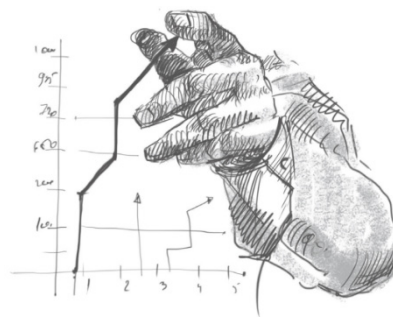




Legal Changes of January 2023

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**

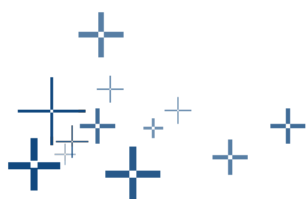


Other topics on recent laws and VF activity

Litigation won by Voicu & Filipescu in public procurement practice following representation in case files before the National Council for Solving Complaints and Courts of Appeal in relation to contracts whose cumulative value is of millions of Euros. [Read here](#) extended info on this topic.

Tax opinion on recent tips taxation regulation formulated by Senior Tax Partner Alex Tabacu in article published by Avocatnet. [Read here](#) extended info on this topic.

VF News



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, 2022 edition recommends Voicu & Filipescu for our lawyer's activity in three practice areas: M&A, Banking and Finance and Project Development.



data protection - legislative changes published in January 2023

I. ROMANIA

1 SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY (ANSPDCP)

1.1 BRISTOL LOGISTICS S.A was sanctioned for violating the provisions Article 32 para. (1) point b) and para. (2) of the GDPR with a fine amounting to LEI 9,828.00 (the equivalent of EURO 2,000)

As a result of the investigation, it was found that the controller did not implement adequate technical and organisational measures to ensure a level of security appropriate to the processing risk.

Thus, the security incident consisted in the theft of a folder containing the personnel files of 12 employees, which led to the access of personal data (contact/identification data, academic and professional training, employment details, tax deduction and dependants information, occupational health qualification) by unauthorised persons.

The investigation was initiated following two data breach notifications by the controller.

1.2 APA CANAL ILFOV was sanctioned for violating the provisions of Article 32 para. (1) point b), para. (2) and para. (4) of the GDPR with a fine amounting to LEI 14,757.60 (the equivalent of EUR 3,000)

As a result of the investigation, it was found that the controller's action led to the unauthorised access and disclosure of personal data belonging to a significant number of data subjects.

In particular, when sending an e-mail to registered users on the company's online portal, the controller erroneously entered e-mail addresses in the „To" section, when they should have been entered in the „BCC" field.

The investigation was initiated following a data breach notification sent by the controller.

1.3 DANTE INTERNATIONAL S.A was sanctioned for violating the provisions Article 17 of the GDPR with a fine amounting to LEI 4,918.60 (the equivalent of EUR 1,000)

As a result of the investigation, it was found that the controller did not respect the exercise of the right to erasure.

In particular, the controller continued to process the data subject's personal data by sending SMS messages to her telephone number regarding the company's commercial offers.

In addition to the fine, the controller was ordered to implement technical and organisational measures to ensure compliance with the right to be forgotten.



II. EUROPEAN UNION

1 SANCTIONS APPLIED IN THE EU

1.1 The Irish Data Protection Authority ("DPC") imposed to Meta Platforms Ireland Limited a fine of EUR 390 million for breaches of the GDPR

As a result of the investigation, the DPC found that the controller processed personal data in breach of the principles of lawfulness, fairness and transparency.

In particular, following consultations between the DPC and the European Data Protection Board ("EDPB"), it was decided that the controller can no longer process the personal data of its users in the context of behavioural advertising within the Facebook and Instagram platforms, so far justified on the grounds of "the need to perform a contract". The reasoning lies in the insufficient description in the Terms and Conditions of the purpose, legal basis and activities related to the processing.

The investigation was initiated following research carried out by the non-governmental organisation None Of Your Business („NOYB"), after which complaints were submitted to the CPD.

2.2 The Irish Data Protection Authority ("DPC") imposed to Whatsapp Ireland a fine of EUR 5.5 million for breaches of the GDPR

As a result of the investigation, the CPD found that the controller did not properly inform data subjects of the purposes and legal grounds for the processing.

Thus, prior to the entry into force of the GDPR, the company amended its Terms and Conditions and made further use of the mobile app conditional upon acceptance of the Terms and Conditions. This was assimilated to a "forcing" of the users to express their consent to the processing of data for security purposes and to improve the services offered.

The investigation was initiated following research carried out by the non-governmental organisation None Of Your Business („NOYB"), after which complaints were submitted to the CPD.

2.3 The Hellenic Data Protection Authority ("HDP") imposed to Intelexxa S.A a fine of EUR 50,000 for breaches of the GDPR

As a result of the investigation, the HDP found that the controller did not cooperate during the audit.

In particular, during the inspection of the company's premises, it was discovered that the building was completely empty, lacking staff and infrastructure related to computer networks and other IT systems. In addition, the controller was unduly late in answering questions and refused to provide information that was indisputably in its possession.

The investigation was initiated following an ex officio referral from HDP.



dispute resolution - legal changes published in January 2023

Decision of the High Court of Cassation and Justice no. 78/2022 regarding the examination of the request formulated by Alba Iulia Court of Appeal – Criminal Section regarding the request that forms the object of Case File no. 1.418/1/2022 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 51 of January 18, 2023 and it is applicable from the same date.

The High Court admitted the request made by Alba Iulia Court of Appeal – Criminal Section in order to issue a preliminary ruling, respectively, if, according to the Romanian legislation, it is mandatory for an individual driving a vehicle on public roads to own a driving license when the individual solely owns a Provisional Driving License issued by the competent authority in the United Kingdom, the mitigated form of the offence of driving a vehicle without a driving license referred to in art. 335 para. (2) of the Criminal Code shall be held, respectively the situation in which the individual does not have the right to drive vehicles in Romania.

Thus, the Court held that, in accordance with Romanian legislation, driving on public roads a vehicle by an individual who owns a Provisional Driving Licence, issued by the competent authority in the United Kingdom, meets the elements of the offence of driving a vehicle without a driving license provided by art. 335 para. (2) of the Criminal Code, if the individual is not entitled to drive vehicles in Romania.

Decision of the High Court of Cassation and Justice no. 79/2022 regarding the examination of the request formulated by the High Court of Cassation and Justice – 1st Civil Section regarding the request that forms the object of Case File no. 2.059/1/2022 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 61 of January 25, 2023 and it is applicable from the same date.

The High Court admitted the request made by the High Court of Cassation and Justice – 1st Civil Section 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. 497 of the Civil Procedure Code, as amended by Law no. 310/2018 for amending and supplementing Law no. 134/2010 on the Civil Procedure Code, as amended and supplemented by other normative acts, in correlation with the provisions of art. 492 para. (1), art. 498 and art. 501 para. (3) and para(4) of the Civil Procedure Code, if, in the second phase of the proceedings, the second appeal is admitted and the challenged decision is overturned, the High Court of Cassation and Justice shall retain the case for retrial on the merits only when it would not be put in a position to proceed to an analysis of the facts by reclassifying the facts or by supplementing or re-administering the evidence, otherwise the case shall be sent back for retrial to the first court of appeal or, where applicable, to the first court.

Law no. 31/2023 for amending Government Emergency Ordinance no. 51/2008 on the public legal aid in civil matters was published in the Official Gazette of Romania, Part I, no. 38 of January 12, 2023, being in force starting with January 15, 2023.

The law regulates new provisions concerning the justice field in relation to the public legal aid in civil matters, therefore, starting with January 15, 2023, the following measures came into force:



- public legal aid shall be granted separately or cumulatively. The amount of legal aid granted, separately or cumulatively, shall not exceed, within a period of one year, the maximum amount equal to 10 times the gross minimum national basic salary for the year in which the application for the aid was made;
- furthermore, legal aid shall also be granted to individuals whose average net monthly income per family member, in the last two months before the application was submitted, is below the equivalent of 25% of the minimum gross basic salary. In this case, the amounts representing legal aid shall be paid in entirety by the state; and
- if the average net monthly income per family member, in the last two months before the application was submitted, is less than the equivalent of 50% of the minimum gross basic salary, 50% of the amount of money representing public legal aid shall be paid by the state.

According to Government Emergency Ordinance no. 51/2008, public legal aid represents a form of assistance provided by the state, which has the purpose of ensuring the right to a fair trial and guaranteeing equal access to justice. In this way, public legal aid shall be provided, when requested, to individuals who are unable to afford a lawyer or to pay the stamp duty required for civil proceedings.



employment - legal changes published in January 2023

Law no. 26/2023 amending and supplementing the National Archives Law no. 16/1996 and Law no. 53/2003 - Labour Code, was published in the Official Gazette, Part I, no. 30 of January 11, 2023, being in force from January 14, 2023.

The normative act supplements Law no. 53/2003 (Labour Code) as to establish a time limit of 60 days within which the judicial liquidator or, where applicable, the judicial administrator must fulfil its obligation to issue a document attesting the activity carried out by the employees, to terminate and transmit to the general register of employees the termination of individual employment contracts, in the event that the employer is in insolvency, bankruptcy or liquidation proceedings.

It is also provided that failure to comply with the provisions set out above is an offence punishable by a fine between Lei 300 and Lei 1,000.

The Order of the National Agency for Employment no. 1073/2022 amending and supplementing the Procedure for profiling jobseekers registered with employment agencies, approved by the Order of the President of the National Agency for Employment no. 11/2018 was published in the Official Gazette, Part I, no. 44 of January 16, 2023, being in force from February 1, 2023.

Order no. 1073/2022 brings a series of changes to the Procedure for profiling jobseekers registered with employment agencies, as follows:

- New criteria are established for placing jobseekers in employability levels (personal, family, medical, criteria relating to willingness to take up work in the shortest possible time, to participate in vocational training programmes, to take up work in an occupation other than that for which they have experience or training, and criteria relating to motivation to take up work);
- The necessary procedure to be followed for profiling is established;
- The Annex forming an integral part of the Order is amended in order to comply with the new provisions.

Law no. 3/2023 supplementing Article 28 of Law no. 290/2004 on criminal records was published in the Official Gazette, Part I, no. 3 of 3th of January 2023, being in force since 6th of January 2023.

The law establishes the possibility of issuing criminal records also in electronic form, at the request of individuals and legal entities, after recording the option in the standard application. Criminal records certificates issued in electronic form will be signed with a qualified electronic signature and will be assimilated to authentic documents.

The Order of the Minister of Labour and Social Solidarity and the Minister of Education no. 2228/2022/3025/2023 amending and supplementing the Methodology for authorisation of adult vocational training providers, approved by Order of the Minister of Labour, Social Solidarity and Family and the Minister of Education, Research and Youth no. 353/5.202/2003 was published in the Official Gazette, Part I, no. 70 of January 27, 2023, being in force since the same date.



The Order brings a series of changes to the Methodology for the authorisation of adult vocational training providers, the most important being the following:

- According to the new provisions, the authorisation of vocational training providers may also be granted for the organisation of online programmes, the fields of activity and the procedure being established by Order of the Minister of Labour and Social Protection No 1,149/2020;
- The minimum duration of the vocational training programme for which the vocational qualification certificate is issued, by qualification level, is amended as follows:
 - 180 hours for level 1 qualification;
 - 360 hours for level 2 qualification;
 - 720 hours for level 3 qualification;
 - 1,080 hours for level 4 qualification.
- The initial assessment will be carried out only for qualification programmes according to the new regulation;
- It is established that the provision according to which, in the situation where it is found that the participants in a vocational training programme have certain competences, the duration of the training will be reduced accordingly, does not apply to level 1 vocational qualification programmes nor to programmes leading to a qualification;
- The duration of the professional training programme, expressed in training hours, for theoretical and practical training for which a graduation certificate is issued, shall be between:
 - 30-75 hours for refresher programmes;
 - 180-300 hours, for specialisation programmes.

According to the current regulation, in order to be authorised, training providers must prove that the training programmes are carried out with certified trainers in the profile or speciality corresponding to the training programme or trainers who provide evidence of their teaching qualification in the profile or speciality corresponding to the training programme. Practical training may also be carried out by master trainers or instructors/training trainers, certified in accordance with the legal provisions, who have the profile or speciality corresponding to the training programme, only for training programmes whose level of qualification is at most equal to their level. The number of trainers included in a training programme is a minimum of 2 and is determined by the provider, depending on the complexity of the programme.



public procurement - legal changes published in January 2023

The Government Ordinance no. 18/2023 amending and supplementing the Government Emergency Ordinance no. 47/2022 on the adjustment of the prices of public procurement contracts/sectorial contracts/concession contracts/framework agreements was published in the Official Gazette, Part I, No 87 of January 31, 2023, being in force from the same date.

The Ordinance no. 18/2023 brings a series of amendments to the Government Emergency Ordinance no. 47/2022, as follows:

- It is provided that, in the case of work contracts or framework agreements which include design, the amount of the claim for payment, according to the prices set out in the tender on the basis of which they were concluded, shall not include expenditure relating to design and technical assistance, and the advance and profit shall be those relating exclusively to the works and shall be determined by reference to the contract price minus the amounts related to design;
- The amount of the claim for payment in accordance with the prices quoted in the tender on which the contract is based shall now include the profit as well as, where appropriate, the direct and indirect expenses related to the works and/or the expenses related to the purchase of plant and/or machinery and technological and functional equipment, or the cost related to the purchase of products intended for the maintenance/repair/administration/operation of roads of national, county or local interest;
- If the value of the last payment request is recalculated after the conclusion of the additional act determining the final contract price, the parties must conclude a new additional act containing the recalculated final price. Where the parties have carried out the acceptance on completion of the works determining the final contract price, after the conclusion of the additional act and before the conclusion of the additional act determining the recalculated final contract price, for the amount of the excess difference between the final contract price initially determined and the recalculated final contract price, by way of derogation from the provisions of Article 43, para. (2) letter b) of the Law no. 10/1995 on quality in construction, the amount related to the quota determined according to them shall not be owed and shall not be transferred to the State Building Inspectorate - I.S.C. Within 10 days from the conclusion of the additional act, the contracting authority/entity is obliged to notify the State Building Inspectorate of the recalculated final contract price;
- It is established that the phrase "*irrespective of their execution period*" referred to in the Government Emergency Ordinance no. 47/2022 also applies to procurement contracts in which the contracting entities have applied penalties or surcharges for late payment, damages or other penalties of a similar nature for culpable non-fulfilment of the contractual obligations assumed by the contractor and for those where the execution period laid down in the contract has been exceeded, without having been amended in accordance with the contractual clauses or legal provisions in force.

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