



Legal Changes of September 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
- Public Procurement

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

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

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

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

[IFLR 1000, 2021 edition](#) recommends Voicu & Filipescu for our lawyer's activity in three practice areas: M&A, Banking and Finance and Project Development. Also, Mr. Dumitru Rusu – Partner, head of the Banking and Finance practice, was selected as a *Highly Regarded Lawyer* for the practice areas of Capital Markets and Banking.





data protection - legal changes published in September 2021

I. European Union

1 REGULATIONS

1.1 EDPB establishes cookie banner taskforce

The EDPB decided during its latest plenary to set up a taskforce to coordinate the response to complaints concerning cookie banners filed with several EEA SAs by NOYB.

This taskforce was established in accordance with Art. 70 (1) (u) GDPR and aims to promote cooperation, information sharing and best practices between the SAs.

In particular, the taskforce will:

- exchange views on legal analysis and possible infringements;
- provide support to activities on the national level;
- streamline communication.

1.2 Starting September 27, 2021, the new Standard Contractual Clauses, available for the transfer of personal data to third countries under the GDPR, have entered into force

Following the judgment of July 16, 2020 in the Data Protection Commissioner v. Facebook Ireland Limited and Maximilian Schrems, C-311/18 (known as 'Schrems II'), the Court of Justice of the European Union (CJEU) declared the Privacy Shield between the European Union and the United States of America invalid, considering the level of protection of personal data transferred from the EU to the United States to be insufficiently adequate.

The old Standard Contractual Clauses (SCC), adopted in 2004 (controller to controller relationship) and 2010 (controller to processor), will, in principle, lose their validity starting with September 27, 2021. According to the transitional provisions established by the Decision of the European Commission (the so-called "sunset clauses") by which the new SCC model was adopted:

- Companies that conclude new contracts after September 27, 2021, will use the new SCC;
- The companies having established SCC through the previous contracts will be able to use the old SCC for another 15 months after the date of entry into force of the new clauses, respectively until December 27, 2022, if there are no new processing operations within these contracts.

The new SCC contain a more modern and modular approach (in line with the GDPR provisions) of the obligations to protect personal data when transferred to third countries, compared to the previous version. More onerous obligations for data importers are established (e.g. regarding transparency and the right of access to data of the data subject). Moreover, SCC are a form of



"appropriate safeguards" that can be used when there is no adequacy decision in the country of data import under Article 45 of the GDPR.

Following the decision of 04.06.2021 of the European Commission, even if the model clauses remain, in principle, a valid mechanism for the export of data outside the EU, in order to be able to rely on them, the exporters and importers of the data will have the obligation to carry out a serious analysis to demonstrate that the receiving country guarantees the same level of protection as the EU and to take additional protection measures/ guarantees, if there is no equivalent protection.

Binding Corporate Rules (BCRs) are affected in the same way by the Schrems II ruling as the Model Clauses, as even in the case of this transfer tool, U.S. laws take precedence.

More information about SCC is available at: <https://www.vf.ro/hotararea-schrems-ii-cum-mai-transferam-datele-personale-catre-tari-terte-cateva-recomandari-practice/>

1.3 Plenary session of the European Data Protection Board

At the plenary of the European Data Protection Board, held online on September 24, 2021, the Opinion no. 32/2021 on the draft regarding the European Commission Decision on the recognition, in accordance with Regulation (EU) 2016/679, of an adequate level of protection of personal data in South Korea came into force. More information is available at: https://edpb.europa.eu/news/news/2021/edpb-adopts-opinion-draft-south-korea-adequacy-decision_ro

2 EUROPEAN UNION – SANCTIONS GRANTED IN THE EU.

2.1 The Norwegian Data Protection Authority ("Datatilsynet") imposed a fine of €496,000 for alleged breaches of the GDPR

The Norwegian Data Protection Authority ("Datatilsynet") imposed, on 28 September 2021, a fine of NOK 5 million (approximately EUR 496,000) on Ferde AS for the illegal transfer of drivers' personal data to a processor in China.

Datatilsynet found that Ferde AS violated, for a period of between one and two years, a series of basic obligations that the company has under the General Data Protection Regulation, namely Art. 5 (1) f), Art. 5 (2), Art. 28 (3), Art. 32 (2) and Art. 44 GDPR.

In addition, Datatilsynet pointed out that, among other things, the company did not have a valid basis for the transfer of personal data to China and that a large number of people were affected.

Datatilsynet stated that they will maintain the decision to impose the fine in question after sending the company a notice to impose the fine in the amount indicated above, earlier this year.

2.2 Hamburg's Commissioner for Data Protection and Freedom of Information (HmbBfDI) imposed a GDPR fine of €900,000 to Vattenfall Europe Sales GmbH



On September 24, 2021, the Hamburg Commissioner for Data Protection and Freedom of Information (HmbBfDI) imposed a GDPR fine of EUR 900,000 on Vattenfall Europe Sales GmbH.

The fine was imposed due to a breach of GDPR's transparency obligations under Articles 12 and 13.

HmbBfDI took into account both the rights to protect customer data and the economic interests of the company when defining the final amount of the fine.

HmbBfDI stated that Vattenfall demonstrated cooperation in the process and immediately ceased comparing non-transparent data, which contributed to a significant reduction in the fine.

2.3 The Danish Data Protection Authority fines the Danish Cancer Association with an amount of €107,000

The Danish Data Protection Authority imposed a fine of EUR 107,000 on the Danish Cancer Association for breaching Art. 32 GDPR. The association did not comply with the GDPR requirements for appropriate security measures. At least 1,448 citizens' information - including sensitive personal health information - has been compromised.

However, the Danish Data Protection Authority is aware that the Danish Cancer Association is an organization where the majority of the association's revenue comes from donations and private funds. In calculating and evaluating the amount of the fine, the Danish Data Protection Agency took, as a starting point only the income of the Danish Cancer Society from recycling, events, sales of goods and other products, which corresponds to approximately 10% of the total income of the Association.



employment - legal changes published in September 2021

Government Decision no. 932/2021 on the extension of the state of alert on the territory of Romania starting with September 10, 2021, as well as on the establishment of the measures that apply during it to prevent and combat the effects of the COVID-19 pandemic was published in the Official Gazette of Romania, Part I, no. 866 of September 9, 2021, in force from the same date.

The Decision establishes that, starting with September 10, 2021, the state of alert is extended by another 30 days throughout the country.

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

Also, for all public or private institutions and economic operators, the obligation to order the organization of work at home or in teleworking regime is maintained, where the specificity of the activity allows, under the conditions of art. 108-110 of the Labour Code, as well as those established by Law no. 81/2018 on the regulation of the teleworking activity.

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

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

It should also be mentioned that the Decision was successively amended by: the Government Decision no. 990/2021 (published in the Official Gazette of Romania, Part I, no. 895 of September 17, 2021, in force from the same date), the Government Decision no. 1015/2021 (published in the Official Gazette of Romania, Part I, no. 913 of September 23, 2021, in force from the same date) and by the Government Decision no. 1050/2021 (published in the Official Gazette of Romania, Part I, no. 943 of October 2, 2021, in force from the same date). Through these normative acts, new changes were introduced regarding the traffic restrictions depending on the infection rate in the localities, but also regarding the organization of events (shows, concerts, public and private festivals or other cultural events, processions and/ or religious pilgrimages, weddings, baptisms, festive meals, etc., conferences, public gatherings, rallies and demonstrations), sports competitions, the activity of economic operators carrying out activities of preparation,



marketing and consumption of food and/ or alcoholic and non-alcoholic beverages (restaurants and cafeterias), activity in bars and clubs, the activity with the public of the licensed economic operators in the field of gambling.

It was also established the obligation of the public institutions and authorities, economic operators and professionals to organize the activity so as to ensure, upon entry into the headquarters, the epidemiological triage and mandatory disinfection of hands, both for their own staff and for visitors.

Government Emergency Ordinance no. 101/2021 for the amendment of art. 5 point IV4 of Law no. 76/2002 on the unemployment insurance system and employment stimulation, as well as for amending and supplementing the Law no. 416/2001 regarding the guaranteed minimum income was published in the Official Gazette of Romania, Part I, no. 890 of September 16, 2021, in force from the same date.

The Ordinance amended one of the conditions regarding the classification of a person in the category of “*young NEET*”, namely it is defined as a person aged between 16 years and up to the age of 30, who does not have a job, does not follow a form of education and does not participate in vocational training activities (in the previous regulation, it was provided that it is a person aged between 16 and up to the age of 25).

The Ordinance also amends the Law no. 416/2001 regarding the guaranteed minimum income, some of the amendments being the following:

- it is established that, in the event that the persons eligible for social assistance are employed under an individual employment contract or on the basis of an employment relationship, for a period of at least 24 months, the granting of social assistance is extended for a period 6 months, in the amount received prior to the employment;
- it is stipulated that the eligible persons for receiving social assistance are required to report to the territorial employment agency every 6 months or whenever requested by them;
- it is foreseen that the town halls will develop computer systems for transmitting the applications regarding the granting of social aids, so that the applications and proving documents can be submitted and registered electronically, until the end of 2026.

Government Emergency Ordinance no. 111/2021 for establishing social protection measures for the employees and other professional categories in the context of prohibition, suspension or limitation of economic activities, caused by the epidemiological situation generated by the spread of SARS-CoV-2 coronavirus was published in the Official Gazette of Romania, Part I, no. 945 of October 4, 2021, in force from the same date.

The Ordinance establishes that, starting with the date of its entry into force and until December 31, 2021, for the period of temporary suspension of the individual employment contract, at the initiative of the employer, according to art. 52 para. (1) letter c) of the Labour Code (technical unemployment), as a result of the effects produced by the SARS-CoV-2 coronavirus, the allowances that the employees receive are set at 75% of the basic salary corresponding to the job occupied and are supported from the unemployment insurance budget, but not more than 75% of the average gross salary provided by the Law on the state social insurance budget for 2021 no. 16/2021. This allowance is calculated for the number of days in which the activity was suspended, but not later than December 31, 2021 and is subject to



taxation and payment of mandatory social contributions, according to the provisions of the Fiscal Code (with the exception of the insurance contribution for work, which is not due).

These provisions are also applicable to: **(i)** the employers' employees during the period of temporary interruption of activity, in whole or in part, in the context of increasing the incidence of SARS-CoV-2 coronavirus and measures to reduce the impact of the risk type provided by the Government decisions for the extension of the state of alert in Romania, as well as **(ii)** the employers' employees whose activity was suspended as a result of the epidemiological investigation carried out by the county public health directorates, respectively of the Bucharest municipality, except for the employees on medical leave and who receive the related social insurance allowance.

It is also provided that, where the employer's budget for the payment of personnel costs allows, the above allowance may be supplemented by the employer.

In order to grant the necessary amounts for payment, the employers must submit, via e-mail, to the employment agencies within which they have their registered office an application signed and dated by the legal representative, together with a statement on their own responsibility and the list of persons to benefit from this allowance, assumed by the employer's legal representative, according to the templates to be approved through order of the Minister of Labour. The payment from the unemployment insurance budget of the allowances is made within maximum 15 days from the submission of the mentioned documents, and the payment of the allowance has to be made to the employee within maximum 3 working days upon receipt by the employer of such amounts.

The employees of the following employers shall not receive this allowance: (a) public institutions and authorities; (b) employers who are in bankruptcy, dissolution, liquidation or have their activities suspended or whose restrictions are imposed for reasons other than those caused by the spread of the SARS-CoV-2 coronavirus.

Government Emergency Ordinance no. 110/2021 regarding the granting of paid days off to the parents and other categories of persons in the context of the spread of the SARS-CoV-2 coronavirus was published in the Official Gazette of Romania, Part I, no. 945 of October 4, 2021, in force from the same date.

According to the Ordinance, the days off are granted to one of the parents for the supervision of children up to and including 12 years of age, as well as to parents who have dependent children or adults with disabilities in a form of education, respectively enrolled in a unit of pre-university education, including pre-school early education (hereinafter referred to as educational units). This measure applies during the state of alert and after its termination, but not later than the end of the 2021-2022 school year, without including the holidays, in the situation of limiting or suspending the didactic activities with physical presence of the children in the educational units and in the pre-school early education units, where they are enrolled.

For the purposes of the Ordinance, limiting or suspending the teaching activities that involve the physical presence of children in schools means reducing the frequency of children's participation in schools and the use of technology and the internet or other alternative ways of education.

The parents who meet the conditions provided by the Ordinance have the right to paid days off for the entire period in which it is decided to limit or suspend the teaching activities that involve the physical presence of children in schools. The paid days off are granted at the request of the parent submitted to his/ her employer. The days off are



granted from the date of submission of the application, but not earlier than the date on which it is decided to limit or suspend the teaching activities.

The parent's application must be accompanied by a statement on the other parent's own responsibility (showing that he or she did not apply for obtaining days off at his or her place of work, under the Ordinance) and a copy of the certificate (s) of birth of the child/ children or the document certifying the quality of parent.

The allowance for each day off is paid from the chapter on staff costs in the employer's income and expenditure budget and is in the amount of 75% of the basic salary corresponding to a working day, but not more than the daily correspondent of 75% of the average gross earnings used to substantiate the state social insurance budget.

For settlement of the amounts for the payment of the allowance, the employer submits an application to the employment agencies in whose territorial area it carries out its activity, accompanied by supporting documents regarding the fulfilment of the conditions for the settlement of the allowance.

It is also established that the employer is obliged to grant days off in case the employee requests this right based on the provisions of the Ordinance. Failure to comply with this obligation represents a contravention and is sanctioned with a fine of Lei 1,000 – Lei 2,000 for each person for whom the employer refuses to grant days off, without exceeding the cumulative value of Lei 20,000.

Government Decision no. 1071/2021 for establishing the minimum gross basic salary per country guaranteed in payment was published in the Official Gazette of Romania, Part I, no. 950 of October 5, 2021, in force from the same date.

The Decision stipulates that, starting with January 1, 2022, the minimum gross basic salary per country guaranteed in payment is established in cash, without including bonuses and other additions, at the amount of Lei 2,550 per month, for a normal working schedule on average of 167,333 hours per month, representing Lei 15,239/ hour.

Government Emergency Ordinance no. 117/2021 for the amendment and supplementation of Law no. 53/2003 - The Labour Code was published in the Official Gazette of Romania, Part I, no. 951 of October 5, 2021, in force from the same date.

The Ordinance made the following amendments to the Labour Code:

- the notion of **under-declared work** was introduced, which represents the granting of a net salary higher than the one constituted and highlighted in the payroll statements and in the monthly declaration on the obligations to pay social contributions, income tax and nominal records of the insured persons, sent to the tax authorities;
- **the term in which the overtime is compensated by paid free hours was extended:** in the next 90 calendar days after its performance (the previous regulation provided for 60 days);
- the amount of the fine with which the deed of receiving at work one or more employees in a manner that exceeds the duration of the working time established in the individual part-time employment contracts has been increased: from Lei 10,000 to Lei 15,000 for each such person identified, without exceeding the cumulative value of Lei 200,000;



- a new contravention was introduced, namely the granting of a net salary higher than the one highlighted in the payroll statements and in the monthly declaration on the obligations to pay social contributions, income tax and nominal records of the insured persons, sent to the tax authorities, which is sanctioned with a fine of Lei 8,000 – Lei 10,000 for each employee identified in this situation, without exceeding the cumulative value of Lei 100,000;
- another contravention introduced is represented by the violation by the employer of the obligation provided in art. 166 para. (1) of the Labour Code (which establishes that the salary is paid in cash at least once a month) more than one month from the date of payment of the salary, established in the individual employment contract, in the collective labour contract applicable or in the internal regulations; this deed is sanctioned with a fine of Lei 5,000 lei – Lei 10,000 lei for each person who was not paid the salary, except for the situation in which the employer is under the incidence of Law no. 85/2014 on insolvency prevention and insolvency proceedings.

Order of the Minister of Finance no. 1,244/901/2021 regarding the establishment of the value of the indexed monthly amount that is granted in the form of nursery vouchers for the second semester of 2021 was published in the Official Gazette of Romania, Part I, no. 956 of October 6, 2021, in force from the same date.

The Order stipulates that, for the second semester of 2021, starting with October 2021, the value of the monthly amount granted in the form of nursery vouchers, established according to the provisions of art. 33 of the Methodological Norms for the application of Law no. 165/2018 regarding the granting of value vouchers, is of Lei 490. This value also applies for the first 2 months of the first semester of 2022, respectively February 2022 and March 2022.

Order of the Minister of Finance no. 1,245/902/2021 for establishing the indexed nominal value of a meal ticket for the second semester of 2021 was published in the Official Gazette of Romania, Part I, no. 956 of October 6, 2021, in force from the same date.

By Order it was established that, for the second semester of 2021, starting with October 2021, the nominal value of a meal ticket, established according to the provisions of art. 33 of the Methodological Norms for the application of Law no. 165/2018 regarding the granting of value vouchers, cannot exceed the amount of Lei 20.09. This value also applies for the first two months of the first semester of 2022, respectively February 2022 and March 2022.

Government Decision no. 932/2021 on the extension of the state of alert on the territory of Romania starting with October 10, 2021, as well as on the establishment of the measures that apply during it to prevent and combat the effects of the COVID-19 pandemic was published in the Official Gazette of Romania, Part I, no. 962 of October 7, 2021, in force from the same date.

The Decision establishes that, starting with October 10, 2021, the state of alert is extended by another 30 days throughout the country.

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



Also, for all public or private institutions and economic operators, the obligation to order the organization of work at home or in teleworking regime is maintained, where the specificity of the activity allows, under the conditions of art. 108-110 of the Labour Code, as well as those established by Law no. 81/2018 on the regulation of the teleworking activity.

If the employee cannot carry out the activity by teleworking or work from home and in order to avoid crowding of public transport, employers in the private system, central and local public authorities and institutions, having a number of more than 50 employees, have the obligation to organize the work schedule so that the staff is divided into groups that start, respectively finish the activity at a difference of at least one hour.

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

Also, is maintained the obligation of the public institutions and authorities, economic operators and professionals to organize the activity so as to ensure, upon entry into the headquarters, the epidemiological triage and mandatory disinfection of hands, both for their own staff and for visitors.

Order of the Minister of Labour and Social Protection no. 920/2021 for the approval of the application forms and the statement on their responsibility provided in art. 5 para. (3) of the Government Emergency Ordinance no. 110/2021 on granting paid days off to the parents and other categories of persons in the context of the spread of the SARS-CoV-2 coronavirus was published in the Official Gazette of Romania, Part I, no. 964 of October 8, 2021, in force from the same date.

The Order approved the template of the application and the statement on their own responsibility that must be submitted by the parents in order to benefit from paid days off for the entire period in which it is decided to limit or suspend the teaching activities that involve the physical presence of children in schools (for the period of state of alert and after its termination, but not later than the completion of the courses of the school year 2021-2022, excluding the holidays).

Order of the Minister of Labour and Social Protection no. 847/2021 on the approval of the Procedure for the authorization of protected units was published in the Official Gazette of Romania, Part I, no. 970 of October 11, 2021, in force from the same date.

In accordance with Law no. 448/2006 on the protection and promotion of the rights of persons with disabilities, the authorized protected unit represents the public or private entity, with its own management, within which at least 3 persons with disabilities are employed, representing at least 30% of the total number of employees, and their cumulative working time represents at least 50% of the total working time of all employees, as well as any form of organization, according to the law, chosen for carrying out an economic activity by a natural person holding a certificate of disability.



The Order details the modality of authorization of the protected units, the authorization to operate as a protected unit being issued by the National Authority for the Rights of Persons with Disabilities, Children and Adoptions.



public procurement - legal changes published in September 2021

Order of the National Agency for Public Procurement no. 1,170 / 2021 on the approval of the standard forms of the interim evaluation minutes related to the procedures for awarding public procurement contracts/ framework agreements, sectoral contracts/ framework agreements and works concession and service concession contracts was published in the Monitor Official of Romania, Part I, no. 845 of September 6, 2021, entering into force on the same date.

The Order approved the standard forms of the interim evaluation minutes, the form of the interim report of the stage on the selection of candidates, as well as the form of the procedure report, related to the procedures for awarding public/ sectoral procurement contracts/ framework agreements and works concession contracts. and concession of services that the contracting authorities/ entities use at the end of the phases of the tender/ application evaluation process.

These forms apply only to the award procedures whose deadline set for the submission of tenders/ applications is set after the date of entry into force of the Order.

It is also established that no document issued by other bodies/ authorities, except the National Public Procurement Agency, which requires the contracting authorities / entities to comply with other forms / rules regarding the procedures for awarding public/ sectoral procurement contracts, public works concession contracts and service concession contracts, does not produce legal effects.

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

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