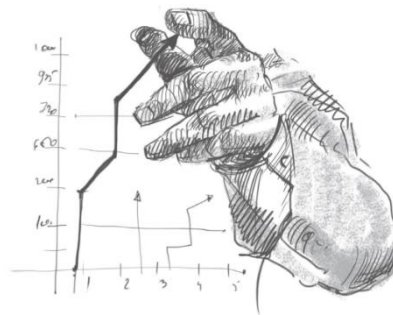




Legal Changes of February 2023

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**
- **Public procurement**

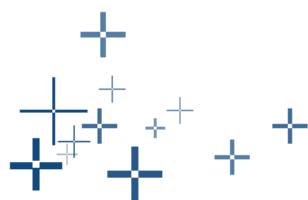


Extended topics on February 2023 laws

Litigations won by Voicu & Filipescu lawyers in important cases on criminal offence and medical malpractice. Courts have pronounced favorable solutions to a well-known insurance company, one of the most important in Romania, in a criminal case in which the client was called as a guarantee and to a physical person subject of a medical malpractice awarding substantial moral damages representing a first in our judicial practice related to the committed act. [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 February 2023

I. ROMANIA

1 SANCTIONS APPLIED BY THE NATIONAL SUPERVISORY AUTHORITY (ANSPDCP)

1.1 TENSA ART DESIGN S.A was sanctioned for violating the provisions Article 21 para. (3) of the GDPR with a fine amounting to LEI 4,927.30 (the equivalent of EUR 1,000)

As a result of the investigation, it was found that the controller did not follow up on the exercise of the right to object.

Thus, it was found that the controller had repeatedly sent unsolicited commercial messages to the data subject via e-mail, although the data subject had previously requested to unsubscribe from the newsletter service.

The investigation was initiated following a complaint by the data subject.

1.2 MEDIJOBS PLATFORM S.R.L was sanctioned for violating the provisions of Article 32 para. (1) point b) and para. (2) of the GDPR with a fine amounting to LEI 24,610.50 (the equivalent of EUR 5,000)

As a result of the investigation, it was found that the controller had caused a personal data security breach.

Specifically, the security breach occurred as a result of unauthorised access to the IT infrastructure managed by the controller, resulting in the downloading and deletion of certain personal data contained in candidates' CVs, such as first name, surname, e-mail, telephone number, professional/educational history, hobbies and family status.

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

II. EUROPEAN UNION

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

1.1 EDPB adopts the final version of Guidelines No. 03/2022 on deceptive design patterns in social media platform interfaces: how to recognise and avoid them

At its Plenary Session on 14 February 2023, the EDPB adopts the final version of the Guidelines No. 03/2022 on Deceptive design patterns in social media platform interfaces: how to recognise and avoid them.

The purpose of the Guide is to provide practical recommendations to designers and users of social media platforms for assessing and avoiding virtual practices contrary to GDPR requirements.

The Guide draws attention to undesirable patterns that cause social media users to unintentionally and unwittingly make potentially dangerous decisions regarding the collection and processing of personal data.

A list of examples of such inadvisable patterns, together with related warnings and recommendations, is included in the Guidelines.



The document is available at:

[edpb_03-2022_guidelines_on_deceptive_design_patterns_in_social_media_platform_interfaces_v2_en_0.pdf](#)
(europa.eu)

1.2 The EDPB adopts the final version of Guidelines No. 07/2022 on certification as a tool for transfers

At its Plenary meeting on 14 February 2023, the EDPB adopts the final version of the Guidelines No. 07/2022 on certification as an instrument for the transfer of personal data to third countries, in the absence of a decision on the adequacy of the level of protection offered by the latter.

It complements the Guidelines No. 01/2018 on certification and its main purpose is to provide further clarification on the practical use of certification mechanisms as a transfer tool.

The document is available at [edpb_guidelines_07-2022_on_certification_as_a_tool_for_transfers_v2_en_0.pdf](#)
(europa.eu)

1.3 EDPB adopts final version of Guidelines No. 05/2021 on Interplay between the application of Article 3 and the provisions on international transfers as per Chapter V of the GDPR

At its Plenary Meeting of 14 February 2023, the EDPB adopts the final version of Guidelines No. 05/2021 on Interplay between the application of Article 3 and the provisions on international transfers as per Chapter V of the GDPR.

The Guidelines aim to assist organizations subject to the GDPR in identifying whether a data processing activity constitutes an international data transfer under the GDPR, as the GDPR does not define the term, setting forth three main criteria to be considered in determining whether a processing activity qualifies as an international data transfer under the GDPR, namely:

- The data exporter (controller or processor) is subject to the GDPR for the given processing activity;
- The data exporter discloses by transmission or otherwise makes the personal data subject to the processing of an importer (a controller or processor);
- The data importer is in a third country (or is an international organization), irrespective of whether the data importer or its processing activities are subject to the GDPR in respect of the given processing in accordance with Article 3.

The document is available at

[edpb_guidelines_05-2021_interplay_between_the_application_of_art3-chapter_v_of_the_gdpr_v2_en_0.pdf](#)
(europa.eu)

2 SANCTIONS APPLIED IN THE EU

2.1 The Irish Data Protection Authority ("DPC") imposed to Centric Health Ltd. a fine of EUR 460,000 million for breaches of the GDPR

As a result of the investigation, the DPC found that the controller did not implement adequate technical and organisational measures to address the risks associated with the processing operations.



Thus, a ransomware attack was launched against the controller resulting in unauthorised modification, loss of availability or permanent deletion of personal data belonging to 70,000 data subjects belonging to special categories. A number of 2500 patients were permanently affected as their data was deleted without a backup.

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

2.2 The Norwegian Data Protection Authority ("NDPA") imposed to Edison Energia S.p.A a fine of EUR 900,000 for breaches of the GDPR

As a result of the investigation, the NWDA found that the controller did not respect the access and deletion rights of data subjects. In particular, the controller processed data relating to customers' training history without a legal basis.

The investigation was launched following complaints by data subjects.



dispute resolution - legal changes published in February 2023

The Decision of the European Court of Human Rights dated 16 November 2021 ruled in Nedelcu against Romania Case (Application no. 39.290/19) was published in the Official Gazette, Part I no. 88 dated February 01, 2023 and it is applicable from the same date.

Through the filed application, the complainant claims that the State has failed to fulfil its positive obligation to protect her right to life and also that the national authorities have failed to carry out an effective investigation regarding the circumstances of the accident. The complainant, aged sixty-nine, was the victim of an accident occurred in a subway station in Bucharest, as a result of which she lost her left leg, requiring emergency surgery.

As a result of the event, the applicant filed a criminal complaint for culpable bodily injury against the public transport company that operated the subway network in Bucharest. The public prosecutor's office dismissed the complaint on the grounds that the company was not responsible, the fault belonging to the applicant. The Bucharest Court admitted the complainant's appeal and ordered the continuation of the investigation, with the prosecutor's office closing the case for the second time on the same grounds.

The Bucharest Court held that the company was responsible, as it was its fault, but at the same time concluded that the company's criminal liability was time-barred and, therefore, the criminal prosecution stopped.

The European Court of Human Rights held that there was a violation of Article 2 of the Convention under material and procedural aspects, and, consequently, the respondent State shall pay to the applicant, within three months, the following amounts, which shall be converted into the currency of the respondent State, at the exchange rate applicable on the date of payment: **(i)** EUR 26,000 plus any other amount that may be due as a tax for this amount for non-pecuniary damages; **(ii)** EUR 2,700 plus any other amount that may be due as a tax, in respect of costs and expenses; **(iii)** that from the expiry of the above-mentioned period and until payment is made, such amounts 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.

The Decision of the European Court of Human Rights dated 16 February 2021 ruled in Negulescu against Romania Case (Application no. 11.230/12) was published in the Official Gazette, Part I no. 94 dated February 02, 2023 and it is applicable from the same date.

The case concerns allegations according to which the criminal proceedings against the applicant for a minor offence were unfair, to the extent that the court relied on the testimony of witnesses to whom the applicant could not ask questions.

The European Court of Human Rights held that **(i)** there was a violation of Articles 6 § 1 and 6 § 3 (d) of the Convention **(ii)** the respondent State shall pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the amount of EUR 1,000, which shall be converted into the currency of the respondent State at the exchange rate applicable at the date of payment, for non-material damages, plus any other amount that may be due as a tax for this amount; **(iii)** the respondent State shall pay to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention the amount of EUR 100, which shall be converted into the currency of the respondent State at the exchange rate applicable at the date of payment, in respect of costs and expenses, plus any other amount that may be due as a tax for this amount; **(iv)** that from



the expiry of the above-mentioned period and until payment is made, such amounts 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. 2/2023 regarding the examination of the request formulated by Bucharest Municipal Court – Civil Section V regarding the request that forms the object of Case File no. 19.409/299/2022 in order to issue a preliminary ruling for resolving a matter of law was published in the Official Gazette, Part I no. 141 of February 20, 2023 and it is applicable from the same date.

The High Court admitted the request made by Bucharest Municipal Court – Fifth Civil Section in order to issue a preliminary ruling, in the interpretation and application of the provisions of art. 24 para. (1) to (3) and (4) of Law no. 554/2004 on Administrative Litigation, as subsequently amended and supplemented, established that:

- The provisions of art. 24 para. (1) to (3) of Law no. 554/2004, as subsequently amended and supplemented, shall be interpreted as meaning that the procedure for the enforcement of a final judgment delivered by a court of contentious administrative law is applicable even in the situation where the obligation established by such ruling is the issuance of an administrative unilateral act of an individual nature.

Moreover, the Court stated that art. 24 para. (3) and (4) of Law no. 554/2004 shall be interpreted in the sense that the procedure for fixing the final amount owed to the creditor as penalties is also applicable in the situation where, by the writ of execution, the court has established penalties applicable to the obliged party, for each day of delay, in accordance with art. 18 para. (5) of Law no. 554/2004.

The Decision of the European Court of Human Rights dated 30 August 2022 ruled in Gal against Romania Case (Application no. 49.229/1519) was published in the Official Gazette, Part I no. 172 dated February 28, 2023 and it is applicable from the same date.

Through the submitted application, the complainant claims that she was prosecuted for the crime of complicity to influence peddling and that she was found not guilty in the first instance as a result of the fact that there was a provocation for committing the crime. The judgement was overturned on the appeal requested by the public prosecutor's office and the court found the applicant guilty based solely on the statements of the whistleblowers from the case file.

In relation to these aspects, the European Court held that the national courts had not taken sufficient measures to ensure the hearing before the court and under contradictory conditions for one of the whistleblowers, who had moved to Ireland. Furthermore, the Court stated that the appeal court infringed the applicant's right to a fair trial by rejecting the applicant's request for the rehearing of two witnesses and to listen to the recordings made by those two witnesses, in public hearing, evidence that supported the defence's regarding the existence of provocation to commit the crime and which substantiated the acquittal solution in the first instance.

The European Court of Human Rights held that there was a violation of Articles 6 § 1 and 6 § 3 (d) of the Convention with regard to the applicant's impossibility to interrogate C.M., in person or through a representative and his conviction on appeal in the absence of the hearing of witnesses on which the appeal court relied and ordered that the respondent State shall pay to the applicant, within three months, the following amounts, which shall be converted into the currency of the



respondent State, at the exchange rate applicable at the date of payment: (i) EUR 6,000 plus any other amount that may be due as a tax for this amount for non-material damages; (ii) EUR 3,000 plus any other amount that may be due as a tax, in respect of costs and expenses. These amounts 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, that from the expiry of the above-mentioned period and until payment is made.



public procurement - legal changes published in February 2023

Regulation of the European Parliament and of the Council of the European Union no. 2560/2022 on foreign subsidies distorting the internal market was published in the Official Journal of the European Union no. 330 of December 2022, in force from 12th of January 2023.

Regulation no. 2560/2022 addresses foreign subsidies that distort the internal market in the context of public procurement procedures.

For the purposes of the Regulation, a foreign subsidy shall be deemed to exist where a third country grants, directly or indirectly, a financial contribution which confers a benefit on an enterprise engaged in an economic activity in the domestic market and which is limited, in law or in fact, to one or more enterprises and industries.

A distortion in the domestic market refers to a case where a foreign subsidy is likely to improve the competitive position of an enterprise in the domestic market and where the foreign subsidy thereby has an actual or potential negative impact on competition in the domestic market.

According to the Regulation, there is a foreign financial contribution subject to notification in a public procurement procedure in the following situations:

- the estimated value, not including VAT, of the procurement, framework agreement or specific acquisition under the dynamic procurement system is equal to or greater than EUR 250 million;
- the economic operator, its subsidiaries without commercial autonomy, its holding companies and its main subcontractors and suppliers involved in the same tender in the public procurement procedure have received total financial contributions during the last three years preceding the notification or, as the case may be, the updated notification, equal to or greater than EUR 4 million per third country;
- where the contracting authority decides to divide the procurement into lots, if the estimated value, excluding VAT, of the procurement exceeds EUR 250 million and the value of the lot or the total value of all lots in which the tenderer submits a tender is equal to or greater than EUR 125 million and the foreign financial contribution is equal to or greater than EUR 4 million.

If the conditions for notification of a financial contribution are met, economic operators participating in a procurement procedure shall notify the contracting authority of all foreign financial contributions. In all other cases, economic operators shall include in a declaration all the foreign financial contributions received and confirm that they are not subject to the notification requirement. If the lack of notification or declaration is found in the request for participation or the tender, the contracting authority may request the economic operators concerned to submit the relevant document within 10 working days. Tenders or requests for participation of economic operators subject to the obligations provided for in the Regulation which, following a request from the contracting authority, are not accompanied by the notification or declaration of financial contributions shall be declared non-compliant and rejected by the contracting authority.

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

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