications). line), thus revealing the e-mail addresses of the other recipients.

Qualitance QBS SA was also applied the corrective measure to ensure the compliance of personal data processing operations with the General Data Protection Regulation (GDPR), by implementing appropriate technical and organizational measures in case of remote transmission of personal data, including regular training of data controllers (employees or collaborators).

6. NSAPDP. ING Bank N.V. Amsterdam - Bucharest Branch was fined EURO 3,000 for violating the provisions of the GDPR

On the 30th of Dec. 2020, the Authority announced that it has sanctioned ING Bank N.V. Amsterdam - Bucharest Branch with a fine in the amount of RON 14,619.9 (equivalent to EURO 3,000).

The sanction was applied to the operator as a result of the fact that the ING Bank processed the personal data of a natural person after the conclusion of the contractual relationship with ING Bank.

During the investigation, the National Supervisory Authority found that the operator sent to the e-mail address of a natural person messages regarding the updating of his personal data, although he had requested on 24.11.2017 the closure of the last bank product held, respectively a current account.

It was also found that, as a result of a system error, this request to close the current account did not have the effect of closing the business relationship with the operator, which was still maintained with "active" status.

II. EUROPEAN UNION - REGULATIONS

1. The Forty-third Plenary Session of the European Data Protection Board

On December 15, 2020, the 43rd Plenary Session of the European Committee for Data Protection took place online, a body with legal personality of the European Union, established under art. 68 of the [General Regulation on Data Protection, according to a statement](#).

The following documents were adopted within it:

- (i) **Guidance on restrictions on the rights of data subjects under Article 23 GDPR.** It is published for public consultation.
- (ii) the final version of the **Guide on the Interaction of the Second Payment Services Directive (PSD2) and the GDPR.** The guide aims to provide further guidance on data protection issues in the context of PSD2, in particular on the relationship between the relevant provisions of the GDPR and PSD2;
- (iii) **Guidance on Article 46 (2) (a) and Article 46 (3) (b) of Regulation 2016/679 for transfers of personal data between the EEA and non-EEA public authorities and bodies.** These articles address transfers of personal data from EEA public authorities or bodies to public bodies in third countries, where such transfers are not covered by an appropriate decision.

III. EUROPEAN UNION – SANCTIONS

1. Swedish Authority has sanctioned several healthcare providers for controlling staff access to patient diary data

The Swedish Data Protection Authority has audited eight healthcare providers in the way it governs and restricts staff access to key electronic medical record systems. The Authority found shortcomings in seven of the eight cases leading to administrative fines of up to SEK 30 million.

2. The Estonian Authority obliged electronic pharmacies to immediately cease access to another person's prescription information.

On November 30, the Estonian Data Protection Inspectorate issued a decision and issued a warning with a one-day compliance deadline and a **EUR 100,000** penalty to three pharmacy chains that allowed visualization in the e-pharmacy environment of another person's current prescriptions without their consent based on access to their personal identification code.

3. The Swedish Authority sanctioned a University for not sufficiently protecting special data

Umeå University has processed special categories of personal data relating to sexual life and health, inter alia, by storing in a cloud service, without sufficient data protection. Therefore, the Swedish Data Protection Authority **fines SEK 550,000** against the university.

A research group at the University requested preliminary investigation reports from the police on cases of male rape and, upon receipt of these reports, proceeded to scan and digitally store them. The reports contained information, among other things, about the suspected crime, name, personal identity number and contact details, as well as sensitive data about life and sexual health.

The Swedish Data Protection Authority's investigation shows that the research group stored more than a hundred preliminary investigation reports scanned into a US cloud service, despite the fact that the University informed via its intranet that no special categories of data should be stored in the cloud service in question.

4. The Irish authorities sanctioned Twitter, fined 450,000 euros for violating the GDPR

On Tuesday, December 15, 2020, the Data Protection Commission announced the conclusion of a GDPR investigation it conducted on Twitter International Company, according to a statement.

The operator was **fined EUR 450,000** as an effective, proportionate and dissuasive measure.

The Data Protection Commission found that Twitter had breached Article 33 (1) and Article 33 (5) of the GDPR with regard to the refusal to notify the breach in a timely manner and the lack of adequate documents on the breach.

The full decision is available [here](#).

5. The Swedish authority sanctioned a company headquartered in a block for illegal video surveillance

The Swedish data protection authority has issued an administrative **fine of SEK 300,000** against a housing company for illegal video surveillance in an apartment building.

The Swedish Data Protection Authority has received a complaint about video surveillance in an apartment block belonging to the housing company Uppsalahem. The applicant alleged that there was a surveillance camera in the apartment house facing the applicant's front door.

The Authority found that the monitoring area of the room clearly covered two doors of the apartment, one of which belonged to the applicant and the other to a resident.

The housing company claims that the purpose of the video surveillance was to solve the disorders that occurred in the scale over time.

employment - legal changes published in December 2020

Law no. 278/2020 for the approval 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 was published in the Official Gazette, Part I no. 1166 of December 2, 2020, entering into force starting with December 5, 2020.

The Law approved the Government Emergency Ordinance no. 147/2020, the following amendments being brought:

- a new condition was introduced that must be fulfilled by the parents in order to benefit from the days off [condition that must be fulfilled cumulatively together with the others provided in art. 1 para. (2)], namely that the occupied workplace does not allow working from home or teleworking;
- it is established that, regardless of whether or not the teaching activities have been limited or suspended, the parent or legal representative whose child, up to 12 years of age, who suffers from a chronic disease and is enrolled in a pre-school education or pre-school unit, also benefits from days off;
- an exception is made to the established rule that the employer is obliged to grant days off if the employee so requests; thus, for the following categories of employees, the days off are granted only with the consent of the employer: from the units of the national energy system; from the operating units of the nuclear sectors; from units with 24/7 activity; from social assistance units, telecommunications, public radio and television units; from the railway transport network; from the units that ensure the public transport and the sanitation service of the localities, the supply of the population with gas, electricity, heat and water; from the food trade units, financial services, fuel distribution, production and distribution of medicines and sanitary equipment, as well as the staff from the pharmaceutical units;
- also, if one of the parents carries out its activity in one of the areas listed above, he / she is entitled to an increase granted in addition to the due salary rights, in the amount of 75% of the basic salary corresponding to one working day, but not more than the daily correspondent of 75% of the average gross earnings used to substantiate the state social insurance budget corresponding to the number of the working days.

Government Emergency Ordinance no. 211/2020 regarding the extension of the application of some social protection measures adopted in the context of the spread of the SARS-CoV-2 coronavirus, as well as for the amendment 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, Part I no. 1189 of December 7, 2020, entering into force on the same date.

According to the provisions of the G.E.O. no. 211/2020, the deadline for granting the indemnities to the employees for the period of temporary suspension of the individual employment contract at the initiative of the employers as a result of the effects produced by the SARS-CoV-2 coronavirus was extended until June 30, 2021, the same deadline being

applicable also for granting the indemnities to the professionals and persons who have concluded individual labour agreements based on the Law no. 1/2005 which interrupt their activity due to the effects of the SARS-CoV-2 coronavirus.

At the same time, the following amendments are brought to the Government Emergency Ordinance no. 132/2020:

- by way of derogation from the provisions of art. 8 para. (1) and art. 112 para. (1) of the Labour Code, in case of temporary reduction of the activity determined by the establishment of the state of emergency/ alert / siege, under the law, the employers may reduce the working time of employees by up to 80% of the monthly duration calculated by reference to the duration provided in the individual employment contract, with the information and consultation of the union, employees' representatives or employees, as the case may be, prior to the communication of the employee's decision (in the previous regulation the threshold was 50% of the daily, weekly or monthly duration);
- it is provided that the reduction of the working time in case of temporary reduction of the activity determined by the establishment of the state of emergency/ alert/ siege, is established by the employer's decision for a period of at least 5 working days, monthly (in the old regulation the minimum number of days was 5 consecutive working days);
- regarding the prohibition of the employment of staff for the performance of activities identical or similar to those performed by the employees whose working hours have been reduced, as well as the prohibition of subcontracting of activities carried out by the employees whose working hours have been reduced, these refers strictly to the jobs in which the employees actually carry out their activity, located in the perimeter provided by the employer, at the level of which the measure of reducing the working time is applied.

Government Decision no. 1046/2020 regarding the supplementation 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, Part I no. 1199 of December 9, 2020, entering into force on the same date.

The new Decision regulates the extension, until June 30, 2021, of the granting of the measures provided for in **article 1 paragraph (1)** - reduction of the working time by the employers determined by the establishment of the state of emergency/ alert/ siege and **article 3 paragraph (1)** - reduction of the working time determined by the establishment of the state of emergency/ alert/ siege in the case of professionals and persons who have concluded individual labor agreements based on Law no. 1/2005 of the G.E.O. no. 132/2020.

It is also established that during the period 1 January 2021-30 June 2021, the measure provided for in article 3 paragraph (1) of the G.E.O. no. 132/2020 applies to professionals and persons who have concluded individual employment agreements based on Law no. 1/2005 who benefited from the indemnity provided for in Article XV paragraph (1) of the G.E.O. no. 30/2020.

Law no. 282/2020 for the approval 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, Part I no. 1201 of December 9, 2020, entering into force on December 12, 2020.

Law no. 282/2020 approves G.E.O. no. 132/2020, with the following amendments:

- the conditions under which the temporary reduction of the working time determined by the establishment of the state of emergency/ alert/ siege may be ordered are amended, in accordance with the law, as follows: this measure can be implemented during the state of emergency/ alert/ siege, as well as for a period up to 3 months from the end of the last period in which the state of emergency/ alert/ siege was established; in addition, the maximum threshold of 50% of the daily duration (weekly or monthly) until which the employers have the possibility to reduce the employees' working time is reinstated;
- it is established that the amounts initially paid by the employer for the payment of the indemnity during the reduction of the working time are to be settled **within 5 days** from the issuance of the decision of the Employment Agency stating that the documents submitted by the employer meet the conditions required by the law;
- the documents to be submitted by the employer for the settlement of the amounts granted as indemnity to the employees during the reduction of the working time were introduced, together with the settlement procedure;
- it is provided that the periods in which the employees benefit from the reduction of working time and the indemnity related to this measure, **represent an assimilated contributory period in the unemployment insurance system** and will be taken into account when establishing the contribution period of at least 12 months in the last 24 months prior to registration of the application for the granted indemnity for unemployment;
- it is established that the financial support of Lei 2,500 granted to the employers for each teleworker in order to purchase packages of technological goods and services necessary to carry out the teleworking activity is granted, in the order of submitting of applications, until December 31, 2020, also for the employees who worked in teleworking regime during the state of alert (not only during the state of emergency) for at least 15 working days.

Government Decision no. 1065/2020 regarding the extension of the state of alert on the Romanian territory starting with December 14, 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, Part I no. 1215 of December 11, 2020, entering into force on the same date.

Through the Government Decision no. 1065/2020, it was decided to extend the state of alert on the Romanian territory starting with December 14, 2020 for another 30 days.

Through the Government Decision no. 1065/2020, it was decided to extend the state of alert on the Romanian territory starting with December 14, 2020 for another 30 days.

The Decision maintains the obligation to wear a protective mask in public spaces (closed or open, as Law no. 55/2020 was amended by G.E.O. no. 192/2020), commercial spaces, means of public transport and at the workplace.

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 Labour Code, as well as those established by Law no. 81/2018 on the regulation of teleworking activity.

In the event that the employee cannot work in teleworking regime or working from home, if there are more than 50 employees, the employers have the obligation to organize the work schedule so that the staff is divided into groups to start or end the activity at a difference of at least one hour.

Decision of the Constitutional Court no. 723/2020 regarding the objection of unconstitutionality of the provisions of the Law for supplementation of Law no. 53/2003 - The Labour Code was published in the Official Gazette, Part I no. 1242 of December 16, 2020.

Although the objection of unconstitutionality was rejected as unfounded, the issue under discussion deserves to be mentioned, being extremely interesting both from the perspective of the current context and in view of the fact that 2 of the judges expressed a separate opinion.

According to the criticism of unconstitutionality, the Law no. 298/2020 for the supplementation of the Labour Code violates the principle of legal certainty. In this sense, it is argued that Law no. 298/2020 establishes a legislative parallelism by reference to the norms in force contained in art. XI-XIII of the G.E.O. no. 30/2020 and G.E.O. no. 32/2020, which contradicts the imperative norms of legislative technique.

The Constitutional Court held that the criticized Law envisages measures similar to those provided by art. XI-XIII of the G.E.O. no. 30/2020, but the Law will apply for the future, for the eventual situations in which the state of siege or the state of emergency will be declared. Therefore, the criticized Law considers only the future, generic situations, which, de plano and de jure, will be legally classified as a state of siege or a state of emergency.

Instead, the G.E.O. no. 30/2020 was adopted in consideration of an already existing state of emergency, previously established by Decree no. 195/2020, extended by Decree no. 240/2020, but which ceased 30 days after the application of the latter decree (respectively May 14, 2020). The only common element as a hypothesis-situation between the criticized Law and the G.E.O. no. 30/2020 is the state of emergency itself, but, from a temporal point of view, these, as concrete states of fact, cannot overlap, because, on the one hand, the examined Law, after promulgation, will not be able to produce retroactive effects, and, on the other hand, neither G.E.O. no. 30/2020 cannot be ultraactive. Therefore, even if the Law subject to constitutional review is to enter into force before December 31, 2020, its legal effects concern only a state of emergency/ siege to be declared in the future, and not the state of emergency already established by Decree no. 195/2020 and extended by Decree no. 240/2020, which has been exhausted and which forms, partially, the legal hypothesis of application of the G.E.O. no. 30/2020.

In the separate opinion of 2 of the judges of the Constitutional Court, they consider that the different action in time of the two normative acts does not make disappear the legislative parallelism established by the Law criticized for the period in which Decree no. 195/2020 and Decree no. 240/2020 acted, because the time can no longer be given back so that a possible normative action would make G.E.O. no. 30/2020 and G.E.O. no. 32/2020 disappear from the active fund of the legislation. From a legal point of view, the passage of time is an objective fact; it cannot be reversed or otherwise influenced by normative acts, even if they are laws adopted by the Parliament.

Law no. 296/2020 for the amendment and supplementation of the Law no. 227/2015 on the Fiscal Code was published in the Official Gazette, Part I no. 1269 of December 21, 2020, entering into force since December 24, 2020.

Law no. 296/2020 brought a series of amendments to the Fiscal Code. **Among the novelties brought is the inclusion of a new fiscal facility for the activity of teleworkers, namely:** the teleworkers who receive money from employers, within a certain monthly limit established by the employment contract or the Internal Regulations (within a monthly threshold of Lei 400 corresponding to the number of days in the month in which the employee carries out the teleworking activity), for the payment of utilities expenses at the place where the teleworkers carry out their activity (such as electricity, heating, water, data subscription) and for the purchase of furniture and of office equipment, are

exempted from paying the related salary taxes for these amounts, starting from January 2021 (therefore, **from the perspective of the income tax, these amounts are considered as non-taxable income and are not included in the monthly calculation basis of social security contributions**). In addition, these expenses related to the teleworking activity borne by the employer are considered **deductible expenses when calculating the profit tax**.

Regarding the new facility introduced in the Fiscal Code, the following aspects must be emphasized:

- the establishment of the amount that can be granted by the employer to the teleworkers under the conditions mentioned above can be done either **(i)** by negotiating and including the respective amount in the individual and/or collective labour contract, or **(ii)** by including in the Internal Regulations the amount that the teleworkers will receive to cover the additional expenses generated by the provision of teleworking activity;
- the employer's decision to grant these amounts should apply to all employees who perform the activity in teleworking regime, and not just some of them; in the situation in which these amounts would be granted only for a part of the employees who carry out their activity in teleworking regime, there is the risk that this practice to be considered as being contrary to the principle of equal treatment;
- the threshold of Lei 400/ month represents the maximum amount for which no tax and contributions are due; this does not mean that employers cannot establish through the Internal Regulations (in compliance with the obligation to consult and inform employees) or by individual or collective bargaining agreement, a maximum limit higher than this threshold of Lei 400; in this case, however, the difference established in addition by the employer will be subject to the fiscal regime applicable to the income from salaries or assimilated to salaries;
- it is important to mention that the law does not require the teleworker to present supporting documents, so as to demonstrate that the respective expenses regarding the utilities or the acquisition of office furniture and equipment were actually made in this respect; therefore, the facility is granted without applying income tax or social contributions for employees who work in teleworking regime, supporting documents regarding the expenses incurred not being required;
- the inclusion of these amounts for teleworkers in the category of those for whom no tax and social contributions are due does not establish the obligation of the employer to grant them.

Law no. 298/2020 for the supplementation of the Law no. 53/2003 - The Labour Code was published in the Official Gazette, Part I no. 1293 of December 24, 2020, entering into force on December 27, 2020.

The Law introduces a new situation in which the individual employment contract can be suspended at the initiative of the employer at art. 52 para (1) letter f, namely during the temporary suspension of the activity and/ or its reduction as a result of the decree of the state of siege or the state of emergency.

In case of temporary suspension of the activity and/ or its reduction as a result of the decree of the state of siege or state of emergency, the employees affected by the reduced or interrupted activity, who have their individual employment contract suspended, benefit from an indemnity paid from the unemployment insurance budget. (subject to taxation and payment of compulsory social security contributions; instead, no insurance contribution for work is due) in the amount of 75% of the basic salary corresponding to the job held, but not more than 75% of the average gross earnings used to substantiate the state social insurance budget in force, for the entire duration of maintaining the state of siege or the state of emergency, as the case may be.

If an employee has several individual employment contracts, of which at least one full-time contract is active during the establishment of the state of siege or state of emergency, he does not benefit from the above-mentioned indemnity.

Also, it is established the procedure that the employers must follow in order to settle the amounts paid as indemnity. The documents must be submitted to the employment agencies in the current month for the payment of the previous month's indemnity.

At the same time, **the employers can not cancel the job positions** held by the employees whose individual employment contracts have been suspended in the form mentioned above for a period at least equal to the period of suspension for which they benefited, for these employees, from the payment of indemnities from the unemployment insurance budget. Violation of this obligation is a contravention and is sanctioned by the restitution of the amounts received as indemnity for the cancelled job positions.

Government Emergency Ordinance no. 220/2020 on the application of social protection measures after January 1, 2021 in the context of the spread of SARS-CoV-2 coronavirus, as well as for the amendment of some normative acts was published in the Official Gazette, Part I no. 1326 of December 31, 2020, entering into force on the same date.

The Ordinance provides for social protection measures after 1 January 2021 in the context of the spread of the SARS-CoV-2 coronavirus, namely:

- a) the employers who, **between 1 January and 1 September 2021**, employ, for an indefinite period, full-time, individuals over the age of 50, whose employment relationships have ceased for reasons not attributable to them, during the state of emergency, or alert, individuals aged between 16 and 29 registered as unemployed in the records of the county employment agencies, respectively of the municipality of Bucharest, as well as Romanian citizens, included in the same age categories, who in 2020 had their employment relationship terminated with foreign employers on the territory of other states, for reasons not attributable to them, by dismissal, **receive monthly, for a period of 12 months, for each person employed in this category, 50% of the employee's salary, but not more than Lei 2,500;**
 - the condition for being able to benefit from the above measure is to maintain the employment relationship for a period of at least 12 months after the above-mentioned 12-month period.
 - the above amounts are settled from the unemployment insurance budget, at the request of the employers, submitted by electronic means to the county employment agencies; the settlement procedure is to be approved;
 - from this measure can not benefit the public institutions and authorities and the employers who are in bankruptcy, dissolution, liquidation or whose activities have been suspended or restricted at the time of requesting these amounts.
- b) the term until which the state can settle a part of the salary of the seasonal employees - 41.5% of the salary related to the days worked in these jobs, for a working period of eight hours per day, but not more than 41.5% of average gross earnings in 2020 has been extended until June 30, 2021;
- c) also until June 30, 2021 was extended the period until which the state can settle a part of the salary granted to employees who conclude individual employment contracts for a fixed period of up to 3 months (41.5% of the

related salary days worked in these jobs, for a working period of 8 hours/ day, but not more than 41.5% of the average gross earnings);

- d) the provisions of G.E.O. no. 147/2020 on granting days off for parents in order to supervise children have been extended until June 30, 2021, including the situation in which the Minister of Education orders the suspension of activities that require the physical presence of early pre-schoolers and students in schools and the continuation of online teaching activities.

Government Decision no. 1133/2020 on establishing the quota of newly admitted foreign workers on the labour market in 2021 was published in the Official Gazette, Part I no. 1326 of December 31, 2020, entering into force on the same date.

The quota of newly admitted foreign workers on the labour market was set at 25,000, compared to 30,000 in 2020.

Government Emergency Ordinance no. 226/2020 regarding some fiscal-budgetary measures and for the amendment and supplementation of some normative acts and the extension of some deadlines was published in the Official Gazette, Part I no. 1332 of December 31, 2020, entering into force on the same date.

According to the new regulation, the period for which the public institutions grant, annually, holiday vouchers in the amount of Lei 1,450, has been extended until December 31, 2021 (art. 1 of G.E.O. no. 8/2009).

Accordingly, the new Ordinance also amends the Law no. 165/2018 regarding the granting of value tickets, in the sense of extending the date on which the provisions regarding holiday vouchers enter into force until January 1, 2022 (therefore, until the said date, the Law no. 165/2018 will not apply to holiday vouchers).

At the same time, by derogation from the provisions of the G.E.O. no. 8/2009, the validity period of the holiday vouchers issued between March 2019 - December 2019 and January 2020 - November 2020, regardless of their support, is extended until December 31, 2021.

Also by way of derogation from the provisions of the G.E.O. no. 8/2009, in 2021, for military personnel, police officers, civil servants with special status in the penitentiary administration system and civilian personnel in public institutions of defence, public order and national security, the tourist services provided by any tourist reception structure located on the territory of Romania, are settled within the limit of Lei 1,450 for each employee.

insurance - legal changes published in December 2020

Financial Supervisory Authority Norm no. 46/2020 for amending and supplementing the Financial Supervisory Authority Norm no. 21/2016 on the reports regarding the insurance and / or reinsurance activity, published in the Official Gazette, Part I no. 1304 as of December 29, 2020, the Annexes published in the Official Gazette, Part I, no. 1304 bis, in force as of January 1, 2021.

The normative act regulates certain requirements regarding the periodic supervisory reports specific to the Solvency II regime and the related terms, as well as the implementation of additional periodic reports to support the supervisory process carried out by the authority, including the objective of ensuring a functional and efficient liquidity risk management system.

The most important change concerns the introduction of the additional liquidity reporting and the amendment of the provisions regarding the determination of the liquidity indicator. Insurance companies must hold liquid assets above the level of short-term liabilities or above the level of the gross damage reserve. The first reporting of this indicator will be submitted for the reference date 31.03.2021. If the liquidity indicator is non-compliant, together with this report, the company submits a plan with concrete measures and deadlines in order to restore it by 30.06.2021 at the latest, considered as the reference date.

The normative act introduces new forms of additional reporting (Questionnaire on gross indemnities paid by categories of medical services and providers of medical services; Data on employees and individuals with a mandate agreement; Intragroup transactions; Life insurance activity with exclusive protection component (death insurance for any reason); Assignments / Receipts in reinsurance for the activity of general and life insurance) and brings amendments or clarifications to certain existing forms.

litigation and arbitration - legal changes published in December 2020

The Decision of the European Court of Human Rights dated May 26, 2020 ruled in the Aftanache Case against Romania (Application no. 999/19) was published in the Official Gazette, Part I no. 1,312 of December 30, 2020 and it is applicable from the same date.

The application is based on claims amounting to EUR 1,040 for compensation for pecuniary damage suffered, representing court costs, as well as claims amounting to EUR 284,000 for non-pecuniary damage suffered as a result of the refusal to administer his insulin treatment, despite his poor health, and also due to an alleged unlawful deprivation of liberty when the applicant was taken against his will to hospital for testing, regardless of his medical condition. Therefore, the Court held that: a) the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement: (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; (ii) EUR 17 (seventeen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses; b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

The Decision of the European Court of Human Rights dated June 9, 2020 ruled in the Lascau Case against Romania (Application no. 39,855/13) was published in the Official Gazette, Part I no. 1,247 of December 17, 2020 and it is applicable from the same date.

The application is based on claims of EUR 140,000 for compensation for pecuniary damage suffered, corresponding to uncollected wages, as a consequence of the applicant's dismissal from public office, and, at the same time, blaming the High Court of Cassation and Justice on the fact that the applicant was convicted of bribery and money laundering, in the absence of direct evidence administration and especially of testimonies. The applicant leaves to the Court's discretion the amount of compensation for non-pecuniary damage. The European Court of Human Rights ruled that article 6 §1 of the Convention has been breached and held that: a) the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement; b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Decision of the High Court of Cassation and Justice no. 13/2020 on the examination of the appeal in the interest of the law submitted by the Board of Brasov Court of Appeal was published in the Official Gazette, Part I, no. 1,309, of December 30, 2020 and it is applicable from the same date.

The HCCJ admitted notification formulated by the Board of Brasov Court of Appeal, in order to pronounce an appeal in the interest of the law and, consequently, established that, in the interpretation and application of the provisions of article 226 paragraph (1) of Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code, as amended, in relation with article 22 paragraph (1) of Law no. 132/2017 on the compulsory motor vehicle liability insurance for damages caused to third parties by vehicles and tram accidents, "in disputes relating to the payment of the compensation for pecuniary and non-pecuniary damages, formulated by third parties who have been injured

by traffic accidents, where the MTPL insurer has the passive legal standing and the guilty party has the status of a forced intervener or of a defendant together with the MTPL insurer, as well as, in disputes regarding recourse actions taken by the insurer against the person responsible for the accident, the specialized sections shall have legal jurisdiction in proceedings."

Decision of the High Court of Cassation and Justice no. 22/2020 on the examination of the appeal in the interest of the law, submitted by the Board of Brasov Court of Appeal was published in the Official Gazette, Part I, no. 1,208, of December 10, 2020 and it is applicable from the same date. The HCCJ admitted the notification formulated by the Board of Brasov Court of Appeal, in order to pronounce an appeal in the interest of the law and, consequently, established that, in the interpretation and application of the provisions of the Law of Administrative Litigation no. 554/2004, as subsequently amended and supplemented, in case of civil service disputes aimed at obliging employers to pay outstanding wages, as well as when the employer did not issue an administrative act or the respective act was not communicated to the civil servant, such civil servant may address directly the administrative court, without the need to have requested to the employer to have been granted the same rights before the court was seised.

Emergency Ordinance no. 215/2020 regarding the adoption of some measures relating to the composition of the panel of judges on appeal was published in the Official Gazette, Part I, no. 1,316, of December 30, 2020 and it is applicable from the same date. The Emergency Ordinance includes a single article, establishing that the provisions of article no. 54 paragraph (2) of Law no. 304/2004 on the judicial organization, republished, as amended and supplemented, regarding the trial of appeals in panels of three judges, applies to appeals filed in proceedings initiated starting with January 1, 2023, and in trials initiated between January 1, 2021 and up to December 31, 2022 (inclusive), appeals shall be judged in panels consisting of two judges. These provisions are also applicable in criminal cases.

public procurement - legal changes published in December 2020

Order of the National Agency for Public Procurement no. 2376/2020 on the content, how to complete and how to use the standard documents "Instructions for tenderers/ candidates" and "Tender book" when awarding the framework agreement/ public/ sectoral procurement contract for protection masks for sanitary use type II, II R, FFP2, FFP3 was published in the Official Gazette, Part I, no. 1222 of December 14, 2020, entering into force on the same day.

The Order approved the content, the way of filling in and the way of using the standard documents for the procurement procedure of the masks for sanitary use of TYPE II, II R, FFP2, FFP3.

Annex 1 of the Order establishes the appropriate qualification and selection criteria and the evaluation factors recommended for use in the procedure for procurement of protective masks for sanitary use. The Annex also contains details on how the economic operators should structure the information to be submitted in order to meet the qualification/ selection requirements in the simplified notice/ participation notice, respectively procedural details such as: details of the guarantees required, preparation and the structuring of the technical and financial proposal, the procedural deadlines to be met and the remedies that can be used.

Annex 2 of the Order contains functional and performance requirements in accordance with European and national standards for 4 types of protective masks for sanitary use, of which 3 are included in the category of medical devices, and two intended for the protection of the person, as well as rules and conditions to be followed by the potential tenderers for the preparation of a technical proposal corresponding to the needs of the contracting authority or entity.

The provisions of the Order apply to the award procedures initiated after the date of its publication.

Order of the National Agency for Public Procurement no. 2389/300/2020 on the revision of the discount rate to be used for the award of public procurement contracts in 2021 was published in the Official Gazette, Part I no. 1321 of December 31, 2020, entering into force on the same day.

The Order revised the discount rate that will be used for the award of public procurement contracts in 2021.

Thus, for the discount rate that will be used in 2021 in the process of awarding public procurement contracts, respectively framework agreements financed exclusively from the state budget, a level of this indicator of **5.5%** is set.

In relation with the public procurement contracts financed from non-reimbursable European funds, for which the award procedure starts in 2021, and the award criterion is "the lowest cost", the discount rate remains the one recommended by the European Commission in the *"Guide to Cost-Benefit Analysis of Investment Projects Economic appraisal tool for Cohesion Policy 2014-2020"*, respectively **4%**.

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

Voicu & Filipescu SCA

31 General Ernest Brosteanu Street

010527, Bucharest, Romania

Tel: +40 21 314-02-00

Fax: +40 21 314-02-90

E-mail: office@vf.ro

Web: www.vf.ro

