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by Alex Tabacu, Senior Tax Partner Voicu & Filipescu Tax Advisers

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Legal Changes of November 2022

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- Data protection
- Dispute resolution
- Employment
- Public procurement



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Legislative changes regarding the modification of social health insurance contributions for interest income

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As we have unfortunately become accustomed to in recent years, although it is totally detrimental to the stability of the tax system and the business environment as a whole, the Fiscal code will be again amended as of January 01, 2023.

There are numerous changes covering almost all chapters of the Fiscal code, and among these, one change concerns the health insurance contribution due on interest income.

While currently health insurance contributions are only due if the accumulated income from sources other than wages, including interest income, which according to the Fiscal code is considered investment income, exceeds the level of 12 gross minimum wages (e.g. RON 30,600), from January 01, 2023 there will be several thresholds according to which these contributions will be due.

The thresholds will be 6, 12 and 24 gross national minimum wages respectively.

The working mechanism will be as follows:

- for annual incomes between 6 and 12 gross national minimum wages per country, the basis for calculating the health insurance contribution will be 6 gross national minimum wages per country (e.g. RON 18,000 *),
- for annual income between 12 and 24 gross national minimum wages per country, the basis for calculating the social health insurance contribution will be 12 gross national minimum wages per country (e.g. RON 36,000),
- for annual income exceeding 24 average gross national minimum wages, the basis for calculating the social health insurance contribution will be 24 average gross national minimum wages (e.g. RON 72,000).

Note: * basis of calculation at an estimated minimum gross wage per country for 2023 of RON 3,000.

It is important to note that these ceilings do not strictly refer to interest income but to any other income obtained by individuals from sources other than salaries.



data protection - legislative changes published in November 2022

I. ROMANIA

1 SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY (ANSPDCP)

1.1 RAIFFEISEN BANK S.A. was sanctioned for violating the provisions of Article 32 para. (4) in conjunction with Article 32 para. (1) and para. (2) and Article 25 para. (1) of the GDPR with a fine amounting to LEI 138,572.00 (the equivalent of EUR 28,000).

Following the investigation, it was found that multiple breaches of the GDPR had occurred at the controller level resulting in the disclosure and/or unauthorised access to personal data belonging to at least 169 data subjects.

Among the most serious incidents are the granting of personal loans to customers in the absence of their request, performing prescoring operations for customers or potential customers without the relevant query documentation being signed by the respective applicants and the incorrect transmission to customers of personal data belonging to other data subjects.

The investigation was initiated following the submission by the controller of 17 notifications of personal data breaches.

1.2 ING BANK NV AMSTERDAM BUCHAREST BRANCH was sanctioned for violating the provisions Article 32 para. (1) and para. (2) of the GDPR with a fine amounting to LEI 98,076.00 (the equivalent of EUR 20,000).

Following the investigation, it was found that the controller failed to implement adequate technical and organisational measures to ensure a level of security appropriate to the risk of processing personal data.

This led to the unauthorised access and disclosure of personal data of some data subjects (identification data associated with the identity document, contact data, banking data, Internet Banking module user and password), resulting in payment transactions being performed by third parties.

The investigation was initiated following a notification of a personal data breach submitted by the controller.

1.3 PRESTIGE MEDIA PHG SRL was sanctioned for violating the provisions Article 5 para. (1) point a) and para. (2) and Article 6 of the GDPR with a fine amounting to LEI 24,683.50 (the equivalent of EUR 5,000).

Following the investigation, it was found that the controller unlawfully processed personal data belonging to several data subjects.

Thus, 23 nominal decisions to terminate individual employment agreements containing personal data (name, first name, employment agreement number, disciplinary misconducts) of several individuals, including employees of another company, were published on the controller's website.

In addition to the fine, the controller was also required to remove/anonymise the information leading to the identification of the data subjects in the above decisions.



II. EUROPEAN UNION

1 RELEVANT ISSUES AT THE EUROPEAN DATA PROTECTION BOARD (EDPB) LEVEL

1.1 EDPB adpots Statement no. 03/2022 on the European Police Cooperation Code

At its Plenary Meeting on November 14, 2022, the EDPB adopted Recommendations no. 01/2022 on the Application for Approval and on the elements and principles to be found in Controller Binding Corporate Rules.

The purpose of the Recommendation is to provide a standard form on the Application for Approval of Binding Corporate Rules for Controllers ("BCR-C"), to clarify the content necessary for the BCR-C in relation to Article 47 of the GDPR and to differentiate between what should be included in the BCR-C and what should be presented to the Supervisory Authority responsible for the Binding Corporate Rules.

The document is in public consultation until January 10, 2023 and can be found at the following link: [edpb_recommendations_20221_bcr-c_referentialapplicationform_en.pdf \(europa.eu\)](https://edpb.europa.eu/edpb/recommendations/20221_bcr-c_referentialapplicationform_en.pdf)

2 SANCTIONS APPLIED IN THE EU

2.1 The Irish Data Protection Authority ("DPC") imposed to Meta Platforms Ireland Limited a fine of EUR 265 million for breaches of the GDPR.

Following the investigation, the DPC found that the controller failed to implement sufficient technical and organisational measures to ensure the security of the processing of personal data.

Thus, on a hacking site, sets of personal data obtained from the public accounts of users of the social network Facebook were identified. This data was collected during 2018-2019 and the investigation involved cooperation between all Data Protection Supervisory Authorities in the Member States.

The number of data subjects affected exceeds 500,000, most of them being from the European Union.

2.2 The French Data Protection Authority ("CNIL") imposed to ÉLECTRICITÉ DE FRANCE a fine of EUR 600,000 for breaches of the GDPR.

Following the investigation, CNIL found that the controller processed personal data without the consent of the data subjects, failed to comply with the exercise of their rights and failed to implement sufficient measures to ensure data security.

In particular, the controller sent commercial messages to customers without their prior consent and failed to follow up the exercise of the right to object. In addition, the passwords to the personal accounts of 25,000 customers were improperly stored.



2.3 The Italian Data Protection Authority ("Garante") imposed to Vodafone Italia S.p.A. a fine of EUR 500,000 for breaches of the GDPR.

Following the investigation, Garante found that the controller had unlawfully processed a customer's personal data.

Thus, following a telephone call from an employee of the Vodafone sales network, the data subject was concluded a contract for fixed telephony services without any consent to do so. In addition, the data subject was not asked for consent to receive calls for promotional purposes.



dispute resolution - legal changes published in November 2022

Decision of the High Court of Cassation and Justice no. 21/2022 regarding the issuance of an appeal in the interest of the law regarding the request that forms the object of Case File no. 1.525/1/2022, formulated by the Management Board of Galati Court of Appeal was published in the Official Gazette, Part I no. 1091 of November 11, 2022 and it is applicable from the same date.

The High Court admitted the request submitted by Galati Court of Appeal in order to issue an appeal in the interest of the law and, consequently, established that, in the interpretation and application of the provisions of art. 454 of Civil Procedure Code, the defendant cannot be exempted from paying the court costs in the event that the claim's subject matter is a dispute in the category of those not susceptible to the delay procedure or a dispute in which the ruling cannot be delivered only on the basis of the defendant's acknowledgment.



employment - legal changes published in November 2022

Emergency Government Ordinance no. 143/2022 on the amendment of Article 17 of Government Ordinance no. 25/2014 on the employment and secondment of foreigners on the territory of Romania and on the amendment and completion of certain legal acts on the regime of foreigners in Romania was published in the Official Gazette, Part 1, no. 1049 of October 28, 2022, in force from the same date.

Emergency Ordinance no. 143/2022 provides for a number of amendments to Article 17 of Government Ordinance no. 25/2014, on the conditions of employment of foreign citizen in a new job with another employer or the same employer, as follows:

- A foreigner employed on the basis of a work permit, except for seasonal workers, may be **employed on a new job, even by another employer**, during the period of validity of the single permit or EU Blue Card. The employment of a foreigner on a new job with a new employer, without a period of one year having passed since the date of registration of the individual employment agreement with the previous employer, can be performed only with the written consent of the previous employer, that must be submitted by the new employer to the General Inspectorate for Immigration, except in the cases where the individual employment agreement was terminated at the initiative of the previous employer or following the agreement of the parties or by the resignation of the foreigner in cases where the employer does not fulfil the obligations assumed in the individual employment agreement, under the conditions provided by the Labour Code;
- In the event of a **change of the job to another employer**, the employment in the new job will be made on the basis of a new work permit obtained by the new employer in compliance with all the general conditions provided for in article 4 and the special conditions provided for in article 7 and article 9 of Ordinance no. 25/2014;
- If the foreign citizen is **employed in a new job with the same employer**, the latter will be issued with a new work permit, without being necessary to fulfil the general conditions for issuing the permit, namely: **(i)** payment by the employer of the obligations to the state budget for the last quarter prior to the submission of the application; **(ii)** non-exhaustion of the annual quota by type of newly admitted workers to the labour market; **(iii)** the conditions for entry into the territory of Romania to be fulfilled by the foreign employee in accordance with the provisions of article 6 para. (1) (a), (e), (g) and (h), article 11 and article 27 para. (2) letter c) and e) of the O.U.G. no. 194/2002, respectively without the need to fulfil the special conditions for the issuance of the permit consisting in the submission by the employer of diligences for the employment of the vacant job by a Romanian citizen, by a citizen of another Member State of the European Union or of the European Economic Area, by a citizen of the Swiss Confederation or by a foreigner holding the right of long-term residence on the territory of Romania;
- For the issuance of the new work permit it is necessary to submit the criminal record of the foreigner issued by the Romanian authorities.

The Order of the Minister of Labour and Social Protection no. 1.988/1.527/2022 on the amendment and completion of the Classification of Occupations in Romania was published in the Official Gazette of Romania, Part I, no. 1144 of November 28, 2022, in force from the same date.



The Order completes the Classification of Occupations in Romania - occupation level (six characters) with the new occupations practiced in the national economy, namely: sports programme coordinator, online content creator, logistics manager responsible for orders, e-commerce manager, logistics and distribution manager, recreational policy officer, hydroelectric power plant operator, logistics platform operator, event organizer, trade registry register, hotel technician.

This Order also re-names the occupation of "*Occupational Health and Safety Management System Auditor*" with the new title "*Labour Health and Safety Management System Auditor*".

The decision of the High Court of Cassation and Justice no. 15/2022 on the decision on the appeal in the interest of the law which forms the subject-matter of case no. 1.134/1/2022 concerning the referral made by the Governing Board of the Court of Appeal of Galați was published in the Official Gazette, Part I no. 1065 of November 3, 2022 and is applicable as from the same date.

The High Court admitted the referral made by the Governing Board of the Court of Appeal of Galați for an appeal in the interest of the law and, consequently, established that, in the interpretation and unitary application of article 52 para. (2) of Law no. 53/2003 - Labour Code, republished, as subsequently amended and supplemented, with reference to Constitutional Court Decision no. 405 of June, 15 2016, published in the Official Gazette of Romania, Part I, no. 517 of July 8, 2016, in the case of an employee in respect of whom the employer has issued, pursuant to Article 52 para (2), letter b) first thesis of Law no. 53/2003 - Labour Code, a decision to suspend the individual employment agreement, following the effects of the Constitutional Court Decision no. 279 of April 23, 2015, published in the Official Gazette of Romania, Part I, no. 431 of June 17, 2015 (according to which the provisions of article 52 para. (1) letter (b), first thesis, of the Labour Code, which regulated the suspension of the individual employment contract even in cases where the employer has filed a criminal complaint against the employee for criminal offences incompatible with the position held by the latter, have ceased to have legal effect), where the legal relation governed by the provisions of the law found to be unconstitutional has not been definitively consolidated, a right of claim consisting in compensation equivalent to the remuneration due arises in the employee's patrimony, for the entire duration of the suspension, under the rules and principles of contractual civil liability.



public procurement - legal changes published in November 2022

Emergency Government Ordinance no. 136/2022 on the amendment of certain normative acts was published in the Official Gazette, Part 1, no. 975 of October 6, 2022, in force from the same date.

By G.E.O no. 136/2022 Article 154 para. (4) of Law no. 98/2016 on public procurement and Article 164 para. (4) of Law no. 99/2016 on sectoral procurement, concerning the tender guarantee and the performance bond are amended.

Hence, the new provisions limit the right of economic operators to provide a tender guarantee or, where appropriate, a performance bond, by means of letters of guarantee issued by non-banking financial institutions in Romania or in another country, **only to procedures for the acquisition of works whose estimated value is less than or equal to Lei 40,000,000, excluding VAT and to procedures for the acquisition of products or services whose estimated value is less than or equal to Lei 7,000,000, excluding VAT**, compared to the previous regulation which did not impose a material limit on the procedures for the acquisition of works, products or services, as the case may be, in cases where the guarantees were provided by letters of guarantee issued by non-banking financial institutions in Romania or another State.

The new provisions relating to the tender guarantee and to the performance bond shall apply to award procedures initiated after the date of entry into force of this Emergency Ordinance, **"initiated award procedure"** meaning any procedure for which a contract notice, a concession notice, a simplified contract notice or, as the case may be, an invitation to tender has been issued prior to the date of entry into force of G.E.O no. 136/2022.

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