



European Directive on Temporary Protection. National support and humanitarian measures in the context of the Ukraine situation – how may global or local employers be involved and how may they benefit?

By Beatrice Bealcu, Associate Voicu & Filipescu

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Legal Changes of February 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

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.





European Directive on Temporary Protection. National support and humanitarian measures in the context of the Ukraine situation – how may global or local employers be involved and how may they benefit?

Beatrice Bealcu, Associate at Voicu & Filipescu

The rapid evolution of events in Ukraine, the fact that more and more Ukrainian citizens cross the borders of Ukraine in search of security and support did not remain without impact on social and economic life in neighboring countries or in the European Union in general.

On March 04, 2022, the European Union activated, for the first time, the temporary protection mechanism in case of a massive flux of displaced persons, based on the provisions of the Directive no. 2001/55/ EC (the “**Directive**”). The Directive, dealing with minimum standards for the provision of temporary protection in the event of a massive flux of displaced persons, and measures to promote a balance between Member States' efforts to receive them and bear the consequences of such reception, establishes a system to deal with the mass arrivals in the EU of foreign nationals who cannot return to their countries - especially due to war, violence or human rights violations. The duration of the temporary protection established by the Directive is one year, with the possibility of extending it to a maximum of two years.

At national level, the measures taken by the Romanian Government based on the provisions of the Directive are regulated by the Emergency Ordinance no. 20/2022 on amending and supplementing some normative acts, as well as for establishing measures for humanitarian support and assistance (“**GEO no. 20/2022**”), published in the Official Gazette of Romania no. 231 / 08.03.2022, entering into force on the same date. Hereinafter, we will mention only some of these measures.

Measures for ensuring the rights to education, health, work, child protection of the Ukrainian citizens

▪ **The right to work**

The Ukrainian citizens will be able to work in Romania based on the statement on their own responsibility, given to the Romanian employer. Through this statement, they assume that they meet the conditions of professional training and work experience necessary for the position they are to be employed and that they do not have a criminal record incompatible with the activity they are to carry out in Romania. Also, citizens from Ukraine will have the opportunity to work **without having to obtain (i) the work permit provided in art. 3 para. (1) of G.O. no. 25/2014 and (ii) the long-stay work visa.**

This measure shall apply for a period of one year and may be extended for periods of 6 months up to a maximum of one year.

The measure may be relevant for global companies with subsidiaries and employees in Ukraine, especially in the context in which major multinational companies have decided to suspend or even close their operations in Ukraine, as these employees can easily be integrated into the Romanian labor market.



- **The right to health**

Foreign citizens who come from the area of the armed conflict in Ukraine and do not request a form of protection in Romania according to the Asylum Law, will receive free medical care and appropriate treatment for emergencies, through the national emergency medical system, in temporary camps accommodation and humanitarian assistance or in accommodation facilities set up by emergency committees;

- **The right to education**

Ukrainian children in Romania, including those who do not seek protection under the Asylum Law, benefit from the right to education in Romanian schools under the same conditions and from the same budgets as Romanian preschoolers and students. They will also have the right to free accommodation in boarding schools, food allowance, the right to barracks, respectively: supplies, clothing, footwear, textbooks; Ukrainian children will benefit from health examination in schools, and if they are not vaccinated, they can benefit from the vaccination schedule according to the National Vaccination Program.

Measures to encourage the business environment to take action to help Ukrainian citizens

Legal entities benefit (for a limited period, usually until 31.12.2022) from tax facilities in the situation of providing support to Ukrainian citizens, among which we mention the following:

- **The amounts representing cash donations** made in the separate account available in RON opened at the Treasury and Public Accounting Activity of the Municipality of Bucharest by the General Inspectorate for Emergency Situations **will be deducted in full** from the fiscal result in the case of profit tax payers, respectively from the taxable base for micro-enterprise income taxpayers;
- **Assets and services provided free of charge for humanitarian purposes** by taxable persons, to individuals affected by the armed conflict in Ukraine, will be considered as assets and services provided free of charge in **sponsorship** or patronage actions, up to the amount obtained by applying a quota of up to **5% on the annual value of expenses incurred with staff salaries.**



data protection - legislative changes published in February 2022

I. ROMANIA

1. SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY

1.1 GRUPEX 2000 LLC was sanctioned for violating the provisions of Article 6 and Article 9 by reference to the principles highlighted in Article 5 para. (1) point a), b), c), and f) and para. (2) of the GDPR with a fine in the amount of LEI 4,943.60 (the equivalent of EURO1,000)

Following the investigation, the Data Protection Authority found that a video containing images of individuals, institutionalized patients, had been posted on the controller's website, leading to the unlawful processing of the patient's medical and health data.

As a corrective measure, the controller was required to implement appropriate technical and organizational measures for the processing of sensitive data, so as to ensure compliance with the provisions of the GDPR.

1.2 SABOU, BURZ & CUC Law Firm was sanctioned for violating the provisions of Article 6 in conjunction with Article 5 para. (1) point a), b), c), f) and para. (2) of the GDPR with a fine in the amount of LEI 4,946.00 (the equivalent of EUR 1,000)

Following the investigation, the Data Protection Authority found that the controller had disclosed to a 247-Member WhatsApp group, without a legal basis, excessively and incompatible with the original purpose of the processing, in the absence of technical and organizational measures for maintaining the confidentiality, personal data, such as: the first name, surname, home address and information relating to a case file pending before a court, of one of its clients.

As corrective measures, the controller was requested to notify all members of the WhatsApp group to delete the personal data disclosed and to avoid disclosure of data, except where permitted by law, including through regular training of persons processing the data under its authority.

The investigation was initiated as a result of a complaint filed by the controller's client, who reported the unlawful disclosure of personal data, without his prior consent and information.

1.3 IAMSAT MUNTENIA SA was sanctioned for violating the provisions of Article 12 and Article 13 of the GDPR with a fine in the amount of LEI 9,892.40 (the equivalent of EUR 2,000) and for violating the provisions of Article 12 para. (3) and Article 21 of the GDPR with a fine in the amount of LEI 4,946.20 (the equivalent of EUR 1,000)

Following the investigation, the Data Protection Authority found that the controller continued to process the personal data of one of its employees even after the termination of the employment contract, despite that the employee had previously stated that he does not express his consent to the use of his email address and that he opposes the processing of his data by both the controller and any other natural and/or legal persons, after the termination of his employment.



The controller also failed to settle the request of his employee and to provide him with a reply on the measures taken in response to the exercise of his right to object, within the time limits provided by law.

It was also found that the controller failed to comply with its obligation to provide prior information to its employees, before starting processing personal data by video surveillance means installed at the workplace.

As corrective measures, the controller was requested to provide the data subject with a response on his request, containing also the measures taken following the exercise of his right to object and to ensure that the data subjects, in particular its employees, are fully informed on the use of the video surveillance system at the workplace.

2. REGULATIONS

The EDPB adopts the final version of Guidelines 04/2021 on Codes of Conduct as tools for transfers, after the public consultation.

The Guide provides practical guidelines on Codes of Conduct, as appropriate safeguards for the transfer of personal data from controllers and processors to a third country or an international organization.

In light of safeguards provided by existing transfer tools under Article 46 GDPR, to be considered as providing appropriate safeguards, the Code of Conduct intended for transfers shall generally cover the following elements: a description of transfers to be covered by the code (nature of data transferred, categories of data subjects, countries); a description of the data protection principles; rights and obligations arising under the GDPR for controllers/processors, but also the guarantees that are specific to transfers.

The data exporter is not required to adhere itself to the Code of Conduct to benefit of its effects. It is sufficient that the data importer commits itself under the Code and guarantees its binding and enforceable nature, through contractual or other legally binding instruments.

The Guidelines are available at the following link:

[edpb_guidelines_codes_conduct_transfers_after_public_consultation_en_1.pdf](#)

II. EUROPEAN UNION

1. SANCTIONS GRANTED IN THE EU

1.1 The Spanish Data Protection Authority ("AEPD") imposed to Amazon Road Transport Spain S.L. a fine of EUR 2 million for breaches of the GDPR provisions

Following the investigation, it was found that the controller was requesting, from the independent contractors who were to be hired, criminal record certificates showing the absence of criminal convictions, contrary to Article 10 of the GDPR.



The fact that they were expressly required to give their consent to the transmission of personal data to group companies and suppliers established outside the European Economic Area is not likely to lead the controller being held liable under the GDPR.

As a corrective measure, the controller was required to implement technical and organizational measures to ensure compliance with the GDPR of personal data collection and processing processes and delete all personal data obtained following receipt of criminal records certificates.

1.2 The Spanish Data Protection Authority (“AEPD”) imposed to Vodafone España S.A.U a fine of EUR 3,94 million for breaches of the GDPR provisions

Following the investigation, it was found that the controller failed to implement sufficient security measures to verify the identity of the SIM card holders and thus prevent their fraudulent cloning. In particular, the fraudsters managed to obtain, through Vodafone España, a reply of the SIM cards belonging to 9 targeted persons, subscribers to the company's telecommunications services.

This operation enabled bank transfers and contracts to be concluded to the detriment of the data subjects, with the greatest damage amounting EUR 17,000. It was found that any person in possession of a data subject's basic personal data could bypass the security measures to take possession of a cloned SIM card.



dispute resolution - legal changes published in February 2022

Decision of the High Court of Cassation and Justice no. 27/2021 regarding the issuance of an appeal in the interest of the law regarding the request that forms the object of Case File no. 2.618/1/2021, formulated by the Management Board of the Bucharest Court of Appeals was published in the Official Gazette, Part I no. 135 of February 10, 2022 and it is applicable from the same date. The High Court admitted the request made by the Management Board of the Bucharest 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. 131 para. (1), art. 714 para. (1) and art. 719 para. (7) of the Code of Civil Procedure, the court where the motion for temporary suspension of the enforcement has been filed must verify the jurisdiction according to the general provisions and in the event that the court ascertains that has no jurisdiction to rule the case on the merits, it must deliver a judgement and decline its competency in favour of the enforcement court.

Decision of the Romanian Constitutional Court no. 19/2022 regarding the admission of the constitutional challenge of the Law for supplementing the Government Ordinance no. 2/2001 regarding the legal regime of contraventions was published in the Official Gazette, Part I no. 183 of February 24, 2022 and is applicable from the same date.

The Government Ordinance no. 2/2001 regarding the legal regime of contraventions has been supplemented by introducing a new article, respectively art. 361 which stipulates the possibility for the misdemeanant who submitted the complaint to require the trial hearings in first instance and in appeal to be carried out exclusively via audiovisual telecommunications systems which allow to verify the identity of the parties and shall ensure security, integrity, confidentiality and quality of the transmission and the courts shall order the necessary actions for this purpose.

In support of the ruling, among others, the Court pronounced upon the fact that the criticized law does not establish the grounds regarding the admission or not of the misdemeanant's complaint in accordance with the contravention matter exclusively via audiovisual telecommunications systems. Therefore, in compliance with the expressed critics, the Court held that the admission of the request to rule on cases in contravention matters via audiovisual telecommunications systems must be determined by clear and precise rules, in accordance with the exigencies provided by art. 20 of the Romanian Constitution in relation with art. 6 – the right to a fair trial of the Convention for protection of the human rights and fundamental freedom.

Therefore, the Constitutional Court admitted the constitutional challenge formulated by the Romanian Government and decided that the provisions of the Law for supplementing the Government Ordinance no. 2/2001 regarding the legal regime of contraventions are not constitutional.

Decision of the High Court of Cassation and Justice no. 81/2021 regarding the examination of the request formulated by Bucharest Municipal Court - Civil Section VI in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 194 of February 28, 2022 and is applicable from the same date. The High Court admitted the request made by



Bucharest Municipal Court - Civil Section VI in order to issue a preliminary ruling for resolving a matter of law and, consequently, established that in the interpretation and application of the provisions of art. 719 para. (4) point 1 of Code of Civil Procedure, the effects of the mandatory suspension of the enforcement procedure shall occur until the settlement of the complaint against enforcement by the first instance court, while a request having the same object shall not be reiterated in the appeal against the enforcement's court ruling.



employment - legal changes published in February 2022

Romanian Government Ordinance no. 12/2022 for amending and supplementing certain normative acts in relation to the road transport, published in the Official Gazette of Romania, Part I, no. 98 of January 31, 2022, in force starting with February 03, 2022

A series of legal provisions of Law no. 16/2017 on secondment of the employees in the framework of the transnational provision of services have been amended and supplemented following the entry into force of Government Ordinance no. 12/2022.

Hence, it is provided that drivers shall not be considered employees seconded on the territory of Romania respectively, from the territory of Romania, when:

- perform bilateral road freight transport operations (as defined by the lawmaker);
- perform, in addition to carrying out a bilateral road transport operation, an activity of loading and/or unloading in the Member States or in the transited third countries, provided that it does not load goods and unloads them in the same Member State;
- perform maximum two additional loading and/or unloading activities in the Member States or in the third countries through which they transit, provided that no goods are loaded or unloaded in the same Member State, when the bilateral road transport operation begun in the Member State of establishment during which no additional activity has been carried out is followed by a bilateral road transport operation to the Member State of establishment;
- perform operations of bilateral road transport for passengers (as defined by the lawmaker);
- when performing bilateral road transport for passengers, they shall carry out a passenger embarkation and/or disembarkation of passengers in the Member States or in the third countries they cross, provided that they do not offer passenger transport services between two points in the Member State crossed. The same shall apply to the return journey;
- shall pass through the territory of a Member State without loading or unloading goods or without embarking or disembarking passengers;
- perform the initial or final road segment of a combined transport operation as defined in Article 2 para. (1) of Government Ordinance no. 88/1999 on the establishment of rules for the combined transport of goods, with amendments.

Employers shall be required to inform employees contracted as drivers about their rights and obligations, provided by Law no. 16/2017 and Directive 2020/1.057/EU, by displaying this information at the premises of the company.



In relation to the undertakings established on the territory of a Member State other than Romania or on the territory of the Swiss Confederation which, in the framework of the transnational provision of services, post to the territory of Romania employees, certain obligations must be provided to the competent authorities of Romania in the field of secondment of drivers.

Order of the Minister of Labour, Family and Social Protection and of the President of the National Institute of Statistics no. 38/82/2022 for amending and supplementing of the Classification of the occupations in Romania was published in the Official Gazette of Romania, Part I, no. 141 of February 11, 2022, in force from the same date

The list of occupations practiced in the national economy is amended and supplemented through Order no. 38/82/2022, as follows:

- new occupations within the national economy are being introduced, as listed in Annex 1 to the Order, such as: ICT security administrator, behavioral analyst, business analyst, ICT business analyst, health service and policy analyst, software testing analyst, ICT system architect, cybersecurity auditor, cybersecurity advisor, investor relations director, maintenance and repair engineer, commissioning engineer, robotics engineer, ICT business analysis manager, information systems security manager, digital transformation manager, digitization specialist, waste recycling specialist, cyber security specialist for automated command-control systems, investor relations specialist and so forth;
- the occupations no longer practiced in the national economy, listed in Annex 2 to the Order, mostly occupations of Groups 7 and 8, concentrated on specific industries and trades, are eliminated.

Law no. 24/2022 for amending and supplementing the Government Emergency Ordinance no. 158/2005 on sick leave and social security benefits, published in the Official Gazette of Romania, Part I, no. 122 of February 16, 2022, in force starting with April 16, 2022

Law no. 24/2022 regulates new provisions on leave and healthcare allowance for nursing the patient with oncological affections, as follows:

- the right to leave and healthcare allowance for patients with oncological affections, older than 18 years, recognized in favor of the insured person who, with the patient approval, accompanies him/her at surgical interventions and at prescribed treatments by the specialist physician;
- the period granted for leave and healthcare allowance for nursing the patient with oncological affections shall not exceed 45 calendar days within 1 year for a patient;
- the beneficiary who receives a leave for nursing the patient with oncological diseases shall be entitled each year to minimum one clinical psychological evaluation session and minimum five psychological counselling sessions;



- the leave and the healthcare allowance for nursing the patient with oncological affections, as well as the clinical psychological evaluation and clinical psychological counselling sessions shall be granted based on the medical leave certificate issued by the specialist physician;
- the monthly gross amount of the healthcare allowance for patients with oncological affections is 85% of the calculation basis established in compliance with Article 10 of G.E.O no. 158/2005 and shall be fully covered from the budget of the Single National Health Insurance Fund.



public procurement - legal changes published in February 2022

Decision of the High Court of Cassation and Justice no. 5/2021 on the settlement of the law clarification appeal, which forms the subject of the case file no 2.469/1/2021 on the complaint brought by the Board of Directors of the Iași Court of Appeals, was published in the Official Gazette of Romania, Part I, no. 180 of February 23, 2022, applicable from the same date

The High Court admitted the complaint brought by Iași Court of Appeals on the law clarification appeal and consequently established that, in the interpretation and application of article 166 of Government Decision no. 395/ 2016 on the approval of the application norms of Law no. 98/2016 on public procurement, by reference to article 2 para. (1) letter c) of Law no. 554/2004 on Administrative Litigation, **the jurisdiction for the settlement of disputes having as object the annulment of the ascertaining document** containing information on the non-fulfillment of contractual obligations by the contractor/associate contractor and possible damages, **falls within the jurisdiction of the civil courts**, under article 53 para. (1¹) of Law no. 101/2016.

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

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