



## Legal Changes of May 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:

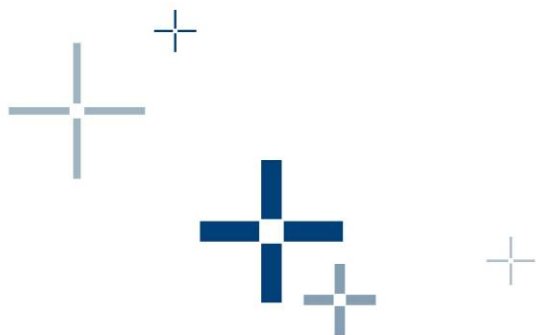
- Data protection
- Dispute resolution
- Employment



[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, 2022 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.



Business Catalysts





## data protection - legislative changes published in May 2022

### I. ROMANIA

#### 1 SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY (ANSPDCP)

##### 1.1 KREDYT INKASO INVESTMENTS RO S.A. was sanctioned for violating the provisions of Article 5, 6, 9 and 33 of the GDPR with a fine amounting to LEI 24,740.00 (the equivalent of EUR 5,000)

Following the investigation, the National Supervisory Authority found that the controller had unlawfully processed the data subject's personal data, disclosing his home address, personal identification number, job title, employment contract data and sick leave certificates to several healthcare facilities with which the data subject had no legal relations. In addition, the controller also shared personal data belonging to the complainant's minor child.

The controller also failed to comply with the deadlines for notification of the security incident that occurred, in accordance with the provisions of Article 33 of the GDPR; for such violation, the controller was sanctioned with a warning.

The investigation was initiated following a complaint by the data subject that the controller had disclosed her/his personal data and those of her/his minor child to third parties, without a legal basis.

##### 1.2 MEDLIFE S.A. was sanctioned for violating the provisions Article 32 para. (1) point b), para. (2) and para. (4) of the GDPR with a fine amounting to LEI 24,721.50 (the equivalent of EUR 5,000)

The investigation was initiated following a complaint concerning a possible breach of the GDPR, filed by an individual who identified a series of documents containing personal data of several patients of the controller, disposed of in a waste bin of an administrative-territorial unit.

Following the investigation, it was found that the controller failed to implement adequate technical and organizational measures to ensure a level of confidentiality and security appropriate to the risk of processing personal data, which led to the unlawful access or disclosure of personal data of the controller's patients (name, surname, personal identification number, medical service received, medical analysis performed, amount paid, bank account) and its employees (salary advance).

As a corrective measure, the controller was required to review and update the implemented technical and organizational measures, including the working procedures relating to the protection of personal data, and to implement measures for the regular training of persons acting under its authority.

##### 1.3 MEGAREDUCERI TV S.R.L. was sanctioned for violating the provisions of Article 83 para. 5 point e) in conjunction with Article 85 para. (1) of the GDPR with a fine amounting to LEI 19,795.60 (the equivalent of EUR 4,000)



Following the investigation, the National Supervisory Authority found that the controller processed the data subject's personal data for the purposes of direct marketing or for sending commercial communications without their express consent.

In particular, several data subjects reported that they received commercial SMS messages promoting the controller's website without having previously given their consent to receive such messages.

## **II. EUROPEAN UNION**

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

#### **1.1 EDPB adopts the first version of Guidelines no. 4/2022 on the calculation of administrative fines under the GDPR**

During its Plenary held on May 12, 2022, the EDPB adopts the first version of Guideline no. 4/2022 on the calculation of administrative fines under the GDPR, which is under public debate until June 27, 2022.

The Guide provides a 5-step methodology for the correct assessment of the fines imposed by the National Supervisory Authorities of the Member States, based on the circumstances of the case.

The sanction must respect the effective, proportionate and dissuasive character provided for in Article 83 para. (1) of the GDPR, observing the circumstances provided for in Article 83 para. (2) of the GDPR and considering the maximum limits set out in paragraphs (3), (4) and (5) of the same Article of the GDPR.

More details can be found at the following link: [https://edpb.europa.eu/system/files/2022-05/edpb\\_guidelines\\_042022\\_calculationofadministrativefines\\_en.pdf](https://edpb.europa.eu/system/files/2022-05/edpb_guidelines_042022_calculationofadministrativefines_en.pdf).

#### **1.2 EDPB adopts the first version of Guidelines no. 5/2022 on the use of facial recognition technology in the area of law enforcement**

During its Plenary held on May 12, 2022, the EDPB adopts the first version of Guideline no. 5/2022 on the use of facial recognition technology in the area of law enforcement, which is under public debate until June 27, 2022.

The EDPB underlines, in the Guide, that facial recognition tools should only be used in strict compliance with the "Law enforcement" Directive. Furthermore, these tools should only be used if they are necessary and proportionate, as provided for in the Charter of Fundamental Rights of the European Union.

More details can be found at the following link: [https://edpb.europa.eu/system/files/2022-05/edpb-guidelines\\_202205\\_frlawenforcement\\_en\\_1.pdf](https://edpb.europa.eu/system/files/2022-05/edpb-guidelines_202205_frlawenforcement_en_1.pdf).

#### **1.3 EDPB adopts the second version of Guidelines no. 6/2022 on the practical implementation of amicable settlements.**

At the European Data Protection Board Plenary held on May 12, 2022, the EDPB adopts the second version of Guideline No 6/2022 on the practical implementation of private settlements.



The second version of the Guide contains only editorial adjustments for publication purposes compared to the first version adopted. The purpose of the Guide is to standardise practice in relation to out-of-court settlements.

As the GDPR does not provide exhaustive regulations and the implementation of this matter is left to the discretion of each Member State, differences in interpretation of the GDPR may arise.

More details can be found at the following link: [https://edpb.europa.eu/system/files/2022-06/edpb\\_guidelines\\_202206\\_on\\_the\\_practical\\_implementation\\_of\\_amicable\\_settlements\\_en.pdf](https://edpb.europa.eu/system/files/2022-06/edpb_guidelines_202206_on_the_practical_implementation_of_amicable_settlements_en.pdf).

## **2 SANCTIONS APPLIED IN THE EU**

### **2.1 The British Data Protection Authority ("ICO") imposed to Clearview AI Inc. a fine of EUR 9 million for breaches of the GDPR provisions**

Following the investigation, ICO found that the controller had unlawfully processed over 20 million facial images, together with personal data in the public domain, without the data subjects being informed of this fact or being asked for their prior consent.

The images were entered into a database that allowed the service provided by the controller to use facial recognition technology to identify people with similar features, together with the link to where the person's image was found, based on any photo uploaded to the platform.

### **2.2 The Spanish Data Protection Authority ("AEPD") imposed to Google LLC a fine of EUR 10 million for breaches of the GDPR**

Following the investigation, AEPD found that Google had transferred personal data without lawful basis to Lumen Project, a controller based in the United States of America, which collected and analysed requests to exercise the right to be forgotten.

Data subjects were only informed of this and were not given the option to object to the transfer. The processing of this information allowed the identification of the individuals, their e-mail addresses, the website from which deletion was requested and the reasons of the request.

In addition to the fine, Google was required to delete all personal data disclosed and to instruct Lumen Project to do the same, as the AEPD could not compel an international organization to comply with the GDPR.



## dispute resolution - legal changes published in May 2022

**The Decision of the European Court of Human Rights dated November 2, 2021, ruled in Tartousi against Romania Case (Application no. 35.366/15) was published in the Official Gazette, Part I no. 457 dated May 6, 2022 and it is applicable from the same date.**

The application is based on applicant's complaints regarding the violation of the right to a fair trial, in terms of art. 6 § 1 and 3 letter d) of the Convention, due to his impossibility to obtain a testimonial evidence from the prosecution witness and because of the fact that the court's final ruling was not signed in appeal by one of the judges from the court panel, who has been retired. In fact, the applicant has been accused of helping Omar Hayssam, judged in other criminal file for terrorism, to flee the country. The latter would have left Romania on board of a ship pertaining to the company managed by Tartousi.

In this case file, The Hight Court of Cassation and Justice of Romania rejected the defendant's request for the witness hearing, considering that such hearing did not represent a necessary evidence, since other evidence has already been administered. The European Court noticed that the witness's statement was a fundamental evidence throughout the criminal prosecution and that the evidence has been obtained through rogatory commission by the Lebanese authorities.

Consequently, The European Court of Human Rights unanimously decided that there has been a violation of Article 6 § 1 and 3 letter d) of the Convention.

**The Decision of the European Court of Human Rights dated 16 November 2021 ruled in Marin against Romania Case (Application no. 31.611/18) was published in the Official Gazette, Part I no. 525 dated May 27, 2022 and it is applicable from the same date.**

The application has as subject matter the procedural obligations of the state, provided by art. 2 of the Convention, because of the death by drowning of the applicant's son. In fact, the applicant claims that his son did not die in the night of May 21, 2014 as a consequence of an accidental landslide into the river channel in the immediate proximity of a micro-hydroelectric plant, but as a consequence of a crime that the Romanian authorities had superficially investigated, finally ruling that the case should be closed.

The Court considered that the criminal investigation bodies did not deal with the case file aspects that remained unclear at the end of the criminal investigation. Therefore, it cannot be considered that the Romanian authorities had established in a sufficiently clear way the circumstances that lead to the death of the applicant's son.

Consequently, The European Court of Human Rights held as follows: (i) that there has been a violation of Article 2 of the Convention from a procedural point of view; (ii) that the respondent State shall pay to the applicant, within three months, the amount of EUR 20,000 for non-pecuniary damage, which shall be converted into the currency of the respondent State, at the exchange rate applicable at the date of payment plus any other amount that may be due as a tax for this amount; (iii) that from the expiry of the above-mentioned period and until payment, these amount must be increased with simple interest, at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.



**Decision of the High Court of Cassation and Justice no. 11/2022 regarding the examination of the request formulated by Cluj Court of Appeal – Criminal and minors Section regarding the request that forms the object of Case File no. 3.007/1/2021 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 430 of May 3, 2022 and it is applicable from the same date.**

The High Court admitted the request made by Cluj Court of Appeal – Criminal and minors Section in order to issue a preliminary ruling, respectively: if the person's action of driving a vehicle on a public road, who at the time of sampling biological samples had an alcohol level over 0,80 g/l of pure alcohol in the blood and who is under the influence of psychoactive substances, meets the elements of a crime with an alternative content, stipulated by art. 336 para. (1) and (2) of the Criminal Code or meets the elements of two crimes with alternative content, provided by art. 336 para. (1) and art. 336 para. (2) of the Criminal Code, with the application of art. 38 para. (2) of the Criminal Code.

Therefore, the Court held that the person's action of driving a vehicle on a public road, having an alcohol level over 0,80 g/l of pure alcohol in the blood and being under the influence of psychoactive substances, meets the elements of the crime provided by art. 336 para. (1) and para. (2) of the Criminal Code, respectively a single crime.



## employment - legal changes published in May 2022

**Order of the Minister of Labour and Social Protection no. 644/351/2022 for amending and supplementing the Romanian Classification of Occupations** was published in the Official Gazette of Romania, Part I, no. 514 of May 25, 2022, in force from the same date.

The Order is supplementing the Romanian Classification of Occupations – level of occupation (six characters) with new occupations practiced within the national economy, respectively: creator/designer of clothing, government communication expert, e-governing expert, inspector of tracking and managing the goods, *governmental* communication manager, online marketing specialist, radiology and imaging *licensed* technician.

**Law no. 144 for amending and supplementing art. 34 of Law no. 53/2003 – Labour Code**, was published in the Official Gazette of Romania, Part I, no. 502 of May 23, 2022, in force starting with May 26, 2022.

Following the entry into force of Law no. 144/2022, the following amendments were adopted:

- The general register of employees (in *Romanian*, **Revisal**) shall also include the level and specialty of the completed studies;
- Employees and former employees shall have online access to their data in Revisal. They will also have the possibility to generate and download online an excerpt from the register, with which they shall prove their seniority in work and/or specialty;
- Romanian Government will issue a decision to determine the methodology for applying the new provisions.

**Law no. 135/2022 for amending and supplementing certain normative acts** was published in the Official Gazette of Romania, Part I, no. 489 of May 17, 2022, in force starting with May 20, 2022.

The Law provides that from June 1, 2022 until December 31, 2028, the national minimum gross basic wage for employees in the farming sector and the food industry shall be at least RON 3.000/month (approximately EUR 600 /month), without allowances, bonuses and other additions.

Companies which fail to comply with the legal provisions and do not grant the minimum wage may be sanctioned with a fine between RON 300 and RON 2.000 (approximately EUR 60-400) and the risk of tax facilities granting cancellation.

**Government Emergency Ordinance no. 67/2022 on certain tax measures, as well as for amending and supplementing Article 59 of Law no. 207/2015 on the Tax Procedure Code** was published in the Official Gazette, Part I no. 494 of May 18, 2022, in force starting with the same date.

The GEO provides that, as of June 1, 2022, employees working under a full-time individual employment contract at the place where the basic position is located, do not owe income tax and compulsory social contributions for the amount of RON 200, representing salary and assimilated salary income, in the following cases:



- employers voluntarily decide, at any time during the period from June 1, 2022 to December 31, 2022, to increase the monthly gross salary of employees remunerated with the monthly gross basic wage equal to the national minimum wage, by RON 200/month. The monthly gross basic wage equal to the national minimum wage shall not include bonuses or other allowances;
- the wage tax relief for the monthly amount of RON 200 shall also apply to newly employed individuals between June and December 2022, if the monthly gross basic wage level determined under the individual employment contract, without bonuses and other allowances, is RON 2,750.

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

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