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Law for the application of the Regulation regarding data protection

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Law for the application of the Regulation regarding data protection

Law no. 190/2018 for the application of Regulation (EU) no. 2016/679 regarding data protection has been published in the Official Gazette no. 651 from 26 July 2018 and has entered into force starting with August 1st.

The GDPR is already applicable in the EU member states since 25 May 2018. Romania was also expected to show how it will regulate in the fields where the GDPR permits derogations through national norms, such as in the context of employment, the use of genetic, biometric and health related data or in the case of processing for journalistic purposes. The main provisions of the legislation are the following:

Processing of certain types of data

- There is a **liberalization of the grounds for processing of the personal numeric code (CNP)**, as processing is also permitted for the purposes of the legitimate interest of the operator, subject to: **(i)** implementation of adequate technical and organization measures, **(ii)** designation of the data protection officer, **(iii)** establishing a storage period and a period of time to erase the data and also **(iv)** periodical training of personnel involved in data processing. In practice, we will have to see, amongst others, how compliance with the data minimization principle is actually achieved.
- **Monitoring at the work place** through electronic surveillance means or video surveillance is permitted subject to fulfilment of strict conditions, respectively: **(i)** prior information of the employees, **(ii)** prior consultation of the workers' syndicate or the employees' representatives. **(iii)** storage of data for a period of maximum 30 days with certain exceptions, and **(iv)** eliminating first the possibility to use other less intrusive means if inefficient for achieving the desired purpose;

Derogations from GDPR

- **Processing of data for journalistic, academic, artistic or literary expression purposes** can be performed based on exemptions from the GDPR, in order to achieve a balance between the right to protection of personal data and the freedom of expression and information, only with respect to data: **(i)** which are manifestly made public by the data subject, **(ii)** which are in strict correlation with the quality of the data subject as a public person or **(iii)** with the public nature of the facts in which the data subject is involved. According to the GDPR, such exemptions are permitted only if they are necessary to reconcile these rights.
- **Political parties, NGOs or organizations relating to national minorities** can process data without the consent of the data subject in order to achieve their objectives and in compliance with certain guarantees, such as ensuring information, transparency, guarantee the right to rectification and erasure. The law has extended the definition of "task carried out in the public interest" in order to include the activities of such entities which serve" the fulfilment of the objectives



provided by constitutional law or public international law or the functioning of the democratic system, including the encouragement of citizens' participation in the decision-making process and the preparation of public policies, respectively promoting the principles and values of democracy". Hence, processing of personal data by such entities can rely also on this additional ground for processing.

However, one should note that according to the GDPR, such entities can process data that reveal political opinions, religious or philosophical beliefs of a person, on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects.

Certification Bodies

The Romanian Accreditation Association – RENAR will be acting as a national accreditation body, in accordance with applicable legislation and in accordance with EN-ISO / IEC 17065 and with the additional requirements to be issued by ANSPDCP.

Corrective actions and sanctions applicable to public authorities and bodies

Public authorities and organisms benefit from a special and especially lenient sanctioning system, compared to the one imposed by the GDPR to private operators. Public authorities and organisms shall first receive from the supervisory authority a warning together with a remedy action plan to be complied with in a term of maximum 90 days. After the investigation will be resumed, the supervisory authority may apply a fine up to a maximum of 100,000 to 200,000 lei (representing approx. 20,000 EUR or 40,000 EUR), depending on the type of violation in question, while for the same violation a private entity could be fined up to 10 million EUR or up to 20 million EUR or 2% to 4% of the global turnover in the previous year.

Other aspects

Since it is not regulated by Romanian law, the legal age of consent in relation to the offer of information society services directly to a child is of 16 years, according to the GDPR. Also, the regime applicable to automated individual decision-making, including profiling based on genetic, biometric or health related data does not depart from the provisions of the GDPR, as it can be performed based on consent of the data subject or based on express legal provisions. The legal regime applicable to the appointment of data protection officers does not represent a change from the initial text of the GDPR either.

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