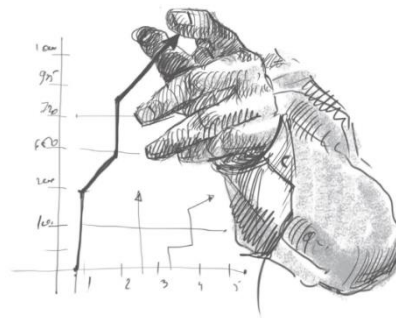




Legal Changes of December 2022

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**
- **Constructions**
- **Dispute resolution**
- **Employment**
- **Real Estate**



Extended topics on December 2022 laws

On December 25, 2022, has entered into force **Law no. 367/2022 on social dialogue** which establishes a new legal framework for the regulation of social dialogue in Romania. Read [here](#) extended info on this topic.

On December 22, 2022, **Law no. 361/2022 on the protection of whistleblowers in the public interest** entered in force regulating the general legal framework regarding violations of the legislation in a professional context, establishing both the rights and obligations of the persons involved. Read [here](#) extended info on this topic.



[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 December 2022

I. ROMANIA

1 SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY (ANSPDCP)

1.1 SUDREZIDENȚIAL BROKER S.R.L. was sanctioned for violating the provisions of Article 32 para. (4) of the GDPR with a fine amounting to LEI 49,418.00 (the equivalent of EUR 10,000)

As a result of the investigation, it was found that the controller has not implemented adequate technical and organisational measures to ensure that any natural person acting under his authority and having access to personal data only processes them at his request.

Thus, the controller created a database in Excel format containing personal data (name, surname, personal number code, telephone number, ID card series and number, e-mail address, bank details, real estate purchases, marital status, amount requested, bank, remarks) of its customers and other natural persons (life partners of the customers). This record was published by the company's administrator on a website, leading to the unauthorised disclosure of personal data belonging to at least 509 data subjects.

In addition to the fine, the controller was also given a warning for violating the provisions of Article 34 of the GDPR and Article 4 para. (5) of Law no. 506/2004 on the processing of personal data and the protection of private life in the electronic communications sector.

1.2 CASA RUSU S.R.L. was sanctioned for violating the provisions of Article 25 para. (1) and Article 32 para. (1) point b), d) and para. (2) of the GDPR with a fine amounting to LEI 9,883.60 (the equivalent of EUR 2,000)

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

Specifically, an unauthorised form was introduced in the online payment section of the controller's website through which the bank details contained in the customer's card were collected, leading to the unauthorised access and disclosure of the cardholder's first and last name, card number, expiry date and year, as well as the CVC code.

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

1.3 THE NATIONAL PROPERTY RESTITUTION AUTHORITY was sanctioned for violating the provisions Article 14 para. (7) in conjunction with Article 14 para. (1) and Article 13 para. (4) of Law no. 190/2018 on the measures implementing the GDPR with a fine amounting to LEI 13,000.00 (the equivalent of EUR 2,600)

As a result of the investigation, it was found that the controller had not carried out the previously imposed corrective actions.

Initially, the controller was sanctioned with a warning in September 2022 for violating the provisions of Article 5 para. (1) lit. b) and Article 6 of the GDPR, while being obliged to implement technical and organisational measures to ensure the security of personal data



The investigation was launched due to a lack of communication from the controller regarding the implementation of the imposed measures plan.

II. EUROPEAN UNION

1 SANCTIONS APPLIED IN THE EU

1.1 The Italian Data Protection Authority ("Garante") imposed to Lazio Region a fine of EUR 100,000 for breaches of the GDPR

As a result of the investigation, the Garante found that the controller processed personal data of employees of the Region's legal department without a legal basis.

Thus, the processor carried out an internal audit analysing the metadata of the institutional e-mails used (date and time, sender, recipient, subject), which also collected information from the private sphere of data subjects on their personal opinions, contacts and other circumstances unrelated to work. The action was coordinated by the controller on the suspicion of unauthorised disclosure of secret information.

The investigation was launched following a complaint by the Federation of Managers and Directors of Local Authorities and Health (FEDIRETS).

1.2 The Finish Data Protection Authority ("SA") imposed to Viking Line Oy Abp a fine of EUR 230,000 for breaches of the GDPR

As a result of the investigation, the SA found that the controller unlawfully processed personal data.

In fact, some of the stored data was incorrect and kept for unjustifiably long periods of time. In addition, the controller did not properly inform its employees about the processing, and the stored health-related data were linked, contrary to the law, to sick leave data.

The investigation was launched following a complaint from a former employee that the controller had failed to respond to his right of access request.

1.3 The Spanish Data Protection Authority ("AEPD") imposed to Vodafone España, S.A.U. a fine of EUR 56,000 for breaches of the GDPR

As a result of the investigation, the AEPD found that the controller processed personal data lacking a legal basis.

Specifically, in the absence of a request to do so, the data of one of the controller's customers was ported to another telecommunications company. This was made possible as a third party managed to purchase a duplicate SIM card on behalf of the data subject and the controller did not have precautionary measures in place to prevent such an incident.

The investigation was launched following a complaint from the data subject.



constructions - legal changes published in december 2022

Law No 375/2022 amending and supplementing Government Emergency Ordinance No 57/2019 on the Administrative Code ("Law No 375/2022") was published in the Official Gazette, Part I No 1255 of 27 December 2022 and entered into force on 30 December 2022. This regulation concerns the establishment, organisation and operation of administrative consortia, which are voluntary associations of administrative-territorial units, with the aim of making public services more efficient and using specialised human resources to achieve the interests of the local community. According to the amendments of the Law No 375/2002, administrative consortia have no legal personality.

As regards the rules on the organisation and operation of the administrative consortia, such are established based on an association agreement, approved through the decisions of the associated local councils. By means of the agreement, the administrative-territorial units members may ensure, among others: **(1)** activities of legal nature, including representation in court, according to the law; **(2)** exercise of their own preventive financial control; **(3)** activities of financial nature, including the administration of local taxes and duties; **(4)** activities of drafting and/or approving urban planning documentation for administrative-territorial units that do not have specific specialized structures; **(5)** issuance of the urbanism certificates and building/demolition permits, of the specialised structure approval or of the opportunity approval for the elaboration of an urbanism zoning plan, etc.

Law No 375/2022 also provides for the liability of staff working in administrative consortia. Therefore, culpable breach of duty entails administrative, civil or criminal liability under the law and the Administrative Code.

In order to encourage administrative-territorial units to cooperate actively in their voluntary association in administrative consortia, a multiannual programme to support the cooperation of administrative-territorial units that are members of administrative consortia is established from 2024. The financing of the programme is provided by the state budget, through the budget of the Ministry of Development, Public Works and Administration, and its approval is made by Government decision, upon proposal of the ministry responsible for public administration.



dispute resolution - legal changes published in December 2022

Decision of the High Court of Cassation and Justice no. 18/2022 regarding the issuance of an appeal in the interest of the law regarding the request that forms the object of Case File no. 1.423/1/2022, formulated by the Management Board of Brasov Court of Appeal was published in the Official Gazette, Part I no. 1258 of December 28, 2022 and it is applicable from the same date.

The High Court admitted the request submitted by Brasov Court of Appeal in order to issue an appeal in the interest of the law and, consequently, established that, in the application of art. 14 para. (2) of Government Ordinance no. 2/2001 on the legal regime of contraventions, as subsequently amended and supplemented, in disputes related to a contravention complaint, the court may, ex officio, invoke the exceeding of the statute of limitation for the enforcement of a contravention sanction.

Therefore, the enforcement of a contravention sanction is subject to the limitation period if the report establishing the contravention has not been communicated to the offender within two months of the date on which the sanction was imposed, art. 14 para. (2) stating that reaching the statute of limitation for the enforcement of a contravention sanction may be established even by the court which is solutioning the contravention complaint.

Law no. 336/2022 for amending para. (1) of art. 651 of Law no. 134/2010 concerning the Civil Procedure Code was published in the Official Gazette of Romania, Part I, no. 1177 of December 08, 2022, in force starting with December 11, 2022.

The law regulates new provisions concerning the justice field in relation with the jurisdiction of the enforcement court, amending para. (1) of art. 651 of Law no. 134/2010 on the Civil Procedure Code, as follows:

The first thesis of the Article remains unchanged, the enforcement court being the district court within whose jurisdiction the debtor's domicile or, where applicable, the debtor's registered office is situated at the time the enforcement authority is lodged with a claim, unless the law provides otherwise. If the debtor is not domiciled or, as the case may be, does not have its registered office within the country, it is competent the court within whose jurisdiction the creditor is domiciled or, as the case may be, has its registered office at the time when the enforcement authority is lodged with a claim, and if it is not domiciled within the country, the court within whose jurisdiction the office of the bailiff appointed by the creditor is situated.

The legislator has supplemented the Article by stating that the provisions of Article 112 (plurality of defendants) and Article 127 (optional jurisdiction) of the same legislative act shall apply accordingly.



employment - legal changes published in December 2022

Government Emergency Ordinance no. 164/2022 amending and supplementing the Government Emergency Ordinance no. 111/2010 on leave and monthly child-raising allowance was published in the Official Gazette, Part I, No 1173 of December 7, 2022, in force from the same date.

The Government has made a series of amendments to the legislation on parental leave and monthly childcare allowance, aimed at sharing childcare responsibilities fairly between men and women, ensuring a work-life balance between men and women, and increasing the possibility for a parent who did not initially request parental leave to exercise this right.

In this respect, the Emergency Ordinance no. 164/2022 fully transposes into national law Directive (EU) 2019/1158 on the work-life balance of parents and carers and repealing Directive 2010/18/EU.

The main amendments introduced concern the following:

- The amount of the monthly allowance is increased by 50% of the allowance due for each child born of a twin, triplet or multiple pregnancy, starting with the second child born of such a pregnancy. The increase so calculated may not be less than the minimum amount of the child-raising allowance;
- If a person receives, in the same month, both income in Romania and in other countries to which EU Regulation no. 883/2004 applies, without the periods of activity overlapping, the income received in both countries will be taken into account, with the appropriate application of the provisions of Article 12, para (2) of the same Regulation;
- For the entire period until the child reaches the age of 2 years, respectively 3 years in the case of a disabled child, the Ordinance provides the possibility for the beneficiary of the allowance to request a recalculation of the allowance based on a final court decision, certificates or other supporting documents relating to the correction of the income on which the entitlement was based. If the recalculation results in (a) a higher amount of the monthly allowance than that originally determined, the difference shall be paid for the entire period from the date of entitlement to the child-raising allowance, and if (b) a lower amount of the monthly allowance than the one originally determined, the excess amounts paid, which have been wrongly received, shall be recovered from the recipient;
- If both parents meet the requirements for parental leave, it shall be granted as follows:
 - at least 2 months of parental leave to be taken by the parent who did not initially apply for it;
 - if the parent referred to above does not apply for parental leave for at least 2 months, although it meets the requirements set out, the other parent shall not be entitled to parental leave instead.
- In order to apply for parental leave, employees are required to notify their employer at least 10 days before the end of their maternity leave or, where applicable, before the expected start date of their parental leave, by



submitting an application indicating the expected period of parental leave. If this period is not specified, the employer will approve the request for the maximum period of parental leave;

- Child-raising allowance may be pursued and enforced regardless of the nature of the claims due, within the limits set by the relevant legal framework.

Order of the Minister of Labour and Social Solidarity no. 2171/2022 approving the framework model of the individual employment contract was published in the Official Gazette, Part I, no. 1180 of December 9, 2022, in force from the same date.

The Order approves the framework model of the individual employment contract and repeals the previous model. The main amendments are as follows:

- The new framework model also contains a clause on job-specific risks, stating that these are set out in the risk assessments of the workplace as well as in the identification sheet for occupational risk factors;
- The method of payment of the salary must be expressly stated, regardless of its type;
- It also provides for conciliation as a means of settling disputes related to the completion, execution, modification, suspension or termination of the individual employment contract, in contrast to the old framework model, which stipulated that the court had exclusive jurisdiction to settle such disputes;
- For employees who do not have a fixed place of work, the contract will include details of the amount of additional benefits (in cash or in kind) to which the employee is entitled and how the employer will insure and/or pay for transport;
- Employers will be entitled to provide employees with benefits such as private health insurance, additional contributions to the employee's voluntary pension or occupational pension, as appropriate, which must be stipulated in the individual employment contract;
- The new framework model also requires the individual employment contract to state, in addition to the conditions for working and compensating overtime, the amount of overtime payment;
- It is introduced a new clause concerning the conditions under which professional training is carried out, as well as a clause through which is identified the applicable collective labour agreement.

Government Decision no. 1447/2022 for the establishment of the minimum gross basic wage per country guaranteed in payment was published in the Official Gazette, Part I, no. 1186 of December 9, 2022, in force from the same date.

This Decision provides that, as from 1st of January 2023, the minimum gross basic wage per country guaranteed in payment, stipulated in Article 164 para. (1) of Law no. 53/2003 - Labour Code, republished, with subsequent amendments and additions, will be established in Lei, without including bonuses or other additions, in the amount of Lei (RON) 3,000 per month, for a normal work schedule averaging 165.333 hours per month, representing the amount of Lei (RON) 18.145 per hour.



Government Decision no. 1448/2022 on the establishment of the contingent of foreign workers newly admitted to the labour market in 2023 was published in the Official Gazette, Part I, no. 1186 of December 9, 2022, in force from the same date.

The Decision establishes for 2023 a contingent of 100,000 foreign workers newly admitted to the Romanian labour market.

The measure adopted by the Government was based on data from the General Inspectorate for Immigration, according to which, by September 14, 2022, out of the quota of 100,000 foreign workers newly admitted to the labour market in 2022, established by the Government Decision no. 132/2022, a number of 64,894 employment/secondment permits was issued by the General Inspectorate for Immigration.

Order of the Minister of Labour and Social Solidarity and of the Minister of Health no. 2172/3829/2022 on granting carer's leave was published in the Official Gazette, Part I, no. 1241 of December 22, 2022, in force from the same date.

The Order establishes the conditions necessary to be met for granting of carer's leave, defines the notion of "serious medical problems" and regulates the list of serious medical problems on the basis of which the employee may request the carer's leave.

Thus, serious medical problems are defined as those conditions or complications thereof that affect a person's functional status or significantly limit the ability to perform basic activities to the point of making it impossible to perform them, requiring the support of another person.

In order for the carer's leave to be granted, the employee must make a written request to the employer, and no later than 30 working days from the time the request is submitted, the employee must submit to the employer documents proving that the person to whom it has provided care or support is a relative or a person living in the same household as the employee, as well as the existence of the serious medical condition that determined the employee's request for carer's leave.

The list of serious medical conditions for the granting of carer's leave contains several categories of medical conditions, from oncological to neurological, digestive, cardiovascular or psychiatric.

Law no. 382/2022 approving the Governmental Emergency Ordinance no. 143/2022 for amending Article 17 of Government Ordinance no. 25/2014 on the employment and secondment of foreigners on the territory of Romania and for amending and supplementing certain regulations on the regime of foreigners in Romania was published in the Official Gazette, Part I, no. 1276 of December 30, 2022, in force since January 2, 2023.

This law establishes the right of foreigners who have legally entered the territory of Romania and whose single permit has expired, to apply for a new permit of the same kind, within 90 days from the entry into force of the law if the termination of the employment relationship of foreigners was registered no later than 18 months before the date of entry into force of this law. This provision does not apply to foreigners for whom the General Inspectorate for Immigration has issued a return decision by the date of entry into force of the law.



Government Decision no. 1577/2022 for amending the Methodological Norms for the application of the Paternal Leave Law no. 210/1999, approved through the Government Decision no. 244/2000 was published in the Official Gazette, Part I, no. 6 of January 4, 2023, in force from the same date.

The Decision no. 1577/2022 introduces several amendments to the Methodological Norms for the application of the Paternal Leave Law, as follows:

- It is provided the holder entitled to parental leave, namely the father of the new born child or children, in the case of multiple births, who effectively participates in the care of the child or children, in the case of multiple births, whether the child or children, in the case of multiple births, is/are born in or out of marriage or adopted by the holder of the right;
- In order to benefit of this right, the father must notify its employer in writing within 8 weeks of the birth of the child or children in the case of multiple births;
- It is provided that fathers who effectively participate to the care of the child are entitled to 10 working days of parental leave, regardless of whether the child's parents are married or not, or whether the child is adopted;
- The duration of paternal leave may be extended to 15 working days for each new born child, or for each birth in the case of multiple pregnancies, if the father attends childcare courses, in which theoretical and practical notions of caring for a young child are taught;
- Currently, childcare courses can be held during the mother's pregnancy or after the birth of the child, both in the father's family doctor's office and in health units or other establishments that organise such courses. At the end of the course, the family doctor issues the father a certificate of graduation;
- The duration of permission is extended from 7 to 10 working days for individuals entitled to parental leave who are performing military service;
- The Decision also provides that in the event of the mother's death during childbirth or during maternity leave, the father is entitled to an allowance equal to the maternity allowance payable to the deceased mother, the gross monthly amount of which is 85% of the average gross monthly earnings of the last 6 months of the 12 months of the insurance period, up to a maximum of 12 gross monthly minimum wages;
- The allowance is paid whether or not the father has completed the insurance period for the granting of sick leave entitlement and is paid out of the salary fund of the employer where the father works. Paternal leave is granted only if the holder of this entitlement is an employee, regardless of how the employer is organised and financed.



real estate - legal changes published in December 2022

Law No 377/2022 amending and supplementing the Law on Cadaster and Real Estate Publication No 7/1996 ("Law No 377/2022") was published in the Official Gazette, Part I No 1260 of 28 December 2022.

The above-mentioned law provides specific completions and amendments to the Land Registry and Real Estate Publicity Law No 7/1996 and regulates, in principle, the registration of possession with the relevant land book, the registration of land related to the residential house and the annexes, as well as the legal status of the possessors that use and pay taxes on the land but have not obtained specific title deeds.

In the case of properties for which title deeds have been issued and the possessor has been identified, possession will be noted, with prior registration of the title deed in Part II of the land book. Moreover, in the case of properties for which owners, possessors or other precarious holders cannot be identified with the occasion of the systematic registration, as well as in the absence of documents proving the status of possessor, the ownership right will be provisionally registered in favor of the administrative-territorial unit. Interested persons may subsequently request either the justification of the provisional registration through the registration of the ownership right of the administrative-territorial unit or the registration of the true owner, or the registration of possession, subject to certain conditions imposed by law.

In the case where the minutes of possession have been issued, the ownership right will be provisionally registered in favor of the entitled persons, according to the minutes and the decision of the county land commission. Moreover, registrations in the land registers opened following the completion of systematic registration may be amended, in accordance with Law No 377/2022, ex officio or on request, without any fee, up to the date of the first subsequent registration.

Another regulation introduced by Law No 377/2022 concerns land relating to residential houses and annexes. Such, as well as the surrounding courtyard and the garden, are registered with the land book in the absence of property deeds and the ownership right vthe agricultural register and the cadastral documentation.

Ownership of buildings constructed before 1 August 2001 is registered on the basis of the tax certificate, eliminating the condition of **lack of building permit**. In addition, the above-mentioned certificate **will include the actual surface area of the building and the related land**, without having to prove the payment of all tax obligations due to the local public administration authority.

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