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Data processing by owners' associations

In terms of their role and legal responsibilities, owners' associations have the status of personal data controllers and, consequently, the obligation to comply with the provisions of Regulation (EU) 679/2016 - General Data Protection Regulation (RGPD). .

Thus, in the context of the processing (including disclosure) of personal data, the owners' associations must identify the legal basis for its performance, provided by the provisions of the RGPD by reference to the legal provisions in their field of activity.

The purpose and means of data processing by the owners' associations may be expressly established by the normative acts governing their establishment, organization and operation or may be established by the association, being justified by its legitimate interest. Also, in some cases, the data processing may be based on the consent of the data subjects concerned.

In this context, we point out that following the views requested of the Supervisory Authority by the owners' associations regarding the data processing they carry out or intend to put into practice, it has resulted that the purposes for which these entities collect and process data mainly cover the following activities:

1. As regards the installation of a video surveillance system by the owners' association, since closed-circuit television systems have the possibility of recording and storing images and data, this activity is subject to both the provisions of Regulation (EU) 679/2016, as well as of Law no. 333/2003 on the protection of objectives, assets, values and protection of persons, amended and supplemented and the Methodological Norms for its application, especially related to the installation and technical use of equipment and components of the video surveillance system.

The measure of installing a video surveillance system can be taken by the owners' association based on the legitimate interest of the association, e.g. for ensuring the security and protection of persons, goods and values, of buildings and public utility installations, as well as of the enclosures affected by them, but also in the area of access to the building or elevators.

Arguments regarding the justification of the legitimate interest must be found in documentation at the level of the owners' association and, subsequently, the decision to install such a system must be adopted at the general meeting of the owners' association, according to the law.

Regarding the obligation to inform the data subject, in the spaces monitored by the video surveillance cameras, an appropriate icon must be installed, containing a representative image, positioned at a reasonable distance from the places where the

surveillance equipment is located, so that it can be seen by anyone.

Regarding the period of storage of personal data (image) processed by the association as a result of the installation of the video surveillance system, the Supervisory Authority recommends that it does not exceed 30 days.

Exceptions may be duly justified situations in which events have occurred which require the storage of only relevant images for a longer period of time necessary for the fulfillment of those purposes (eg until the final settlement of a criminal case by the judiciary).

With regard to the images captured and recorded by the video cameras, installed in the areas established according to the decision of the general meeting of owners, respecting the balance between the legitimate interest of the association and the rights and freedoms of persons, in order to respect the principle of proportionality. Technical view can be oriented so as to focus on the areas needed to be monitored.

Regarding the data processing by another person (such as the company that installs the video surveillance system and ensures its maintenance, also performs the data processing), according to art. 4 point 8 of the RGPD, this is the "person authorized by the operator" as it processes personal data on behalf of the operator.

Also, art. 28 para. (3) lit. a) and para. (10) of the same regulation stipulates that the processing by a person authorized by an controller is governed by a contract, which must also contain documented instructions from the controller on the basis of which the controller will process personal data.

Regarding the installation of video cameras on each level / level of the building, we appreciate that for the processing of the respective images it is necessary to obtain the consent of each tenant on the respective level / level.

For additional information on data processing via video media, see Guide no. 3/2019 on the processing of personal data through video media ", which can be accessed at

https://www.dataprotection.ro/?page=noua%20pagina_regulamentu_GDPR, developed in order to uniformly apply the provisions of the EU Regulation) 2016/679 across the European Union, by the European Data Protection Board, which brings together representatives of all supervisory authorities in the Member States.

2. Regarding the disclosure of data such as the name and surname of the owners / tenants on the notice board of the block staircase, we specify that in the absence of an express legal provision the data can be disclosed only based on the consent of the data subject. 6 para. (1) lit. a) of the RGPD.

With regard to consent (art. 7 in conjunction with art. 4 pt. 11 of the RGPD), it must be given by an unequivocal action that constitutes a freely expressed, specific, informed and clear manifestation of the consent of the data subject for processing of his personal data, such as a written statement, in an intelligible and easily accessible form, using clear and simple language.

The absence of a response or the absence of action by the data subject does not constitute valid consent.

The consent must cover all processing activities carried out for the same purpose or purposes, and the owners' association must be able to demonstrate that the data subject has given his or her consent to the processing of personal data.

For more information on obtaining consent, as well as the conditions for withdrawing it, you can consult the Guide to Questions and Answers on the Application of Regulation (EU) 679/2016 <https://www.dataprotection.ro/servlet/ViewDocument?id=1650>

3. With regard to the registration of personal data in the immovable book, to the extent that there is a legal obligation to do so, the data may be processed without the consent of the data subject.

In this context, we specify that art. 94 and 95 of the Methodological Norms of October 4, 2006 for the unitary application of the legal provisions regarding the evidence, domicile, residence and identity documents of the Romanian citizens, approved by GD no. 1375/2006 provide that:

“Art. 94

The people in charge of the real estate book, designated in accordance with the law, have the following attributions:

- a) to request to the persons living in the building the presentation of the identity documents, within 15 days from the arrival, in order to enter the data in the building book;
- b) to warn the persons who have the identity documents with the expired validity term or who have not made the change of their domicile or the establishment of the residence, in order to put them in legality;
- c) to keep, update and use the data from the real estate book in compliance with the provisions of Law no. 677/2001 for the protection of individuals with regard to the processing of personal data and on the free movement of such data, as subsequently amended and supplemented (currently Regulation (EU) 679/2016 - emphasis added); the real estate book is presented for verification only to the police officers and workers from the community public services for the registration of persons;
- d) to keep the real estate book in good condition, not to alienate it, and to hand it over to the president of the owners' association when moving from the building.

Article 95

The registration of the persons in the real estate book is made on the basis of the identity document, and for the children under 14 years old, on the basis of the birth certificate. ”

As such, the law establishes that the registration of personal data in the real estate book is based on the identity card or birth certificate.

Regarding the data and categories of data collected in the real estate books in the conditions in which the law does not expressly provide for them, as pointed out above, correlated with the legal basis of the processing, which may be the legitimate interest, art. Article 5 of the RGPD sets out a number of principles that must be observed in the processing of data, including those relating to the collection of data for specific, explicit and legitimate purposes, the processing of appropriate data, relevant and limited to what is necessary in relation to the purposes for which they are processed, the processing of exact data, etc. In other words, in this situation it is necessary to respect the principle of data minimization, respectively the processing of data strictly necessary to fulfill the purpose. However, the need must be substantiated by strong arguments justifying the prevalence of the legitimate interest in data collection and processing over the fundamental rights of data subjects.

In relation to the above situations, but also to other situations in which they process personal data, the owners' associations must take into account the conditions of legitimacy and the rules of data processing provided by the RGPD.

In this context, we specify that RGPD establishes that the processing of personal data is carried out with the consent of the data subject or in other legal conditions in which the consent is not required, provided by art. 6, 9 and 10, depending on the nature of the data and categories of data collected and processed.

For example, for data that do not have a special character (such as, for example, name, surname, address, telephone), art.

Article 6 of the RGPD establishes that processing is lawful only if and to the extent that at least one of the following conditions applies:

"(A) the data subject has given his or her consent to the processing of his or her personal data for one or more specific purposes;

(b) the processing is necessary for the performance of a contract to which the data subject is a party or for making arrangements at the request of the data subject before the conclusion of a contract;

(c) the processing is necessary in order to fulfill a legal obligation on the controller;

(d) processing is necessary to protect the vital interests of the data subject or of another natural person;

(e) the processing is necessary for the performance of a task which is in the public interest or which results from the exercise of official authority with which the operator is vested;

(f) the processing is necessary for the legitimate interests pursued by the controller 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 where the data subject is a child."

Correlated with the legal basis of the processing, the owners' associations must also respect the principles of data processing that are found in art. 5 of the RGPD, as follows:

- the principle of legality, fairness and transparency: data processing is lawful, fair and transparent to the data subject
- purpose limitation principle: data collected for specific, explicit and legitimate purposes and which are not subsequently processed in a manner incompatible with those purposes
- the principle of data minimization: the processing of data that is adequate, relevant and limited to what is necessary in relation to the purposes for which it is processed,
- principle of storage limitation: the data are kept in a form which allows the data subjects to be identified for a period not exceeding the period necessary to fulfill the purposes for which the data are processed
- the principle of accuracy - the processing of accurate data
- the principle of integrity and confidentiality - the processing of data in a manner that ensures adequate security of personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, by taking appropriate technical or organizational measures.

Also, the same provisions of art. 5, above provide that the operator (owners' association) is responsible for compliance with these principles and can demonstrate this compliance (liability principle).

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 seriousness for the rights and freedoms of individuals, 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. "

Regarding the security measures that the owners' association is obliged to adopt, art. 32 of Regulation (EU) 2016/679

governing "Processing Security" sets out a number of issues that the controller (association) and the person empowered by it (eg a company acting as administrator or an entity that installs and ensures the maintenance of the video surveillance system) must follow them in the context of the implementation of appropriate technical and organizational measures in order to ensure a level of security appropriate to the risk posed by the processing of the rights and freedoms of individuals. These include pseudonymization and encryption of personal data.

With regard to the transparency of the processing, in terms of informing the data subjects, the owners' association must carry out the information regardless of the basis of the processing, with the consent or on the basis of other legal conditions in which the consent is not required.

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 and any communications under Articles 15 to 22 and 34 concerning processing in a concise, transparent, intelligible and easily accessible form, using clear and simple language.

The information shall be provided in writing or by other means, including, where appropriate, in electronic format.

For information, one can use a generic information method, by displaying the information note on the block staircase notice board or appropriate icons, such as in the case of video surveillance, the information notes of the person concerned (displayed), and in other ways (by email) that are established by the association depending on the specific data processing situation.

Thus, art. 13 of the RGPD provides that if the personal data concerning a data subject are collected from it, the operator (owners' association), when obtaining such personal data, provides the data subject with the information provided by these legal provisions, including:

1. identity and contact details of the owners' association
2. the purposes for which the personal data are processed, as well as the legal basis for the processing;
3. categories of personal data concerned (in the case of data obtained indirectly)
4. legitimate interests pursued by the operator or a third party (if applicable);
5. recipients or categories of recipients of personal data;
6. the period of storage of personal data (or criteria for establishing the period);
7. the existence of the rights of the data subject provided by art. 15-22 of the RGPD

8. the existence of the right to withdraw consent at any time, without prejudice to the lawfulness of the processing carried out on the basis of the consent before its withdrawal;
9. the right to lodge a complaint with the Supervisory Authority;
10. whether the provision of personal data is a legal, contractual obligation or an obligation necessary for the conclusion or performance of a contract, and whether the data subject is obliged to provide such personal data and what are the possible consequences of non-compliance obligations;
11. the processing of data for a purpose other than that for which they were collected (if applicable);
12. the source of the personal data and whether they come from publicly available sources (in the case of indirectly obtained data).

In addition to the right to information, another right that data subjects frequently exercise over owners' associations in their capacity as operators and which associations are obliged to respect is the right of access (Article 15 of the RGPD). Thus, the data subject has the right to obtain from the controller a confirmation that personal data concerning him or her are being processed or not. If the operator's answer is in the affirmative, the data subject shall have the right to know and to be informed the following information:

- processing purposes;
- the categories of personal data concerned;
- the recipients or categories of recipients to whom the personal data have been or are to be disclosed;
- the period of storage of personal data or the criteria used to establish this period;
- the existence of the right to request the operator to rectify or delete personal data or to restrict the processing of personal data concerning the data subject or the right to oppose the processing;
- the right to lodge a complaint with the Supervisory Authority;
- any available information on the source of the data (in the case of indirect data);
- the existence of an automated decision-making process including the creation of profiles, information on the logic used and the consequences of the processing on the data subject;
- the transfer to a third country or an international organization and the appropriate safeguards relating to the transfer.

The controller shall provide the data subject with a copy of his or her personal data which are being processed free of charge.

The right to obtain a copy of the data is without prejudice to the rights and freedoms of others. In this regard, the controller is obliged to take measures to protect the personal data of other persons who may be included in that copy.

If the data subject submits the application in electronic format and does not choose to receive the information in another format, it will be provided in a commonly used electronic format (eg by email).

More information on how to inform data subjects, as well as the exercise of the right of access, as well as other rights enjoyed by the data subject, can be found in the Guide to Questions and Answers on the Application of Regulation (EU) 679/2016.

<https://www.dataprotection.ro/servlet/ViewDocument?id=1650>

In view of the above, it follows that the owners' association must analyze according to the specifics of the activities actually carried out, the processing of personal data carried out, establish their legal basis and take all necessary measures to respect the rights of data subjects and ensuring the security and confidentiality of data, in accordance with the provisions of the RGPD.

At the same time, we point out that as of May 25, 2018, Regulation (EU) 2016/679 no longer establishes the obligation to notify the processing of personal data, so that the owners' associations no longer have this obligation.

Regarding the appointment of a data protection officer, regarding the owners' associations, they do not have the obligation to appoint a manager, according to art. 37 of the RGPD.

Legal and Communication Department

A.N.S.P.D.C.P.