



## Legal Changes of June 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
- Litigation & Arbitration



[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 June 2021

### I. Romania - sanctions

#### 1. ANSPDCP. La Santrade S.R.L. was sanctioned for violating the General Regulation on Data Protection by a fine of RON 9,839.4 lei (equivalent to EUR 2,000)

In the investigation initiated following a complaint, La Santrade S.R.L. failed to comply with the request for information from the Authority.

The Authority also found that the controller did not take measures to ensure the effective exercise of the rights of data subjects, which led to the data subject's request for deletion of his personal data not being resolved.

Two corrective measures were also applied:

- a) informing the data subject about the measures adopted regarding the deletion of the data collected without his / her express consent;
- b) facilitating the exercise of the rights of data subjects, by providing valid contact data, including a functional e-mail address, which will be made public the operator's weight in the sections on personal data processing, privacy policy, contact data.

#### 2. ANSPDCP. Dreamtime Call S.R.L was sanctioned by a fine in the amount of RON 9,852.2 (equivalent to EUR 2,000)

The investigation was initiated following a complaint alleging that SC Dreamtime Call S.R.L. illegally processed the personal data of a natural person (telephone number), by repeatedly contacting him by telephone, without prior consent.

As the controller failed to respond to the Authority's requests, although it confirmed their receipt, it was fined.

The controller was also required to provide the Authority with all requested information within 5 working days of the communication of the minutes.

### II. EUROPEAN UNION - regulations

#### 1. Plenary of the European Data Protection Board

The following documents were, *inter alia*, adopted at the Plenary of the European Data Protection Committee, held online on June 18, 2021:

- **Joint opinion with EDPS on the draft Regulation of the European Commission on the establishment of harmonized regulations on artificial intelligence;**
- [Recommendations no. 1/2020 on additional transfer measures](#) (final version).

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



## 2. Transfer of personal data from the EU to the United Kingdom

On Monday, June 28, 2021, the European Commission adopted **two adequacy decisions for the United Kingdom**: under the General Data Protection Regulation (GDPR) and the Law Enforcement Directive, according to a statement.

**Personal data may be transferred freely from the European Union to the United Kingdom when it enjoys a level of protection essentially equivalent to that guaranteed by Union law.**

Adequacy decisions also facilitate the proper implementation of the EU-UK Trade and Cooperation Agreement, which provides for the exchange of personal information.

**Transfers for immigration control purposes in the United Kingdom are excluded** from the scope of the GDPR's adequacy decision to reflect the recent ruling of the Court of Appeal in England and Wales on the validity and interpretation of certain restrictions on the protection of human rights data in this area. The Commission will reassess the need for this exclusion once the situation has been remedied under UK law.

## III. EUROPEAN UNION - sanctions

### 1. France. IKEA France was fined 1 million Euros for spying on employees

On Tuesday, June 15, 2021, a court in France fined the furniture company IKEA by 1 million Euros, after proving that the **retailer was spying on its employees and incorrectly storing their personal data.**

The French subsidiary of the Swedish company has been accused of spying on its employees for several years and violating their privacy by examining bank account records and sometimes by using fake employees to write reports about staff.

At the same time, Jean-Louis Baillot, former executive director, was sentenced to two years in prison with suspension and was fined EUR 50,000 for storing personal data of employees.

IKEA Retail France strongly condemned these practices, apologized and implemented a major action plan to prevent their recurrence.

### 2. USA. Volkswagen security breach

Volkswagen's U.S. division has announced that the personal data of more than 3.3 million customers and potential buyers of Audi in North America has been compromised following a security breach.

Volkswagen Group of America said that an unauthorized third party obtained some information about customers and potential buyers from a dealer for its Audi and Volkswagen brands and some dealers in the US and Canada.



**3. The Icelandic data protection authority sanctioned an ice cream company for video monitoring of employees with a fine of EUR 34,000**

One of the company's employees filed a complaint with the Icelandic Authority regarding an area used by employees to change their work uniform, which is under constant video surveillance. The employee also complained that he did not receive any notifications or information regarding the supervision and lack of labelling and signalling.

For security reasons, five surveillance cameras recording employees and customers were installed in the company's ice cream zone. The Icelandic authority confirmed after an inspection that the employees did not have access to an acceptable area for changing clothes, an area that is not supervised.

**4. The Norwegian Data Protection Authority fined BRABank EUR 40,000**

This case concerns the insufficient assessment and testing of risks in connection with the launch of a client portal for banking services. Some clients were able to see loan information about other clients when they launched "My Page". "My Page" is a solution where clients can view information about their loan agreements.

Some clients also gained access to another client's address information, and some gained access to the wrong loan information. The incident took place at a time when "My Page" was launched to a selection of 500 bank customers.

**5. The Italian authority requested the holder of the 'IO' application (PagoPA) to implement additional protection measures**

Following the intervention of the Italian Authority, the controller PagoPA developed several technical measures to protect the confidentiality of the users of the "IO" application. These measures will be implemented in the new version of the application, which will be launched soon.

In view of the new measures to be taken by the company, the Italian Authority decided that the order restricting the processing issued by it could be lifted. The processing involved interactions with Google and Mixpanel. The decision was made following the exchanges with PagoPA and the efforts made by the company to remedy in a timely manner the deficiencies that the Authority has recently highlighted, so as to comply with the imposed measures.

However, processing will continue to be limited to the data collected and stored by Mixpanel. This data can no longer be used and will be stored by the company only until the Authority completes its investigations.

**6. The Norwegian authorities have fined the Norwegian Sports Confederation with a fine of EUR 125,000**

The sanction was imposed because personal data about 3.2 million Norwegians were available online for 87 days, due to an error in testing a cloud computing solution. Types of personal data made public included name, gender, date of birth, address, telephone number, e-mail address and affiliation with the association. Of the 3.2 million people affected by this discrepancy, 486,447 were children between the ages of 3 and 17.

**7. The Swedish authorities fined the Stockholm Region with a fine of EUR 49,740 and of the 2 regions with a fine of EUR 24,871 each**

The sanctions were applied as a result of an incident in which telephone calls recorded to the medical consultation service, 1177, were available unprotected on the internet.



The cause of the incident was a storage unit attached to the network that was configured incorrectly and was thus accessible on the Internet. In addition, the unit did not use encrypted communications.

#### **8. The Dutch authority fined an orthodontic clinic with a fine of EUR 12,000**

The sanction was applied because the clinic allowed new patients to register on an unsecured website. As a result, patients' sensitive personal data, such as their number of citizen services, could have fallen into the wrong hands.

The web form that the new patients registered contained mandatory fields that required all kinds of personal data, as well as data on the patient's parents, the general practitioner, the dentist and the insurance company. Most orthodontic patients were children, and this case concerned the personal data of children who need additional protection.

#### **9. The Austrian authority sanctioned a controller for refusing to provide information**

The alleged controller was requested to provide information regarding an alleged breach of the GDPR. Despite being asked several times, the alleged controller ignored all the requests made by the Authority and even refused to appear before it when he was sent to trial for an oral examination and when he was threatened with a hearing, a fine of EUR 500 if it does not appear. Consequently, the Authority requested the local authority to collect the fine. When faced with this fine, the alleged controller finally provided the requested information.

#### **10. The Netherlands authority sanctioned CP&A with a fine of EUR 15,000**

The CP&A maintenance company was sanctioned for violations regarding the processing of health data of sick employees. CP&A kept a register of the causes of sick leave. In doing so, the company processed more health data than allowed by law. In addition, the registration of sick leave was not adequately ensured. CP&A has stopped this practice.

#### **11. The Italian authority imposed a temporary restriction on the "Mitiga Italia" application**

The application was first used on May 19, 2021 to allow certified spectators who were vaccinated, recovered or with negative results for COVID-19 to enter the stadium where the final Coppa Italia football match was to take place.

The restraining order proved necessary, as the application will likely be used in the coming days to regulate access to other events, shows or sporting activities.

The Order of the Italian Authority recalls that there is currently no valid legal basis for the processing of data carried out through the application to determine the refusal of access to persons participating in sports or any other public events or accessing open rooms - partly considering that information is involved, sensitive, such as health data.



## employment - legal changes published in June 2021

**Government Emergency Ordinance no. 44/2021 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 the SARS-CoV-2 coronavirus, as well as for stimulating employment growth** was published in the Official Gazette of Romania, Part I, no. 575 of June 7, 2021, in force from the same date.

The Ordinance establishes that in case of reduction of the working time and/ or income implemented during the state of emergency/ alert/ siege, the persons who benefited from the indemnity provided in art. XV para. (1) and (4) of the Government Emergency Ordinance no. 30/2020 can benefit, upon request, based on a statement on own responsibility, from a monthly allowance in the amount of 41.5% of the average gross salary provided by the Law on the state social insurance budget for 2021 no. 16/2021 (namely, we are talking about the professionals and persons who have concluded individual labour agreements based on Law no. 1/2005 on the organization and operation of cooperation, as well as the individuals who obtain income exclusively from copyright and related rights).

This measure is applicable starting with the rights related to June 2021.

The measure was instituted because the allowances provided in art. XI and XV of the Government Emergency Ordinance no.30/2020 were granted until June 30, 2021.

**Government Decision no. 636/2021 on the extension of the state of alert in Romania starting with June 12, 2021 and the establishment of the measures to be applied during its period to prevent and combat the effects of the COVID-19 pandemic** was published in the Official Gazette of Romania, Part I, no. 586 of June 10, 2021, in force from the same date.

The Decision establishes that, starting from June 12, 2021, the state of alert throughout the country shall be extended by another 30 days.

As a preliminary point, it should be noted that the Decision was subsequently amended through the Government Decision no. 687/2021 (published in Official Gazette no. 628 of June 25, 2021, in force from the same date), introducing new relaxation measures.

The Decision stipulates that in public spaces, markets, fairs, flea markets, public transport stations, commercial spaces, means of public transportation and at the workplace, the obligation to wear a protective mask may be established so as to cover the nose and the mouth, under the conditions established by the joint order of the Minister of Health and the Minister of Internal Affairs.

Furthermore, for all public or private economic institutions and operators, the obligation to implement the working from home regime or teleworking is maintained, where the specific nature of the activity permits, under the conditions of Article 108-110 of the Labour Code, as well as those laid down by the Law no. 81/2018 on teleworking.

In the situation in which the employee cannot carry out the activity in teleworking/ working from home regime and in order to avoid the congestion of the public transportation, the employers in the private system, central and local public authorities and institutions, regardless of the method of financing and subordination, as well as the autonomous municipal companies, national companies and companies in which the share capital is wholly or mainly owned by the state or by an administrative-



territorial unit, with a number of more than 50 employees, have the obligation to organize the work schedule so that the personnel to be divided into groups to start or finish the activity at a difference of at least one hour.

It is also established that the organisation of work shall be carried out in compliance with the legal provisions issued by the competent authorities with regard to the prevention of SARS-CoV-2 virus contamination and for the safety and health at the workplace, taking into account also the degree of vaccination of the employees at the workplace, as reflected in a certificate of vaccination against the SARS-CoV-2 virus presented by the employees for whom 10 days have passed since the completion of the full vaccination scheme, as well as the number of employees who are between the 15<sup>th</sup> day and the 90<sup>th</sup> day following the confirmation of the SARS-CoV-2 virus infection and who hold and present to the employer a certificate issued by the family physician.

**Government Decision no. 654/2021 for amending and supplementing the Methodological Norms on the secondment of employees in the context of the provision of transnational services on the territory of Romania, approved by Government Decision no. 337/2017** was published in the Official Gazette of Romania, Part I, no. 611 of June 18, 2021, in force from the same date.

The Decision brings the following novelties:

- the deadline within which the companies established on the territory of a Member State other than Romania, or on the territory of the Swiss Confederation that second employees with whom they have established an employment relationship must submit to the territorial labour inspectorate the Statement on transnational secondment of employees: at the latest before the start of the activity (in the previous form of the normative act, the deadline was "with *at least one working day before the start of the activity*");
- a new element to be included in the above-mentioned statement was added, namely the transnational measure corresponding to the situation of secondment;
- the elements that the Notification on the extension of secondment must contain are established; the Notification may be transmitted to the competent territorial labour inspectorate either: **(i)** in letter form, by direct submission or by postal service or courier; **(ii)** in electronic format, through the electronic e-mail service or any other means of communication provided by the law; **(iii)** by filling in an online form, accessible on a single platform managed by the Labour Inspectorate and the territorial labour inspectorates, with the observance of the technical and authentication requirements (the platform is to be implemented);
- it is mentioned that, in the event that an employee is made available by a temporary employment agent for a user company established or operating in Romania (existing an employment relationship, during the period of secondment, between the employee and the temporary work agent), if that employee carries out its activity on the territory of another Member State, other than Romania, in the context of the transnational provision of services by the user company (we are talking about the case where the user company established in Romania is posting the employee on the territory of a Member State other than Romania or on the territory of the Swiss Confederation), then that employee is considered to be posted on the territory of the respective Member State by the temporary employment agent with whom he/ she has an employment relationship;
- in the above-mentioned case, the user company established or operating on the territory of Romania shall be obliged to inform the temporary employment agent who made the employee available, with at least 30 days before the start of its activity on the territory of that State, and to notify the territorial labour inspectorate, at the latest on the day before the employee's secondment to the territory of that Member State;



- Annex 1 containing the template of the Statement on transnational secondment of employees has been replaced and a new Annex (Annex 2) containing the template of the Notification on the extension of secondment has been added.

**Order of the Minister of Labour and Social Protection no. 540/2021 on the amendment of the Order of the Minister of Labour and Social Protection no. 741/2020 for the approval of the template of the documents provided in art. XII para. (1) of the Government Emergency Ordinance no. 30/2020 for amending and supplementing some normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation determined by the spread of SARS-CoV-2 coronavirus, with amendments and completions brought by Government Emergency Ordinance no. 32/2020 for the amendment and completion of the Government Emergency Ordinance no. 30/2020 for amending and supplementing some normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation determined by the spread of SARS-CoV-2 coronavirus and for establishing additional social protection measures** was published in the Official Gazette of Romania, Part I, no. 622 of June 24, 2021, in force from the same date.

The Order amended one of the documents to be submitted by the employers to the employment agencies to obtain the allowances granted to the employees whose employment contracts have been temporarily suspended, at the initiative of the employer, according to art. 52 para. (1) letter c) of the Labour Code, as a result of the effects produced by the SARS-CoV-2 coronavirus, namely the Table with the restricted activities under the conditions laid down by the Law no. 55/2020 on some measures to prevent and combat the effects of the COVID-19 pandemic.

**Government Decision no. 677/2021 on the amendment 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 the SARS-CoV-2 coronavirus, as well as for stimulating employment growth**, was published in the Official Gazette of Romania, Part I, no. 628 of June 25, 2021, in force from the same date.

The following amendments are brought to the Government Decision no 719/2020:

- it is provided that, in order to settle the amounts for the payment of the allowances of the employees whose working time have been temporarily reduced (measure determined by the establishment of the state of emergency/ alert/ siege, in accordance with the law, during the state of emergency/ alert/ siege), the employers must submit an application to the employment agencies of the county, respectively of the municipality of Bucharest, in whose territorial area they have their registered office;
- in case the employer changes the work schedule in the context of the implementation of the measure of temporary reduction of the working time under the conditions mentioned above, the employers will have to submit to the competent employment agencies copies of all decisions on the reduction of the working time, working schedule, the manner of its distribution by days and the related salary rights, as well as copies of their communications to the employee;



- the templates of documents to be submitted by the employers for the settlement of amounts for the payment of the allowances to employees whose working time has been temporarily reduced (application, statement on their own responsibility, list of persons) will be approved by order of the Minister of Labour.



## litigation and arbitration - legal changes published in June 2021

### **Decision of the High Court of Cassation and Justice no. 5/2021 on the examination of the appeal in the interest of the law submitted by the Management Board of Constanta Court of Appeals was published in the Official Gazette, Part I no. 608 dated June 18, 2021 and it is applicable from the same date.**

The High Court granted the referral submitted by the Management Board of Constanta Court of Appeals, relating to the settlement of an appeal in the interest of the law and, consequently, held that in the interpretation and application of the provisions of article 96 para. (1) and (2) letter b), article 100 para. (3), article 101 para. (3), article 102 para. (3) and article 109 para. (9) of the *Emergency Government Ordinance* no. 195/2002 regarding traffic on public roads, republished, as subsequently amended and supplemented, in conjunction with provisions of article 5 para. (5), article 21 para. (3) and article 34 para. (1) of Government Ordinance no. 2/2001 regarding the legal regime of contraventions, approved as amended and supplemented by Law no. 180/2002, as subsequently amended and supplemented, the Court invested with ruling on the contravention complaint against the offence report, by which it was applied the supplementary sanction of temporary suspension of the right to drive a motor vehicle, agricultural or forestry tractor or trolley, shall not have the possibility to examine the proportionality of this supplementary sanction.

### **Decision of the High Court of Cassation and Justice no. 8/2021 on the examination of the appeal in the interest of the law submitted by the Management Board of Constanta Court of Appeals was published in the Official Gazette, Part I no. 627 dated June 25, 2021 and it is applicable from the same date.**

The High Court granted the referral submitted by the Management Board of Constanta Court of Appeals, relating to the settlement of the appeal in the interest of the law and, consequently, held that in the interpretation and application of the provisions of article 135 and article 136 of Civil procedure code, in conjunction with provisions of article 54 of Law no. 304/2004 on the judicial organization, republished, as amended and supplemented, the competent jurisdiction panel invested with ruling the jurisdictional conflict in appeal or in second appeal, shall be consisted in accordance with the law applicable for the procedural status of the case in which the conflict appeared, except the conflicts referred by the law as being in the jurisdiction of the High Court of Cassation and Justice, which shall be settled in panels consisting of three judges according to article 31 para. (2) of Law no. 304/2004, or in panels consisting of 5 judges, in the case referred to in article 136 para. (3) of Civil procedure code.

### **Decision of the High Court of Cassation and Justice no. 21/2021 on the examination of the referral submitted by Iasi Court of Appeals – Contentious Administrative and Fiscal Matters Section in order to issue a preliminary ruling was published in the Official Gazette Part I no. 572 dated June 4, 2021 and it is applicable from the same date.**

The High Court granted the referral submitted by Iasi Court of Appeals – Contentious Administrative and Fiscal Matters Section in order to issue a preliminary ruling and consequently, determined that, in the interpretation and application of the provisions of article 24 para. (4) of the Law of Administrative Litigation no. 554/2004, as subsequently amended and supplemented by the Law no. 138/2014, after the issuance of the decision of the enforcement court on the creditor's application consisting in determining the amount due as penalties or, in absence of such application, after the expiry of the enforcement's statute of limitation term, it is no longer admissible for the creditor to submit, grounded on these special provisions, an application for establishing the compensation damages for in-kind non-performance of the compliance obligation, which involves a personal fact of the debtor.

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

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