



New legislative regulations for contracts on the sale of goods

by Beatrice Bealcu and Raluca Știrbu, Associates Voicu & Filipescu

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Legal Changes of December 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
- Banking & Finance
- Corporate
- Employment

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.





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General considerations

Emergency Ordinance no. 140/2021 regarding certain requirements concerning the sale of goods (“GEO no. 140/2021”) transposes the provisions of the Directive no. 2019/771 on certain requirements related to the sale of goods and repeals and replaces Law no. 449/2003 on the sale of goods and related guarantees.

GEO no. 140/2021 establishes the legal framework regarding the sale contracts concluded between the seller and the consumer, referring at the conformity of goods, the corrective measures in case of non-conformity, the modalities of implementation of the respective corrective measures, as well as the commercial guarantees.

Legislative aspects maintained from the old regulation

GEO no. 140/2021 maintains the legal term of guarantee of 2 years as of the date of delivery of the good and corrective measures in case of non-conformity (the consumer right to have the good brought into conformity by means of reparation or replacement or, by case, to be entitled to a proportional reduction of the price or to exercise the right for contract termination, as they were regulated by Law no. 449/2003), however, bringing a number of novelties that shall be detailed hereinafter.

Narrowing the notion of the producer

GEO 140/2021 narrows the definition of the producer, strictly referring to the manufacturer of the goods (in finished format), the importer of the goods in the European Union, respectively the entity that presents itself in this capacity by applying the seal, title or mark on the respective goods.

For the purpose of legislative harmonization, additional amendments should be further considered with respect to Law 240/2004 on producer liability for damages caused by defective products.

Introduction of the notion of durability guarantee

Within the context of commercial guarantees (the commercial guarantee representing the seller's undertaking, in addition to the obligations related to the legal guarantee of conformity, to replace, reimburse the price or to repair the good) GEO no. 140/2021 introduces the notion of durability guarantee.

Said durability guarantee may be granted by the manufacturer and refers to the ability of the good to maintain certain functions or performance standards through normal use. Where a manufacturer provides a guarantee of durability to the consumer, the said guarantee shall be binding, and the manufacturer shall be held directly liable to the consumer within the entire term covered by the durability guarantee for the repair or replacement of the goods

Presumption of non-conformity. The burden of proof



The term in which it is presumed that the non-conformity exists at the date of delivery of the good is increased from 6 months (as established in the old regulation) to 1 year.

Thus, if the non-conformity arises within 1 year from the date of delivery, it shall be presumed that the respective non-conformity existed at the date of delivery, unless it is incompatible with the nature of the non-conformity or the nature of the good.

Furthermore, the consumer shall not be entitled to terminate the contract to the extent that the non-conformity is minor. The burden of proof that the non-conformity is minor lies with the seller.

Costs

According to GEO no. 140/2021, the costs arising from the exercise of the corrective measures, including expenses regarding carriage or postage of the goods shall be borne by the seller, if not considered disproportionate.

Goods with digital elements

GEO no. 140/2021 shall apply also to goods that incorporate digital content or that have interconnected such content / service, sold together with the good object of the sales contract (regardless of whether the respective digital service or content is provided by a third party). As to goods with digital elements, relevant matters are to be considered in terms of conformity requirements, limitation of liability and guarantee terms.

Thus:

- the seller has the obligation to provide the consumer with the necessary updates to maintain the conformity and security of the good.
- the seller shall not be liable for the non-conformity of the good to the extent that, pursuant to informing regarding the availability of the updates, the consumer fails to install the updates or installs them incorrectly, without the observance of the respective instructions.
- the guarantee period for goods with an average term of use of 5 years is of 2 years as of the date of delivery and for goods of average term use longer than 5 years, the guarantee period is of 5 years as of the date of delivery.

Entry into force

GEO no. 140/2021 was published in the Official Gazette of Romania no. 1245 of 12/30/2021, entering into force on January 1st 2022, except for the provisions of art. 18 regarding the deeds that constitute a contravention and the related sanctions, that are to be in force within 10 days from the date of publication.



data protection - legislative changes published in December 2021

I. ROMANIA

1. SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY

1.1 ANSPDCP. The Medical Company TOMMED POLYCLINIC was sanctioned for violating the provisions of Article 5 para. (1) point a), b), and f) and para. (2) of the GDPR in conjunction with Article 9 of the GDPR with a fine in the amount of LEI 9,898.00 (the equivalent of EUR 2,000)

Following the investigation, the Data Protection Authority found that the controller had disclosed certain personal data, including health data of a data subject to another controller, without observing the legal principles and conditions for personal data processing, and without the prior information of the involved person (patient of the controller).

The corrective measure to ensure compliance with the GDPR of the subsequent personal data collection and processing operations, through the periodically training of the persons that process data under the authority of the controller and appropriate involvement of the personal data protection officer, has also been applied to the controller.

1.2 ANSPDCP. TELEKOM ROMANIA COMMUNICATIONS S.A. was sanctioned for violating the provisions of Article 5 para. (1) point d), f) and para. (2) of the GDPR with a fine in the amount of LEI 24,745.00 (equivalent of EUR 5,000), as well as for violating the provisions of Article 17 of the GDPR with a fine in the amount of LEI 4,949.00 (equivalent of EUR 1,000)

The investigation was initiated following a complaint submitted by a data subject through which he/she claimed the receipt from the controller Telekom România Communications SA, on his/her e-mail address, of some invoices and notification messages regarding the debts registered by another person, subscriber of the same controller.

The Data Protection Authority found that the controller has processed inaccurate personal data, which led to the unlawful disclosure of personal data to another person and resulted in a breach of the principles of processing personal.

At the same time, it was found that the controller did not take the necessary measures in order to handle the request for erasure submitted by the data subject.

The following corrective measures were applied to the controller:

- the implementation of appropriate and efficient measures of security, both from a technical point of view (such as: the automatic collection of some data, ensuring the security of the documents' and messages' transmission through encryption/password) and an organizational



point of view, through periodically training of the persons that process data under the authority of the controller.

- the implementation of appropriate technical and organizational measures to ensure the correct and efficient implementation of the operations in the database/bases used by the controller and processors, as well as the appropriate training of the persons that process data under their authority.

1.3 ANSPDCP. NOBIOTIC PHARMA S.R.L. was sanctioned for violating the provisions of Article 58 para. (1) of the GDPR with a fine in the amount of LEI 9,890.00 (the equivalent of EUR 2,000)

The investigation was initiated following some complaints through which a data subject complained about the controller sending him unsolicited commercial SMS messages without his consent.

As the controller did not comply with the request for information addressed by the Data Protection Authority in accordance with Article 58 of the GDPR, he was sanctioned with the above-mentioned fine.

II EUROPEAN UNION

2. REGULATIONS

2.1 EDPB adopts final version of Guide no. 1/2021 on examples regarding Data Breach Notifications

Following public consultation, at the Plenary Session of the European Data Protection Board, held on December 14, 2021 the EDPB adopted a final version of the Guidelines on examples regarding Data Breach Notifications.

The purpose of the Guide is to provide recommendations and guidance to personal data controllers, to decide how to manage security breaches and to determine which factors to take into account during risk assessment.

3. SANCTIONS APPLIED IN THE EU

3.1 The Norwegian Data Protection Authority (“Datatilsynet”) imposed to Grindr LLC a fine of EUR 6,5 million for breaches of the GDPR provisions

Following the investigation, Datatilsynet found that, through the Grindr application, an online dating platform, information about GPS location, IP address, mobile phone advertisement ID, age and gender of users, including sensitive data on their sexual orientation, had been disclosed to third parties for marketing purposes. Users also included members from the LGBT Community.

Datatilsynet concluded that the consent was the legal basis for processing applicable in this case, but that the alleged consents collected by Grindr for disclosure of personal data to its partners for



marketing purposes were not valid. Users were forced to accept the privacy policy to use the application and were not specifically asked if they wanted to consent to share their data with third parties for behavioral advertising.

3.2 The French National Commission for Informatics and Freedoms (“CNIL”) imposed to FREE MOBILE SAS a fine of EUR 300,000 for breaches of the GDPR provisions.

Following complaints from subscribers concerning difficulties encountered in exercising their rights of access and opposition on receiving advertising messages, CNIL noted that the controller has violated the following provisions of the GDPR:

- Article 12 and 15 of the GDPR, as the company had failed to respond to data subjects' requests in a timely manner;
- Article 12 and 21 of the GDPR, as the company ignored the data subjects' requests to stop sending them commercial prospecting messages;
- Article 25 of the GDPR, as the company continued to send complainants invoices for telephone numbers whose contracts had been terminated;
- Article 32 of the GDPR, as the company had sent users passwords by email, in clear text, without the passwords being temporary and the company requesting their change.

In addition to the above-mentioned fine, as a complementary sanction, CNIL has forced FREE MOBILE to publish in the press the decision imposing the fine.



banking & finance - legal changes published in December 2021

FSA Norm no. 32/2021 regarding insurance guarantees, published in the Official Gazette no. 1203 as of 20 December 2021, entering into force in 90 days from publication (March 20, 2022)

It regulates for the first time the insurance guarantees (surety bonds) issued by insurers, among others imposing stricter conditions for issuance and working of the unconditional guarantees. It does not apply for guarantees issued before entering into force and states the obligation of insurers to update their policies and procedures for underwriting insurance guarantees risks.

Law no. 319/2021 for amending and supplementing the GEO no. 99/2006 on Credit Institutions and Capital Adequacy, published in the Official Gazette no. 1247 as of December 30, 2021, entering into force on January 2, 2022

It transposes the provision of the Directive 2019/878/EU of the European Parliament and of the Council as of May 20, 2019, refining and detailing aspects generically known as the Basel III principles, especially the rules of administration and governance and the right of the National Bank of Romania (NBR) to impose additional funding requirements or the role of the NBR in the consolidated supervision of financial holding companies. The Law extends the necessary framework for the interaction of the National Bank of Romania with the European Banking Authority (EBA), by regulating reporting obligations.

Law no. 320/2021 for amending and supplementing the Law no. 312/2015 regarding the recovery and resolution of credit institutions and investment firms, as well as for amending and supplementing certain acts in the financial field, published in the Official Gazette no. 1256 as of December 31, 2021, entering into force on January 3, 2022

It transposes the provisions of the Directive 2019/879/EU of the European Parliament and of the Council as of May 20, 2019 (also known as BRRD2) for amending the Directive 2014/59/EU (BRRD) as regards the loss-absorbing and recapitalization capacity of credit institutions and investment firms and Directive 98/26/EC. It is relevant to mention that the implementation term of the obligation to meet the intermediate target levels using own funds, subordinated eligible instruments or other debts, was extended by 180 days as of the entry into force of this Law, such obligation having, according to the Directive, the implementation deadline January 01, 2022



corporate – legal newsletter published in December 2021

Law 315/2021 on amending and supplementing Law no. 129/2019 for preventing and combating money laundering and terrorist financing, published in the Official Gazette of Romania, Part I, no. 12490 of December 29, 2021.

The main amendment is aimed to eliminate the obligation of submitting the annual statement on the beneficial owner for the legal entities subject to registration with the trade register, except for companies that have in their shareholding structure entities registered and/or entities which have the tax office in high risk states or jurisdictions or under the monitoring of the relevant international bodies for such risks. Said companies shall continue to have the duty of submitting the annual statement on the beneficial owner, within 15 days of the approval of the annual financial statements.



employment - legal changes published in December 2021

Decision of the Constitutional Court of Romania no. 730/2021 regarding the solutioning of the constitutional challenge of the provisions of art. 111, art. 121, art. 122 paragraph (1), art. 123 and art. 229 paragraph (4) of Law no. 53/2003, as well as art. 142 para. (2) of Law no. 62/2011 on Social Dialogue, by interpreting the Decision of the High Court of Cassation and Justice no. 17 of June 13, 2016 was published in the Official Gazette, Part I no. 1153 of December 3, 2021 and is applicable from the same date.

The Court analyzed the provisions of art. 142 paragraph (2) of Law no. 62/2011 on Social Dialogue, which stipulates that in the case of a collective labour agreement, the nullity of the contractual clauses is established by the competent courts of law, when requested by the interested party, by initiating a claim or by way of exception. The authors of the constitutional challenge consider that the public interest provisions of article 41 of the Romanian Constitution are violated when a nullity of a collective labour agreement cannot be invoked by the court *ex officio*, being considered a private cause of nullity.

Furthermore, with reference to the Decision no. 17 of June 13, 2016, ruled by the High Court of Cassation and Justice, that has established that, in the interpretation of article 138 paragraphs (1)-(3) and article 142 paragraph (2) of Law no. 62/2011 on Social Dialogue, the nullity of a negotiated clause of a collective labour agreement can be invoked by the court, *ex officio*, as long as the collective labour agreement is in force.

Thus, the Constitutional Court admitted the constitutional challenge formulated by Gheorghe Martuica, Constantin Miloiu, Marcel Dinulescu, Ilie Bacanu and Danila Popa in case files no. 563/101/2015, no. 5562/101/2015, no. 8968/101/2014, no. 7830/101/2015 and no. 1193/101/2016 of the Craiova Court of Appeal - Civil Section I and held that the provisions of article 142 paragraph (2) of Law no. 62/2011 on Social Dialogue, as interpreted by the Decision no. 17 of June 13, 2016 ruled by the High Court of Cassation and Justice – Panel for preliminary ruling on law issues, are not constitutional.

Law no. 296/2021 for the approval of the Government Emergency Ordinance no. 33/2021 for amending and supplementing of Law no. 156/2000 on the protection of Romanian citizens working abroad was published in the Official Gazette of Romania, Part I, no. 1183 of December 14, 2021, in force starting with December 17, 2021.

The amendments and supplementations brought to Law no. 156/2000 on the protection of Romanian citizens working abroad concern, on one hand, the replacement of the “*destination state*” expression with “*host state*” expression, throughout the normative act, as well as other amendments regarding the obligations of the labour placement agencies concerning the examination of the required documentation for workers in order to enter into the host state, along with other obligations about providing sufficient time for workers for studying the job offers, before signing the agreements, otherwise, the labour agencies shall bear the repatriation costs.

Moreover, the fines shall be increased (i) in case of an intervention of other types of mediators between the placement agent or service supplier for labour placement, the person who benefits from the mediation services



and the foreign employer, excluding situations that are regulated by the host state and (ii) in the case of a mediation service which purpose is other than establishing a legal working relationship. In these circumstances, the amount of fines is Lei 15,000 – 20,000 for the first situation and Lei 25,000 – 40,000 for the second situation.

In other terms, alongside with entering into force of Law no. 296/2021, the labour placement agencies and the service suppliers for labour placement must assure that before placing the workers into the host state, the workers possess the required documentation for entering and exercising the right to work and have sufficient time in order to study the binding offers, before signing the agreements, and the content of the offer shall be in depth explained to them. The minimum period of time for explaining and studying the binding job offers shall be 5 days for the workers who are at the first mediation services and 2 days for the ones who have received the mediation services in the past. If not, in addition to bearing the repatriation costs, the placement labour agencies shall be sanctioned with a fine between Lei 8,000 and Lei 10,000.

Law no. 295/2021 for amending and supplementing Law no. 55/2020 on measures to prevent and combat the effects of the COVID-19 pandemic was published in the Official Gazette, Part I, no. 1183 of December 14, 2021, entering into force on December 24, 2021.

Law no. 295/2021 is amended and supplemented by the introduction of **Article 66¹** of the Law no. 55/2020, which provides, in the event of repetition of the minor offence referred to in article 65 letter q) by the head of an economic operator at the same registered office or secondary office, within 15 days from the previous finding of the same offence, that in addition to the main civil sanction referred to in article 66 letter (b), the ascertaining agent shall also order the complementary sanction of temporary closure, for a period of 15 days, of the registered office or secondary office in which the economic operator performs the activity without observing the conditions set up according to article 5 para. (3) letter f).

As regards the minor offence provided in article 65 letter q) of Law No. 55/2020, this concerns the situations where the heads of institutions or economic operators do not comply with the conditions relating to the limitation or suspension for a determined period of time of the activity performed by these institutions or economic operators (from the list of measures to reduce the impact of the type of risk during the state of alert).

It is also expressly provided, by way of derogation from the provisions of article 32 para. (3) of Government Ordinance no. 2/2001, as amended and supplemented by Law no. 180/2002, with its subsequent amendments and additions, that the complaint against the minutes establishing the minor offence and imposing the civil sanction shall not suspend the execution of the complementary sanctions applied pursuant to article 66¹.

Government Emergency Ordinance no. 130/2021 on some fiscal-budgetary measures, extension of some terms, and for amending and supplementing some normative acts was published in the Official Gazette, Part I no. 1202 of December 18, 2021, in force from the same date.

With the entry into force of Emergency Ordinance no. 130/2021, some relevant changes have also been made in the area of labour law.



According to **Article XLVI** of the Emergency Ordinance no. 130/2021, after para. (2) of article 164 of Law no. 53/2003 – The Labour Code, two new paragraphs, para. (2¹) and para. (2²) are inserted, having the following content:

Para. (2¹): The minimum gross base wage guaranteed for payment established under para. (1) may be applied to an employee for a period not exceeding 24 months from the conclusion of the individual labour contract. After the expiry of that period, during which the employee will be qualified or not, he will be employed with a base wage higher than the national minimum gross base wage guaranteed in payment.

Para. (2²): The provisions of para. 2¹ shall also apply to an employee with the national minimum gross base wage guaranteed in payment, who has already concluded an individual labour contract of more than 24 months.

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