APPLICATION ON THE NATIONAL LEVEL OF THE EUROPEAN REGULATION NO. 679/2016

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Abstract

In order to ensure a uniform level of protection for individuals throughout the Union and to prevent discrepancies that hinder the free movement of data within the internal market, a regulation is needed in order to provide legal certainty and transparency for economic operators, including micro-enterprises and businesses small and medium-sized enterprises and to provide individuals in all Member States with the same level of legal rights, obligations and responsibilities legally binding on operators and their empowered persons in order to ensure a consistent monitoring of the processing of personal data , equivalent sanctions in all Member States, and effective cooperation of the supervisory authorities of different Member States.

Keywords: *personal data, privacy, data protection.*

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European regulation no. 679 of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data states that the processing of personal data is a fundamental right.

The principles and rules on the protection of individuals with regard to the processing of their personal data should, irrespective of the nationality or place of residence of natural persons, respect their fundamental rights and freedoms, in particular the right to data protection personal.

This regulation aims at contributing to an area of freedom, security and justice and economic union, to economic and social progress, to the consolidation and convergence of economies within the internal market and to the welfare of individuals. The effective protection of personal data throughout the Union requires not only to consolidate and establish in detail the rights of data subjects and the obligations of those who process and decide to process personal data, but also equivalent competences to monitor and ensure compliance with the rules on protection of personal data. personal data and equivalent penalties for offenses in the Member States.

In order to ensure a uniform level of protection for individuals throughout the Union and to prevent discrepancies that hinder the free movement of data within the internal market, a regulation is needed in order to provide legal certainty and transparency for economic operators, including micro-enterprises and businesses small and medium-sized enterprises and to provide individuals in all Member States with the same level of legal rights, obligations and responsibilities legally binding on operators and their empowered persons in order to ensure a consistent monitoring of the processing of personal data , equivalent sanctions in all Member States, and effective cooperation of the supervisory authorities of different Member States.

For the proper functioning of the internal market, the free movement of personal data within the Union should not be restricted or prohibited on grounds of the protection of individuals with regard to the processing of personal data. In order to take into account the specific situation of micro-enterprises and small and medium-sized enterprises, this Regulation includes a derogation for organizations with fewer than 250 employees in keeping records.

In addition, the institutions and bodies of the Union and the Member States and their supervisory authorities are encouraged to take into account the specific needs of micro, small and medium-sized enterprises in the application of the Regulation.

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In order to ensure that natural persons are not deprived of the protection to which they are entitled, processing of the personal data of the data subject located within the Union by an operator or a person empowered by him not established in the Union should be subject to regulation where processing activities are related to the supply of goods or services to such targeted persons, whether or not they are linked to a payment. In order to determine whether such an operator or such person empowered by the operator offers goods or services to persons concerned within the Union, it should be determined whether the operator or person empowered by the operator intends to provide services to the data subject from one or more Member States of the Union.

Since the mere fact that there is access to a website of the operator, the person empowered by the operator or an intermediary in the Union that an e-mail address and other contact data are available, or that a language generally used in the third country where the operator is established is insufficient to confirm such an intention, factors such as the use of a language or coin generally used in one or more Member States with the possibility of ordering goods and services in that language or mentioning clients or users within the Union may lead to the conclusion that the operator intends to offer goods or services to persons targeted in the Union.

Directive 95/46 / EC of the European Parliament and of the Council aims at harmonizing the level of protection of the fundamental rights and freedoms of natural persons with regard to processing activities and ensuring the free movement of personal data between Member States.

The processing of personal data should be at the service of the citizens. The right to the protection of personal data is not an absolute right; it must be taken into account in relation to the function it performs in society and in balance with other fundamental rights, in accordance with the principle of proportionality.

In Romanian national law, European Regulation no. 679 is enrolled through Law no. 190 of 18 July 2018. The aforementioned normative act lays down the measures necessary for the implementation at national level, mainly, of the provisions of art. 6 par. (2), art. 9 par. (4), art. 37-39, 42, 43, art. 83 par. (7), Art. 85 and art. 87-89 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 / EC , published in the Official Journal of the European Union, L series, no. 119 May 4, 2016.

Law no. 190/2018 regulates special rules for the processing of certain categories of personal data, such as:

a) Processing of genetic data, biometric data or data on the health;

b) Processing of a national identification number;

c) Processing of personal data in the context of working relations;

d) Processing of personal data and special categories of data with personal nature in the context of performing a task that is in the public interest;

e) Processing of personal data for journalistic purposes or purposes academic, artistic or literary expression;

f) Processing of personal data for purposes of scientific research or historical, for statistical purposes or for purposes of archiving in the public interest[1].

In order to ensure proportionality and balance between the right to the protection of personal data and special data and the processing of such data by political parties and citizens' organizations belonging to national minorities, to non-governmental organizations, the following guarantees will be achieved:

[1] The art. 9 par. (1) of the Law no. 190 of 18 July 2018.

a) informing the data subject about the processing of personal data;

b) ensuring the transparency of the information, communications and ways of exercising the rights of the data subject;

c) guaranteeing the right to rectification and erasure.

The processing of personal and special personal data is allowed to political parties and citizens' organizations belonging to national minorities, non-governmental organizations, in order to achieve their objectives, without the express consent of the data subject, provided the appropriate guarantees are provided.

Operators and persons empowered by the operator designate a data protection officer. Where the operator or the person empowered by the operator is a public authority or a public body, a data protection officer, unique to several of these authorities or bodies, may be designated, taking into account the organizational structure and size.

According to the law, the right to be forgotten implies that natural persons may require the deletion of personal data if they have been illegally processed without their consent or if the data are no longer necessary for the purpose for which they were initially processed. In the case of the right to be forgotten, particular consideration was given to the processing of data in the on-line environment.

The right to be forgotten is not an absolute one - the circumstances of each case will always be analyzed. The law allows the continued storage of personal data if it is necessary to respect freedom of expression and the right to information, to comply with a legal obligation, to carry out a task which is in the public interest or which results from the exercise of public authority with the public interest in public health, for purposes of archiving in the public interest, for scientific or historical research purposes or for statistical purposes, or for the establishment, exercise or defense of a right in the courts.

The right to data portability - provides the possibility for the individual to request the transmission of the data to another operator or to receive the personal data which concern him and which he has provided to the operator. The data operator must provide the data in a structured format, currently used, automatically processed and interoperable, just so that another data operator can process it later. The right to data portability is applicable to the extent that the data subject has provided the data controller with the personal data and he processes them on the basis of his or her consent or the performance of a contract.

The right to data portability may not be exercised in the case of data processors who process data of individuals in the exercise of their public functions if processing is necessary to comply with a legal obligation to which the operator is subject or when performing a task which serves a public interest or which results from the exercise of a public authority with which the data controller is invested. In exercising the right to data portability, the rights and freedoms of others must not be impaired - for example, the case of a data set involving more than one person or the right of someone else to obtain the deletion of the data concerning it. When the data portability is exercised, the data controller may transmit the personal data directly to another data operator chosen by the data subject.

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For example, in the case of ticked boxes (through which the agreement is preset), an informed consent can not be presumed. If data is processed for multiple purposes, it is

important that the data controller can demonstrate that he has obtained the consent of the person to process the data for all purposes.

The law establishes the obligation of the data controller to ensure a certain level of transparency vis-à-vis the data subjects. They need to know who the data operator is, the purpose of processing the data, what data are used, what rights are guaranteed, how they can exercise those rights, and who they are / will be third parties to whom the data will be disclosed, if appropriate. Where personal data of minors are processed, the data controller must provide that information in a simple and clear language so that the child / minor can easily understand the purpose and the way personal data will be processed. Minors under 16 can not give their consent.

Regarding the responsibility of data controllers, the emphasis is on the transparency of the data subject and the data controller's responsibility towards the way it processes the data. In the case of data processing that may involve a high risk to the privacy of individuals, the operator must carry out an impact study on privacy. The outcome of such a study will allow it to identify specific risks and adopt measures that prevent or arise from these situations. The processing of categories of 'sensitive data' may often entail the emergence of specific risks to the privacy of individuals.

Such assessment will always begin with the inventory of data / categories of personal data the operator intends to process. These will be subject to a need analysis to verify that all those data / categories of data are indeed needed to achieve the purpose of the operator in order to comply with the data minimization principle. Later, the risks involved in the processing of those data, such as unauthorized / accidental / unlawful disclosure of the data, and the implications of such a risk can bring the person's right to privacy can also be identified.

Violation of legal provisions results in the application of contravention sanctions. The main contravention sanctions are the warning and the fine for the contravention.

In the event of a breach by the public authorities / bodies of the provisions of the General Regulation on Data Protection and this law, the National Supervisory Authority shall conclude a report on the detection and sanctioning of the offense by which the sanction of the warning applies and to which it annexes a remedial plan[1] .

The remedial deadline is determined by the risks associated with the processing, as well as the steps to be taken to ensure compliance with the processing.

Within 10 days of the expiration of the remedial period, the National Supervisory Authority may resume control.

Responsibility for the remedial measures is the responsibility of the public authority / body which, according to the law, bears the contravening responsibility for the established deeds.

If the audit reveals that the public authorities / bodies did not fully implement the measures set out in the remedial plan, the National Supervisory Authority may, depending on the circumstances of each case, apply the sanction of the contravention of the fine.

[1] Article 13 paragraph (1) of the Law no. 190 of 18 July 2018.