

Press release

In the context of the September 2020 elections for local government authorities, the National Supervisory Authority recommends that all entities involved in this process pay close attention to compliance with personal data protection legislation, in order to ensure that personal data is used responsibly. and that the rights of data subjects are respected.

The organization and conduct of elections for local public administration authorities is regulated by:

- Law no. 115/2015 for the election of the local public administration authorities, for the amendment of the Local Public Administration Law no. 215/2001, as well as for the amendment and completion of Law no. 393/2004 on the Statute of local elected officials;
- Law no. 135/2020 for setting the date of elections for local government authorities in 2020, as well as measures for their proper organization and conduct;
- Law no. 91/2020 regarding the amendment of Law no. 115/2015 for the election of the local public administration authorities, for the amendment of the Local Public Administration Law no. 215/2001, as well as for the amendment and completion of Law no. 393/2004 regarding the Statute of local elected officials, as well as for the amendment of Law no. 208/2015 on the election of the Senate and the Chamber of Deputies, as well as for the organization and functioning of the Permanent Electoral Authority;
- Law no. 84/2020 regarding the extension of the mandates of the local public administration authorities and for the amendment of art. 151 para. (3) of the Government Emergency Ordinance no. 57/2019 on the Administrative Code;
- decisions of the Permanent Electoral Authority;
- Government decisions.

With regard to the processing of personal data, we specify that, from 25 May 2018, 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 shall apply. personal data and on the free movement of such data and repealing Directive 95/46 / EC (General Data Protection Regulation - hereinafter "RGPD").

Thus, art. 4 point 7 of the RGPD defines the operator as a natural or legal person, public authority, agency or other body which, alone or together with others, establishes the purposes and means of processing personal data; where the purposes and means of processing are determined by Union or national law, the controller or the specific criteria for its designation may

be laid down in Union or national law.

Therefore, according to the legal provisions, it results that they can have the quality of personal data controller:

political parties

citizens' organizations belonging to national minorities

political alliances

electoral alliances

independent candidates

Regarding the data processing in the context of the elections for the local administration authorities, according to the specific applicable regulations, it results that this is done based on the provisions of art. 6 para. (1) lit. c) of the RGPD, according to which the processing is legal if it is necessary in order to fulfill a legal obligation incumbent on the operator.

By reference to the provisions of the Decision of the Permanent Electoral Authority no. 2/2020 on the approval of the Methodology for submitting candidacy files and lists of supporters in the local elections in 2020, issued pursuant to art. 104 para. (1) and (2) of Law no. 208/2015, with subsequent amendments and completions, as well as of art. 6 of Law no. 84/2020, it results that political parties, citizens' organizations belonging to national minorities, political alliances, electoral alliances, independent candidates, process personal data as operators, for purposes such as:

submission of candidature files to the competent constituency electoral bureaus

submission of lists of supporters

Thus, the above-mentioned normative act establishes the model of the list of candidates containing the following categories of personal data:

name and surname

date and place of birth

domicile according to the identity document

name, series and number of the identity document

citizenship

occupation

profession

political affiliation / political or electoral alliance

As for the model of the list of supporters, according to the applicable regulations, it contains the following categories of personal data:

signature

name and surname

citizenship

date of birth

Address

name, series and number of the identity document

At the same time, pursuant to art. 17 of Law no. 115/2015, political parties, political alliances, electoral alliances and citizens' organizations belonging to national minorities participating in elections, have the opportunity to obtain an extract from the Electoral Register which includes voters from the respective administrative-territorial unit, respectively name, surname, date of birth and domicile.

Also, according to the provisions of art. 26 para. (15) of Law no. 115/2015, for the organization and conduct of electoral operations, "political parties, political alliances, electoral alliances and organizations of citizens belonging to national minorities participating in elections must communicate, in writing, to the constituency electoral bureaus the names and surnames of their representatives who will be part of these".

Therefore, the processing of personal data must take place only in compliance with the provisions of art. 6 or 9 of the RGPD and the processing principles provided by art. 5 of the RGPD.

If the operators decide to perform personal data processing based on the consent of individuals, we emphasize that, in terms of obtaining it and proof of its existence, it is necessary to comply with the conditions provided by art. 7 in conjunction with art. 4 point 11 of the RGPD.

Thus, art. 4 point 11 of the RGPD states that this means any manifestation of free will, specific, informed and unambiguous of the data subject by which he accepts, by an unequivocal statement or action, as personal data that a look to be processed.

Also, art. Article 7 of the Regulation provides:

"(1) Where the processing is based on consent, the controller must be able to demonstrate that the data subject has given his

or her consent to the processing of his or her personal data.

(2) Where the consent of the data subject is given in the context of a written statement which also covers other matters, the request for consent shall be made in a form which clearly distinguishes it from other matters, in a form which intelligible and easily accessible, using clear and simple language. No part of this declaration which constitutes an infringement of this Regulation shall be binding.

(3) The data subject has the right to withdraw his / her consent at any time. Withdrawal of consent does not affect the lawfulness of the processing carried out on the basis of the consent prior to its withdrawal. Prior to giving consent, the data subject shall be informed accordingly. Withdrawal of consent is as simple as giving it away.

(4) When assessing whether consent is freely given, account shall be taken, as far as possible, of, inter alia, whether or not the performance of a contract, including the provision of a service, is conditional on consent to the processing of personnel who are not required to perform this contract. "

Recital (32) of the RGPD also states: such as a written statement, including an electronic or verbal statement. This could include ticking a box when the person visits a site, choosing the technical parameters for information society services or any other statement or action that clearly indicates in this context the data subject's acceptance of the proposed processing of his or her personal data. Therefore, the absence of an answer, the boxes ticked in advance or the absence of an action should not constitute a consent ".

As such, the obtaining of the data subject's consent, insofar as the processing is based on it, must meet the conditions mentioned above by the RGPD and comply with the principles of personal data processing.

For any of the purposes for which operators process personal data, they shall have the following main obligations:

informing the persons concerned;

respect for the rights of data subjects;

ensuring data security and confidentiality;

notification of security breaches under the conditions of art. 33 of the Regulation;

the appointment of a data protection officer, as appropriate;

keeping records of personal data processing performed;

assessment of the impact on data protection, if any.

Thus, we emphasize that the information of the data subjects must be made, regardless of the basis for data processing, respectively with the consent or in the other legal conditions of processing provided by art. 6, art. 9 and art. 10, depending on the nature of the data and the categories of data collected and processed.

Thus, art. Article 12 of the RGPD provides that the controller shall take appropriate measures to provide the data subject with any information referred to in Articles 13 and 14 (depending on how the data is obtained, either directly from the data subject or indirectly from another controller) and any communications pursuant to Articles 15 to 22 and 34 relating to processing, in a concise, transparent, intelligible and easily accessible form, using clear and simple language.

We note that the Regulation does not impose a certain way of informing the data subjects, leaving to the operators the choice of appropriate ways of providing information, such as by posting on the site, by posting, in writing.

On the other hand, we specify that art. 5 of the RGPD sets out a number of principles that must be observed in data processing. These include the processing of appropriate data, relevant and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data") and the processing of data in a manner that ensures adequate data security. personal protection, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage by appropriate technical or organizational measures ("integrity and confidentiality").

We also emphasize that the operator is responsible for complying with these principles and can demonstrate this compliance.

At the same time, operators have an obligation to respect the rights of data subjects covered by Chapter III of Regulation (EU) 2016/679, such as: the right to information, the right of access, the right to rectification, the right to be forgotten), the right to restrict processing, the right to object, the right not to be subject to a decision based solely on automatic processing, the right to lodge a complaint with a supervisory authority.

Regarding the responsibility of the operator, art. 24 of the RGPD provides that: "Taking into account the nature, scope, context and purposes of the processing, as well as the risks with varying degrees of probability and guarantee and be able to demonstrate that the processing is carried out in accordance with this Regulation. Those measures shall be reviewed and updated as necessary. "

At the same time, in certain situations, among the obligations incumbent on the operator is the appointment of the data protection officer.

The General Data Protection Regulation contains specific provisions regarding the designation of the Data Protection Officer,

his / her position and tasks.

In this context, we specify that, according to the provisions of art. 37 para. (1) of the RGPD, the appointment of the data protection officer is mandatory when:

- a) the processing is carried out by a public authority or body, with the exception of courts acting in the exercise of their judicial function;
- b) the main activities of the controller or of the person authorized by the controller consist of processing operations which, by their nature, scope and / or purpose, require regular and systematic monitoring of the persons concerned on a large scale;
- c) the main activities of the controller or of the person authorized by the controller consist in the large-scale processing of special categories of data or personal data concerning criminal convictions and offenses.

Compared to the above, we specify that political parties, independent candidates, national minority citizens' organizations, political alliances, electoral alliances (as data operators) may process personal data in the context of local government elections and campaigns. strict compliance with the applicable legal regulations in the electoral field and the relevant legal provisions in the field of data protection, with the application of the principles of processing (especially the principle of determined and explicit purpose, data minimization, storage limitation) and compliance prior information of data subjects and data security measures, in accordance with the provisions of the RGPD.