



Legal Changes of March 2022

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
- Dispute resolution
- Employment
- Public Procurement

VF Legal alerts

Law no. 81/2022 on unfair trade practices between companies within the agricultural and food supply chain. [Read here.](#)

Amendments to the public procurement legislation, GEO no. 26/2022, for amending and supplementing certain normative acts in the field of public investment [Read here.](#)

[Legal 500, EMEA 2022 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.

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

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





data protection - legislative changes published in March 2022

I. ROMANIA

1 SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY

1.1 BRIZA LAND SRL was sanctioned for violating the provision of Article 15 of the GDPR with a fine amounting to LEI 9,892.60 (the equivalent of EUR 2,000)

Following the investigation, the Data Protection Authority found that the controller failed to provide the data subject with all the information on the processing of his/her personal data, leading to a breach of the provisions of Article 15 of the GDPR.

As a corrective measure, the controller was required to provide to the data subject, within 5 working days, all information on the processing of his/her personal data, including the personal data processed, the source and recipients of the data, in compliance with the provisions of Article 15 of the GDPR.

The investigation was initiated following the complaint filed by the data subject, who declared to be displeased with the response received from the controller to his/her request when exercising the right of access to the personal data processed.

1.2 KAUFLAND ROMANIA SCS was sanctioned for violating the provision of Article 15 para. (3) of the GDPR with a fine amounting to LEI 9,889.40 (the equivalent of EUR 2,000)

Following the investigation, the Data Protection Authority found that the controller failed to provide the data subject with a copy of all video surveillance system recordings concerning him/her, leading to a breach of the provisions of Article 15 para. (3) of the GDPR.

As a corrective measure, the controller was required to provide the data subject with all the images requested, insofar as they are available, with the blurring of images leading to the identification of other persons, in compliance with Article 15 of the GDPR.

The investigation was initiated following the complaint filed by the data subject, who reported that the controller had failed to comply with the request to exercise the right of access to the personal data processed.

1.3 CONDOR SA was sanctioned for violating the provisions of Article 32 para. (1), (2) și (4) of the GDPR with a fine amounting to LEI 9,897.40 (the equivalent of EUR 2,000)

Following the investigation, the Data Protection Authority found that the controller failed to implement appropriate technical and organisational measures and failed to instruct the persons processing data under its authority to ensure the confidentiality of personal data.

This led to the disclosure of personal data of employees and former employees of the controller, through unauthorised access to unsecured documents.



As corrective measures, the controller was required to implement appropriate technical and organisational measures and to contact the person who had unauthorised access to that personal data in order to delete or destroy it, as appropriate.

2 REGULATIONS

2.1 EDPB adopts first version of Guidelines no. 2/2022 on the application of Article 60 of the GDPR

At the Plenary of the European Data Protection Board held on March 14, 2022, the EDPB adopts the first version of Guidelines no. 2/2022 on the application of Article 60 of the GDPR.

The purpose of the Guide is to analyse the cooperation between supervisory authorities with each other, the EDPB and other third parties on the cross-border processing of personal data and provide practical guidance on the concrete application of the provisions of Article 60 of the GDPR.

The Guidelines is available at the following link: https://edpb.europa.eu/system/files/2022-03/guidelines_202202_on_the_application_of_article_60_gdpr_en.pdf.

2.2 EDPB adopts first version of Guidelines no. 3/2022 on dark patterns in social media platform interfaces: How to recognise and avoid them

At the Plenary of the European Data Protection Board held on March 14, 2022, the EDPB adopts the first version of Guidelines no. 3/2022 on dark patterns on social media platforms: how to recognise and avoid them.

The purpose of the Guide is to provide practical recommendations to designers and users of social media platforms for assessing and avoiding virtual practices that infringe GDPR requirements.

The Guide draws attention to these dark patterns that lead social media users to unintentionally and unwittingly make potentially dangerous decisions regarding the collection and processing of personal data.

The Guide provides a list of examples of such dark patterns, together with the related warnings and recommendations.

The Guidelines is available at the following link: https://edpb.europa.eu/our-work-tools/documents/public-consultations/2022/guidelines-32022-dark-patterns-social-media_en.

II. EUROPEAN UNION

1 SANCTIONS APPLIED IN THE EU

1.1 The Irish DPA ("DPC") imposed to Meta Platforms Ireland Limited a fine of EUR 17 million for breaches of the GDPR provisions

Following the investigation, DPC found that, in the light of cross-border processing of personal data, the controller failed to implement appropriate technical and organizational measures to protect the



personal data of EU users, leading to a breach of Article 5 para. (2) and Article 24 para. (1) of the GDPR. Following the investigation, DPC found that, in the light of cross-border processing of personal data, the controller failed to implement appropriate technical and organizational measures to protect the personal data of EU users, leading to a breach of Article 5 para. (2) and Article 24 para. (1) of the GDPR.

Due to the cross-border nature of the processing, the DPC Decision was subject to the cooperation process under Article 60 of the GDPR, between all the Data Protection Supervisory Authorities of the Member States concerned.

Despite the objections received from the German and Polish Supervisory Authorities, this marks the first time that issues concerned were settled under Article 60 of the GDPR and not by means of the courts, under Article 65 of the GDPR, the DPC Decision thus representing the collective opinion of both the DPC and EU Data Protection Supervisory Authorities.

1.2 The Bremen Data Protection Authority ("BC") imposed to BREBAU GmbH a fine of EUR 1,9 million for breaches of the GDPR provisions

Following the investigation, BC found that the controller had unlawfully processed the personal data of over 9500 potential tenants, including unnecessary information for the conclusion of lease agreements, such as hair style, body odour and personal appearance, in violation to the data minimisation principle.

In addition, more than half of all personal data collected and processed fall within the special categories of personal data, such as religious affiliation, sexual orientation and health status, the processing of which is permitted only in certain cases expressly provided for by Article 9 of the GDPR. The controller's actions were not justified by the latter exceptional cases.

It was also found that the controller deliberately thwarted requests from data subjects on the transparency of the process of collecting and processing personal data. Despite the seriousness of the facts, the amount of the fine was significantly reduced, given the cooperation of the controller in the investigation and the mitigation of damages.

1.3 The Swedish Data Protection Authority ("IMY") imposed to Klarna Bank AB a fine of EUR 720,000 for breaches of the GDPR provisions

Following an audit, IMY found that the controller failed to provide information on the purpose and legal basis for which personal data were processed in one of the services provided.

In addition, the controller provided incomplete and misleading information about the recipients of different categories of personal data when they were shared with credit institutions in Sweden and abroad.

The IMY also found that the controller provided insufficient information on the rights of data subjects, namely the right to be forgotten, the right to data portability and the right to object.



dispute resolution - legal changes published in March 2022

Decision of the High Court of Cassation and Justice no. 1/2022 regarding the issuance of an appeal in the interest of the law regarding the request that forms the object of Case File no. 2.905/1/2021, formulated by the Management Board of the Suceava Court of Appeals was published in the Official Gazette, Part I no. 284 of March 24, 2022 and it is applicable from the same date. The High Court admitted the request made by the Management Board of the Suceava Court of Appeals in order to issue an appeal in the interest of the law and, consequently, established that in the unitary interpretation and application of the provisions of art. 603 para. (3) of Civil procedure code, the phrase "after the examination (...) that the conditions have been complied with" concerns the examination of the formal conditions of the arbitral decision and not the ones concerning the merits of the case.

Article 603 para. (3) of the Civil procedure code provides that: *Where the arbitral decision refers to a dispute concerning the transfer of ownership and/or the establishment of another right in rem over the immovable asset, the arbitral decision shall be submitted to the court or to the notary public in order to obtain a judgment or a notarial deed, as applicable. After the examination by the court or the notary public that the conditions have been complied with and after the fulfilment of the procedures provided for by law and payment by the parties of the tax on the transfer of ownership, the property shall be registered in the land register and the transfer of ownership and/or the establishment of another right in rem over the immovable asset shall take place.*

In support of the ruling it was argued that the arbitral decision has the force of *res judicata* and that an examination of the dispute's merits ruled through arbitration proceedings, it would question the very rationale of the procedure regulated by art. 603 of the Civil procedure code. Compared with non-contentious proceedings, the arbitral regulation shall be compatible only with a formal examination of the arbitral decision by the court.

Decision of the High Court of Cassation and Justice no. 2/2022 regarding the issuance of an appeal in the interest of the law regarding the request that forms the object of Case File no. 2.943/1/2021, formulated by the Management Board of the Cluj Court of Appeals was published in the Official Gazette, Part I no. 256 of March 16, 2022 and it is applicable from the same date.

The High Court admitted the request made by the Management Board of the Cluj Court of Appeals in order to issue an appeal in the interest of the law and, consequently, established that in the unitary interpretation and application of the provisions of art. 416 para. (1) of Civil procedure code, in case of optional suspension, order by court in accordance with art. 413 para. (1) pt. 1 of Civil procedure code, until the judgement of the Court of Justice of the European Union of a preliminary ruling, as a result of a request from a national court or courts of another member state of the European Union, the extinction of the statement of claim shall not occur, or, if appropriate, of the legal remedy, in the case where the interested party shall not request to redocket the case within 6 months of the date of delivery of the preliminary ruling by the Court of Justice of the European Union, the court being required to order, ex officio, the resumption of the trial.



Decision of the High Court of Cassation and Justice no. 5/2022 regarding the issuance of an appeal in the interest of the law regarding the request that forms the object of Case File no. 3.065/1/2021, formulated by the Ombudsman was published in the Official Gazette, Part I no. 279 of March 23, 2022 and it is applicable from the same date. The High Court admitted the request made by the Ombudsman in order to issue an appeal in the interest of the law and, consequently, established that in the unitary interpretation and application of the provisions of art. 684 and 687 of Law no. 95/2006 and art. 94 pt. 1 letter k) and art. 95 pt. 1 of Civil Procedure Code, the material jurisdiction for the adjudication of the dispute whose object is represented by the obligation, on tort liability ground, of the defendants to pay the material damages and/or non-material damages for malpractice, in the situation where the procedure governed by the provisions of article 679-685 of Law no. 95/2006 has not been followed, lies with the district court.



employment - legal changes published in March 2022

Order of the Minister of Labour and Social Protection no. 301/2022 on the approval of the Procedure for the employment of Ukrainian citizens arriving from the armed conflict zone of Ukraine was published in the Official Gazette of Romania, Part I, no. 240 of 10 March 2022, in force from the same date.

The Order has approved the Procedure for the employment of Ukrainian citizens arriving from the armed conflict zone of Ukraine, provided in the annex which forms an integral part, with the following points being noted:

- Ukrainian citizens arriving from the armed conflict zone of Ukraine and seeking to enter the labor market, but who do not have documents proving their professional qualifications or work experience, **may apply to** local agencies for employment, respectively at the Bucharest Municipal employment agency for registration. The employment of Ukrainian citizens shall be performed based on an affidavit, attesting the fulfillment of the conditions for professional qualification and experience for the activity to be assigned, respectively, the lack of criminal record which shall be incompatible with the activity to be performed on the Romanian territory;
- registration at the local agencies for employment, respectively at the Bucharest Municipal employment agency is performed based **on a form of identity, passport or other document proving identity**. Following the registration, the persons shall have free access to the services and measures provided for by Law no. 76/2002 on the unemployment insurance system and employment stimulation;
- completion of the affidavit, available in both Romanian and Ukrainian, shall be performed with the support and assistance of the career guidance counsellor;
- after having completed the activities of the professional information and counselling services, the person is mediated in work on a job vacancy corresponding to his/her declared qualifications and experience and receives the assignment order to report to the employer;
- the interview or work test shall be held at the employer for whom the person has been assigned.

Government Decision no. 367/2022 on the establishment of certain conditions for ensuring temporary protection, as well as for amending and supplementing certain regulations in the field of foreigners was published in the Official Gazette of Romania, Part I, no. 268 of March 18, 2022, in force from the same date.

The Decision transposes Decision (EU) no. 382/2022 establishing the existence of a mass influx of displaced persons from Ukraine and introducing temporary protection for these citizens.

In relation to this, foreigners and stateless persons who were legally residing in Ukraine and who cannot return to their country of origin in safe and stable conditions, both those who came to Romania after the outbreak of



the armed conflict and Ukrainian citizens who were on the territory of Romania before the event shall benefit from temporary protection on Romanian territory.

At the same time, stateless persons and third-country nationals other than Ukrainians who were granted national protection shall continue to benefit from this protection.

The General Inspectorate for Immigration shall issue a residence permit on the territory of Romania, assigning a personal identification number, similar to the one assigned to asylum seekers.

The expenses incurred in granting temporary protection following the application of the provisions of this Decision shall be covered by the state budget and by non-fundable external funds.

Law no. 73/2022 for amending and supplementing the Government Emergency Ordinance no. 158/2005 on leave and social health insurance allowances was published in the Official Gazette of Romania, Part I, no. 315 of March 31, 2022, entering into force on April 03, 2022.

The law provides that, in the case of a child for whom quarantine or isolation measure has been ordered under the conditions of Law no. 136/2020, republished, as subsequently amended and supplemented, namely for infectious and contagious diseases, the insured persons for whom quarantine or isolation is not ordered shall be entitled to receive leave and compensation for the supervision and care of the child up to the age of 18.

According to the law, the allowance shall be granted on the basis of the sick leave certificate issued by the attending physician, or where applicable, by the family doctor who has taken care of and monitored these persons, for a period of time determined by the evolution of the disease and the duration of monitoring.

The duration of the allowance takes in consideration the number of calendar days corresponding to the duration of the sick leave as determined by the attending physician or, where applicable, by the family doctor.



public procurement - legal changes published in March 2022

Government Emergency Ordinance no. 19/2022 on certain measures relating to performance bonds for public procurement contracts and sectoral contracts was published in the Official Gazette, Part I no. 216 of March 4, 2022, in force from the same date.

In the light of the market background generated by the withdrawal of the operating permit followed by the opening of bankruptcy proceedings against an insurance company that issued a significant number of insurance policies related to public procurement/sectoral contracts, the lawmaker has enacted Emergency Ordinance no. 19/2022 providing measures in relation with the performance bonds already issued, in the event of withdrawal of the insurance company's operating permit.

Hence, for works/services/supply contracts in progress, in the event of withdrawal of the insurance company's operating permit which issued the initial guarantee instrument, the economic operators are required, at the request of the contracting authorities/entities, to obtain a new performance bond within 90 days of the date of the decision to open bankruptcy proceedings, but no later than January 31, 2023.

The new bond may be issued through any means provided for by law, namely: bank transfer, guarantee instrument issued under the law by an insurance company or credit institution, by successive deductions from the amounts due for partial invoices, as well as by any means of issuing bonds provided for in Article 2 para. (1) letter (a) or (b) of G.E.O no. 19/2022, which shall apply only in cases where both contracting parties so agree, respectively:

- by successive deductions from the amounts due for partial invoices without being necessary to check whether this possibility was provided for in the tender documentation;
- the combination of two or more of the means of providing the performance bond provided for by law (*e.g., by bank transfer for part of the amount, successive deductions from amounts due for partial invoices for another part of the amount and by a guarantee instrument issued by an insurance company for the third part of the amount*).

Government Emergency Ordinance no. 26/2022 for amending and supplementing certain normative acts in the field of public investment was published in the Official Gazette, Part I no. 272 of March 21, 2022, in force from the same date.

GEO 26/2022 amends Law 98/2016 on public procurement, Law 99/2016 on sectoral public procurement and Law 101/2016 on remedies and appeals in the award of public procurement contracts, sectoral contracts and concession contracts for works and services, amendments that we have summarized [here](#).

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

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