

Law no. 190/2018 on implementing measures to 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/EC (General Data Protection Regulation)

CHAPTER I: General provisions

Article 1: Object of the law

This law establishes the measures necessary for the implementation, at national level, in particular, of the provisions of Article 6 (2), Article 9 (4), Articles 37-39, 42, 43, Article 83 (7), Article 85 and Articles 87-89 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/EC, published in the Official Journal of EU, series L, no. 119 of 4th of May 2016, hereinafter General Data Protection Regulation.

Article 2: Definitions

(1) For the application of the General Data Protection and the present law, the terms and expressions below are defined as follows:

- a) public authorities and bodies – Chamber of Deputies and Senate, Presidential Administration, Government, the ministries, the other specialised bodies of the central public administration, the autonomous public authorities and institutions, the local public administration authorities and at county level, other public authorities, as well as the subordinated/under coordination institutions. For the purposes of this law, the clubs and associations and public utility foundations are assimilated to public authorities/bodies;
- b) national identification number – the number identifying a natural person in certain record systems that is of general applicability, such as: personal numerical code, series and number of the identity card, passport number, of the driving license, social security number;
- c) remedial plan – annex to the report on the finding and sanctioning of the contravention, drawn under the conditions stipulated in Article 11, by which the National Supervisory Authority for Personal Data Processing, hereinafter referred to as the National Supervisory Authority, establishes measures and a deadline for remedial;
- d) remedial measure – solution ordered by the National Supervisory Authority in the remedial plan for the fulfillment by the public authority/body of the obligations stipulated by the law;
- e) remedial deadline – a period of time no more than 90 days from the date of communication of the report on the finding and sanctioning of the offence in which the public authority/body has the possibility to remedy the detected irregularities and the fulfillment of the legal obligations;
- f) performing a task that serves a public interest – includes those activities of political parties or citizen organisations belonging to national minorities, non-governmental organisations that serve the fulfillment 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 the promotion of the principles and values of democracy.

(2) In the present law, the definitions provided in Article 4 of the General Data Protection Regulation are also applicable.

CHAPTER II: Special rules on the processing of certain categories of personal data

Article 3: Processing of genetic data, of biometric data and of health data

(1) The processing of genetic data, of biometric data or of health data for the purpose of automated decision-making or profiling is permitted with the explicit consent of the data subject or if the processing is carried out under explicit legal provisions, with appropriate measures protecting the rights, freedoms and legitimate interests of the data subject.

(2) The processing of health data for the purpose of ensuring public health, as defined in Regulation (EC) no. 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work, published in the Official Journal of EU, series L, no. 354/70 of 31st of December 2008, can not be subsequently performed for other purposes by third entities.

Article 4: Processing of a national identification number

(1) The processing of a national identification number, including the collection and disclosure of the documents that contain it, shall be performed under the conditions provided by Article 6 (1) of General Data Protection Regulation.

(2) The processing of a national identification number, including the collection and disclosure of the documents that contain it, for the purposes provided by Article 6 (1) f) of General Data Protection Regulation, namely fulfilling the legitimate interests pursued by the controller or by a third party, is carried out only with the establishment by the controller of the following safeguards:

- a) the implementation of appropriate technical and organizational measures to respect, in particular, the principle of data minimization, as well as to ensure the security and confidentiality of personal data processing, in accordance with the provisions of Article 32 of the General Data Protection Regulation;
- b) the designation of a data protection officer, in accordance with the provisions of Article 10 of this law;
- c) the setting of retention periods according to the nature of the data and the purpose of the processing, as well as specific deadlines in which personal data must be erased or revised for deletion;
- d) the regular training concerning the obligations of persons who, under the direct authority of the controller or processor, process personal data.

Article 5: Processing of personal data in the context of employment

Where electronic monitoring and/or video surveillance systems are used in the workplace, the processing of employees' personal data in order to achieve the legitimate interests pursued by the employer is only permitted if:

- a) the legitimate interests pursued by the employer are duly justified and prevail over the interests or rights and freedoms of the data subjects;
- b) the employer has carried out the mandatory, complete and explicit information of the employees;

- c) the employer consulted the trade union or, as the case may be, the representatives of the employees before the implementation of the monitoring systems;
- d) other less intrusive forms and ways to achieve the goal pursued by the employer have not proven their effectiveness before; and
- e) the retention period of personal data is proportionate to the purpose of the processing, but not more than 30 days, except in cases expressly provided for by law or in cases duly justified.

Article 6: Processing of personal data and of special categories of personal data for the performance of a task carried out in the public interest

Where the processing of personal data and of special categories of data is necessary for the performance of a task carried out in the public interest pursuant to Article 6 (1) e) and of Article 9 g) of General Data Protection Regulation, the processing is carried out with the establishment by the controller or third party of the following safeguards:

- a) the implementation of adequate technical and organisational measures for the observance of the principles mentioned in Article 5 of General Data Protection Regulation, in particular the one referring to data minimisation, respectively the principle of integrity and confidentiality;
- b) the designation of a data protection officer, if this is necessary in accordance with Article 10 of the this law;
- c) the establishment of retention periods according to the nature of the data and the purpose of the processing, as well as specific deadlines in which personal data must be erased or revised for deletion.

CHAPTER III: Derogations

Article 7: Processing of personal data for journalistic purposes or the purposes of academic, artistic or literary expression

In order to ensure a balance between the right to the protection of personal data, freedom of expression and the right to information, the processing for journalistic purposes or for the purpose of academic, artistic or literary expression may be carried out if it concerns personal data which have been made publicly manifested by the data subject or closely related to the person's public status or the public character of the facts in which he or she is involved, by way of derogation from the following chapters of the General Data Protection Regulation:

- a) Chapter II – Principles;
- b) Chapter III – Rights of the data subject;
- c) Chapter IV – Controller and processor;
- d) Chapter V – Transfer of personal data to third countries or international organizations;
- e) Chapter VI – Independent supervisory authorities;
- f) Chapter VII – Cooperation and consistency;
- g) Chapter IX – Specific data processing situations.

Article 8: Processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

(1) The provisions of Articles 15, 16, 18 and 21 of the General Data Protection Regulation do not apply if personal data are processed for scientific or historical research

purposes insofar as the rights referred to in those articles are such as to render impossible or to seriously affect the achievement of the specific goals, and the respective derogations are necessary for the achievement of these purposes.

(2) The provisions of Articles 15, 16, 18, 19, 20 and 21 of the General Data Protection Regulation do not apply if personal data are processed for archiving purposes in the public interest, insofar as the rights referred to therein are of a nature to make it impossible or seriously affect the achievement of specific goals, and these derogations are necessary to achieve these goals.

(3) The derogations provided for in paragraphs (1) and (2) shall be applicable only subject to the existence of adequate safeguards for the rights and freedoms of the data subjects referred to in Article 89 (1) of the General Data Protection Regulation.

(4) Where the processing referred to in paragraphs (1) and (2) serves at the same time for another purpose, the exemptions only apply to the processing for the purposes referred to in those paragraphs.

Article 9

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

- 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) ensuring the right to rectification and erasure.

(2) The processing of personal and special data is allowed to political parties and organisations of citizens belonging to national minorities, non-governmental organizations, in order to achieve their objectives, without the express consent of the data subject, provided that the appropriate safeguards referred to in the preceding paragraph are provided.

CHAPTER IV: Data protection officer

Article 10: Designation and tasks of the data protection officer

(1) The controllers and processors shall designate a data protection officer under the situations and conditions provided in Articles 37-39 of the General Data Protection Regulation

(2) Where the controller or the processor is a public authority or body, as defined by Article 2 (1) a), a single data protection officer may be designated for several such authorities or bodies, taking account of their organisational structure and size.

(3) The activity and tasks of the data protection officer shall be carried out in compliance with the provisions of Articles 38 and 39 of General Data Protection Regulation and the applicable national legal regulations.

CHAPTER V: Certification bodies

Article 11: Accreditation of certification bodies

(1) The accreditation of the certification bodies, provided by Article 43 of General Data Protection Regulation, is carried out by Romanian Accreditation Association – RENAR,

as the national accreditation body, pursuant to Regulation (EC) no. **765/2008** of the European Parliament and of Council of the 9th of July 2008 on setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) no. **339/93**, published in the Official Journal of EU, series L, no. 218 of 13th of August 2008, as well as pursuant to Government Ordinance. No. **23/2009** on the accreditation activity of the conformity assessment bodies, approved with amendments by Law no. **256/2011**.

(2) Certification Bodies shall be accredited according to applicable legal regulations in accordance with EN-ISO/IEC 17065 and with the additional requirements set by the National Supervisory Authority, as well as with the observance of provisions of Article 43 of the General Data Protection Regulation.

CHAPTER VI: Corrective measures and sanctions

Article 12: General dispositions on corrective measures and sanctions

(1) The infringement of the provisions listed in Article 83 (4) to (6) of the General Data Protection Regulation is a contravention.

(2) The main contravention sanctions are the reprimand and the contravention fine.

(3) The infringement of the provisions of Articles 3-9 of the present law constitutes a contravention and is sanctioned under the conditions provided by Article 83 (5) of the General Data Protection Regulation.

(4) The finding of the contraventions provided by the present law and the application of the contravention sanctions, as well as of the other corrective measures provided by Article 58 of the General Data Protection Regulation is made by the National Supervisory Authority in accordance with the provisions of the General Data Protection Regulation, of Law no. 102/2005 on the set up, organisation and functioning of the National Supervisory Authority for Personal Data Processing, as subsequently amended and supplemented, and of this law.

Article 13: Applying corrective measures to public authorities and bodies

(1) In the event of a breach by the public authorities/bodies of the provisions of the General Data Protection Regulation and of this law, the National Supervisory Authority shall conclude a report on the finding and sanctioning of the offence by which the sanction of the reprimand is applied and to which it shall attach a remedial plan.

(2) The remedial deadline is determined based on the risks associated with the processing, as well as the steps to be taken in order to ensure compliance of the processing.

(3) Within 10 days of the expiry date of the remedial deadline, the National Supervisory Authority may resume control.

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

(5) The template of the remedial plan that is attached to the report on the finding and sanctioning of the contravention is provided in the annex to the Remedial Plan, which is an integral part of this law.

Article 14: Finding contraventions and applying sanctions to public authorities and bodies

(1) If, following the control provided in Article 13 (3) it is found 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 fine, taking into account of the criteria provided in Article 83 (2) of the General Data Protection Regulation.

(2) It is a contravention the violation by the public authorities/bodies of the following provisions of the General Data Protection Regulation regarding:

a) obligations of controller and processor pursuant to Article 8, Article 11, Articles 25-39, Articles 42 and 43;

b) the obligations of the certification body pursuant to Articles 42 and 43;

c) the obligations of the monitoring body pursuant to Article 41(4).

(3) It is a contravention the violation by the public authorities/bodies of the provisions of Articles 3-9 of this law.

(4) The contraventions provided in paragraphs (2) and (3) shall be sanctioned by a fine from 10,000 lei to 100,000 lei.

(5) It is a contravention the violation by the public authorities/bodies of the following provisions of the General Data Protection Regulation regarding:

a) the basic principles for processing, including conditions for consent, pursuant to Articles 5, 6, 7 and 9;

b) the data subjects' rights pursuant to Articles 12 to 22;

c) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 44 to 49;

d) any obligations pursuant to Member State law adopted under Chapter IX;

e) non-compliance with an order or a temporary or definitive limitation on processing or the suspension of data flows by the supervisory authority pursuant to Article 58(2) or failure to provide access in violation of Article 58(1).

(6) By way of derogation from the provisions of Article 8 (2) a) of the Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments and completions by Law no. 180/2002, with the subsequent modifications and completions, the contraventions stipulated in paragraph (5) shall be sanctioned with a fine from 10,000 lei to 200,000 lei.

(7) It is a contravention a violation by the public authorities/bodies of a decision issued by the National Supervisory Authority according to Article 58 (2) in conjunction with Article 83 (2) of the General Data Protection Regulation.

(8) By way of derogation for the provisions of Article 8 (2) a) of the Government Ordinance no. 2/2001, with the subsequent modifications and completions, the contraventions stipulated in paragraph (7) shall be sanctioned with a fine from 10,000 lei to 200,000 lei

Article 15

In applying the provisions of Article 58 (2) b) of the General Data Protection Regulation, Article 14² (1) of the Law no. 102/2005 on the set up, organisation and functioning of the National Supervisory Authority for Personal Data Processing, published in the Official

Journal of Romania, Part I, no. 391 of 9th of May 2005, as amended and supplemented, shall be amended and shall have the following content:

“- Article 14

(1)

The main contravention sanctions applied by the National Supervisory Authority, according to Article 58 (2) b) and i) of the General Data Protection Regulation are the reprimand and the fine. The fine is applied under the conditions of Article 83 of the General Data Protection Regulation.”

Article 16

This law shall enter into force 5 days after its publication in the Official Journal of Romania, Part I.

This law was adopted by the Romanian Parliament, in compliance with the provisions of Article 75 and Article 76 (1) of the Romanian Constitution, republished.