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## Video surveillance - local public authorities

In consideration of the requests received from public authorities, but also from the general public, regarding the conditions of using video surveillance systems in public spaces, we submit the following aspects to the attention of operators and interested persons:

According to art. 4 point 1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46 /CE (General Data Protection Regulation), personal data means any information regarding an identified or identifiable natural person (data subject); an identifiable natural person is a person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier, or to one or more many specific elements, specific to his physical, physiological, genetic, psychological, economic, cultural or social identity.

Thus, it represents personal data: name and surname, address, place and date of birth, personal numerical code, BI / CI series and number, citizenship, profession, e-mail, telephone/fax, image, workplace, position , signature, family status, religion, political affiliation, state of health, vehicle registration number and others.

Related to the provisions of art. 4 point 7 of the General Regulation on Data Protection, local public authorities have the status of operator when they establish, alone or together with others, the purposes and means of processing personal data or when the purposes and means of processing are established by domestic law applicable.

With regard to the method of processing personal data through the use of video surveillance means in public spaces by local public authorities, this can only be done with strict compliance with the provisions of art. 6 of the General Data Protection Regulation (RGPD).

Thus, in relation to the conditions of personal data processing by the operators, we mention that, according to art. 6 para. (1) of the GDPR, the processing is legal only if and to the extent that at least one of the following conditions applies:

- a) when the data subject has given his consent for the processing of his data for one or more specific purposes;
- b) when the processing is necessary for the execution of a contract to which the data subject is a party or to take steps at the request of the data subject before concluding a contract;

- c) when the processing is necessary in order to fulfill a legal obligation incumbent on the operator;
- d) when the processing is necessary to protect the vital interests of the data subject or another natural person;
- e) when the processing is necessary for the performance of a task that serves a public interest or that results from the exercise of the public authority with which the operator is vested;
- f) when the processing is necessary for the purposes of the legitimate interests pursued by the operator or a third party, unless the interests or fundamental rights and freedoms of the data subject prevail, which require the protection of personal data, in particular when the data subject is a child.

Letter (f) – (legitimate interest) from the first paragraph does not apply in the case of processing carried out by public authorities in the performance of their duties."

Combined with the above provisions, art. 6 para. (3) of the RGPD provides that:

"The basis for the processing referred to in paragraph (1) letters (c) and (e) must be provided for in: a) Union law; or b) the domestic law that applies to the operator."

Also, the limiting conditions for the use of personal data for a purpose other than that established by the normative acts applicable to the activity of the respective operator must be taken into account, according to art. 6 para. (4) GDPR.

As such, we emphasize that, in principle, public authorities (including administrative-territorial units), in their capacity as data operators, process personal data to comply with a legal obligation, in relation to the specific legal provisions applicable to their field of activity and to the purposes established within the limits of these provisions.

They have the obligation to analyze the existence of the specific legal basis for each processing carried out and they have the obligation to comply with the specific legal regulations in their own field of activity and GDPR.

In accordance with the above, recital (41) of the RGPD states that a legislative measure should be clear and precise, and its application should be predictable for the persons concerned by it, in accordance with the jurisprudence of the Court of Justice of the Union European Court ("Court of Justice") and the European Court of Human Rights.

In addition, recital (45) of the RGPD specifies: "If the processing is carried out in accordance with a legal obligation of the operator or if the processing is necessary for the performance of a task that serves a public interest or is part of the exercise public authority, the processing should have a basis in Union or domestic law. This regulation does not require the existence of a specific law for each individual processing. A single law may be sufficient as the basis for several processing operations

carried out in accordance with a legal obligation of the operator or where the processing is necessary for the performance of a task that serves a public interest or is part of the exercise of public authority. Also, the purpose of the processing should be established in Union or national law. Moreover, the respective right could specify the general conditions of this regulation that regulate the legality of the processing of personal data, determine the specifications for establishing the operator, the type of personal data that are the subject of processing, the persons concerned, the entities to whom the personal data may be disclosed, the limitations according to the purpose, the storage period and other measures to guarantee a legal and fair processing.

At the same time, we specify the fact that art. 5 of the GDPR establishes a series of principles that must be respected in the context of data processing (including video surveillance of public spaces). Thus, operators (including local public authorities) must comply with the principle of the legality of the processing, that regarding the processing of adequate, relevant and limited data to what is necessary in relation to the established purposes of the processing (the principle of proportionality) and the principle of processing data in a way that ensure adequate privacy and security. The operator is responsible for complying with these principles and can demonstrate this compliance (principle of responsibility).

Also, in the case of the intention to use new technologies on a large scale, such as those of video surveillance in public spaces, the operators also have the obligation to carry out an impact assessment in advance. Thus, art. 35 of the GDPR entitled "Evaluation of the impact on data protection" states that: "Considering the nature, scope, context and purposes of the processing, if a type of processing, especially that based on the use of new technologies, is likely to generate a high risk for the rights and freedoms of natural persons, the operator performs, before processing, an assessment of the impact of the provided processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks."

Pursuant to art. 35 of the RGPD, ANSPDCP Decision no. 174/2018 regarding the list of operations for which the assessment of the impact on the protection of personal data is mandatory (published in Official Gazette no. 919 of 31.10.2018). Art. 1 of this decision provides that the assessment of the impact on the protection of personal data by operators is mandatory when there is a large-scale processing of personal data through the innovative use or implementation of new technologies, especially if the operations respectively limit the ability of the persons concerned to exercise their rights, such as the use of facial recognition techniques in order to facilitate access to different spaces.

Regarding the responsibility of the operator, art. 24 of the GDPR provides that, taking into account the nature, scope, context and purposes of the processing, as well as the risks with different degrees of probability and severity for the rights and freedoms of natural persons, the operator implements appropriate technical and organizational measures to guarantee and be able to demonstrate that the processing is carried out in accordance with this regulation.

In this context, we specify that Chapter IV of the RGDPR regulates the obligations of personal data operators, as well as authorized persons. Among the main obligations of the operator in applying the Regulation are: appointment of a data protection officer under the conditions of art. 37-39 of the Regulation (mandatory for public authorities), mapping of personal data processing, ensuring data confidentiality and security, notification of security breaches under the terms of art. 33 of the Regulation, assessing the impact on data protection and respecting the rights of natural persons (the right to information, access, deletion, opposition, etc.).

We specify that, by art. 12 of the GDPR, the obligation of each operator to ensure compliance with the rights of the data subject provided for by art. 12-22 RGDPR, with a special focus on informing the persons whose data is used.

Also, the operators have the obligation to provide the persons involved with information on the actions taken following a request received pursuant to art. 15-22 RGDPR, in any case no later than one month after receiving the request.

In this context, we emphasize that, in the event of a violation of the legal provisions in the field of data protection, the sanctions established by the legislation in force become applicable.

We highlight that, according to recital (1) of the RGDPR, the protection of natural persons with regard to the processing of personal data is a fundamental right.

Art. 53 of the Romanian Constitution states:

"(1) The exercise of certain rights or freedoms can be restricted only by law and only if it is required, as the case may be, for: the defense of national security, order, public health or morals, the rights and freedoms of citizens; conducting the criminal investigation; preventing the consequences of a natural calamity, a disaster or a particularly serious disaster.

(2) Restriction may be ordered only if it is necessary in a democratic society. The measure must be proportional to the situation that determined it, to be applied in a non-discriminatory manner and without prejudice to the existence of the right or freedom. "

In this sense, the Constitutional Court of Romania also ruled, through Decision no. 498/2018, emphasizing the following:

"50. (...). It is noted that the guarantees for ensuring the constitutional right provided by art. 26 are contained in a decision of

the Government, but such a regulatory manner is totally inadequate, impermissibly weakening the constitutional protection of intimate, family and private life. Practically, the administrative authority can at any time modify the standards of guarantees associated with this right, by issuing normative administrative acts (...). Or, an adequate protection of this right is that established by a law, which is not the case in this case. Consequently, the criticized texts violate art. 26 of the Constitution. 52. Therefore, the legislator has the obligation to regulate the guarantees associated with the right to intimate, family and private life. This obligation must materialize by law, in the sense of instrumentum. "

In this context, we mention, as an example, the fact that the law expressly regulated (through art. 56 para. (1) of Law no. 218/2002 on the organization and functioning of the Romanian Police, republished) the possibility of the Romanian Police bodies to record with the provided photo-audio-video means, in public spaces, as well as the performance conditions, related to the purpose of carrying out the activities of prevention, detection, investigation or criminal prosecution of crimes or the execution of punishments.

On the other hand, we highlight the fact that, in the jurisprudence of the European Court of Human Rights regarding art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the right to respect for private and family life), the European court ruled that "the protection offered by this article would be unacceptably diminished if the use of modern scientific techniques were allowed with any price and without achieving a balance between the benefits of the extensive use of these techniques and the important interests related to private life (Case of S. and M. Marper against the United Kingdom, 4.12.2008).

Therefore, in relation to the above and in the context of possible processing of personal data in public spaces, through video surveillance systems, by local public authorities, we emphasize that these operators have the obligation to strictly comply with the legal regulations specific to public administration local corroborated with the provisions of the RGPD, in particular with the principles of processing, especially of legality, proportionality and ensuring the confidentiality and security of data processing, enshrined in art. 5 and 6 of the GDPR.

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