

Law No. 190/2018 on measures for the application of Regulation (EU) 2016/679 of the European Parliament and 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)

{Issuer: the Romanian Parliament

Published: Official Gazette of Romania No. 651 dated 26 July 2018

In force from: 31 July 2018

Note: several other implementation measures are to be found in Law No. 129/2018 amending Law No. 102/2005 on the establishment, organisation and operation of the National Supervisory Authority for Personal Data Processing, as well as repealing Law No. 677/2001 on the protection of individuals with regard to the processing of personal data and on the free movement of such data}

CHAPTER I: General Provisions

Art. 1:

Purpose of the Law

This law establishes the measures necessary for the application at the national level, mainly of the provisions of Art. 6 paragraph (2), Art. 9 paragraph (4), Art. 37-39, 42, 43, Art. 83 paragraph (7), Art. 85 and those of Art. 87-89 of the Regulation (EU) 2016/679 of the European Parliament and 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, as published in the Official Journal of the European Union, series L, No. 119 dated 4th of May 2016, hereinafter referred to as the *General Data Protection Regulation*.

Art. 2:

Definitions

(1) For the application of the General Data Protection Regulation and this law, the terms and expressions below shall be defined as follows:

- a) *public authorities and bodies* – the Chamber of Deputies and the Senate, the Presidential Administration, the Government, the ministries, the other specialized bodies of the central public administration, autonomous authorities and public institutions, the local and the county level public administration authorities, other public authorities, as well as the institutions subordinated/coordinated thereto/thereby. For the purposes of the present law, the religious units and the public utility associations and foundations are also assimilated to public authorities/bodies;

- b) *national identification number* – the number which identifies a physical person in certain registration systems and which has general applicability, such as the personal identification number, the series and number of the identity document, the passport number, the driving licence number, the social health insurance number;
 - c) *remedial plan* – annex to the report on the administrative violations committed and penalties incurred, prepared in compliance with the provisions of Art. 11, by which the National Supervisory Authority for Personal Data Processing, hereinafter referred to as the National Supervisory Authority, lays out the remedial measures and term;
 - d) *remedial measure* – solution set out by the National Supervisory Authority in view of fulfilling the obligations provided by the law by the public authority/body;
 - e) *remedial period* – the maximum 90-day timeframe from the communication date of the report on the offences committed and penalties incurred, during which the public authority/body has the possibility to repair the irregularities found and to fulfil the legal obligations;
 - f) *carrying out a task in the public interest* – includes those activities of the political parties or the citizens’ organizations of national minorities, the non-governmental organizations, that serve to achieve the objectives provided by the constitutional right or by the international public right or the functioning of the democratic system, including encouraging the participations of citizens in the decision-making process and the preparation of public policies, namely promoting the principles and values of democracy;
- (2) In the content of the present law, the definitions provided under Art. 4 of the General Data Protection Regulation are also applicable.

CHAPTER II: Special rules related to processing of certain categories of personal data

Art. 3:

Processing genetic data, biometric data or health-related data

(1) The processing of genetic, biometric or health-related data, for the purpose of achieving an automated decision-making process or creating profiles, is allowed with the explicit consent of the data subjects or, if the processing is based on express legal provisions, with the application of appropriate measures for the protection of the rights, freedoms and legitimate interests of the data subject.

(2) The processing of data relating to health for the purposes of ensuring public health, as defined by the Regulation (EU) No. 1.338/2008 of the European Parliament and Council, dated 16th of December 2008 on community statistics regarding public health and well as occupational health and safety, published in the Official Journal of the European Union, series L, No. 354/70 dated 31st of December 2008, cannot be performed subsequently, for other purposes, by third entities.

Art. 4:

Processing of a national identification number

(1) The processing of a national identification number, including by collecting or disclosing documents containing it, can be made in the situations provided by Art. 6 paragraph (1) of the General Data Protection Regulation.

(2) The processing of a national identification number, including by collecting or disclosing documents containing it, for the purposes provided by Art. 6 paragraph (1), item f) of the General Data Protection Regulation, namely achieving the legitimate interests followed by controller or by a third party, shall be made provided that the controller institutes the following safeguards:

- a) applying adequate technical and organizational measures to observe, in particular, the principle of data minimization, as well as ensuring the security and confidentiality of personal data processing, as provided by Art. 32 of the General Data Protection Regulation;
- b) appointing a data protection representative, in compliance with the provisions of Art. 10 of the present law;
- c) setting out storage limitation periods, according to the nature of the data and the processing purpose, as well as specific periods when personal data need to be deleted or revised for deletion purposes;
- d) periodical training regarding the obligations of the persons processing personal data, under the direct authority of the controller or the processor.

Art. 5:

Processing personal data in the context of employment relationships

In cases where workplace monitoring systems through electronic communications and/or video surveillance measures are used, the processing of the personal data of employees, for the purpose of pursuing the legitimate interests of the employer, is permitted only if:

- a) The legitimate interests pursued by the employer are thoroughly justified and prevail over the interests or rights and freedoms of the data subject;
- b) The employer has provided mandatory prior, complete and explicit information to the employees;
- c) The employer performed consultations with the trade union or, as the case may be, with the employees' representatives before introducing monitoring systems;
- d) Other less intrusive forms and means for reaching the aim pursued by the employer did not prove to be efficient;
- e) The storage periods for the personal data is proportional to the processing aim, but not longer than 30 days, save for situations which are expressly provided by law or in thoroughly justified cases.

Art. 6:

Processing personal data and special categories of personal data in the context or carrying out a task in the public interest

In case personal and special data processing is required in order to carry out a task in the public interest, as per Art. 6 paragraph (1) item e) and Art. 9 item g) of the General Data Protection

Regulation, it shall be achieved provided that the controller or the third party has instituted the following safeguards:

- a) application of adequate technical and organisational measures to observe the principles listed under Art. 5 of the General Data Protection Regulation, especially in terms of data minimisation and the principle of integrity and confidentiality, respectively;
- b) nomination of a data protection officer, if required as per Art. 10 of the present law;
- c) setting out storage periods according to the nature of the data and the processing purpose, as well as specific deadlines for deleting personal data or revising them for deletion purposes.

CHAPTER III: Derogations

Art. 7:

Processing personal data for journalistic purposes or for academic, artistic or literary expression purposes

In order to ensure a balance between the right to personal data protection, the freedom of expression and the right to information, data processing for journalistic purposes or for academic, artistic or literary expression may be performed, provided that it refers to personal data that were expressly made public by the data subject or which are strictly related to the quality of public person of the data subject or the public character of the facts that person is involved in, by 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 - Transfers of personal data to third countries or international organisations;
- e) Chapter VI – Independent supervisory authorities;
- f) Chapter VII – Cooperation and consistency;
- g) Chapter IX - Provisions relating to specific processing situations.

Art. 8:

Processing personal data for scientific or historical research purposes, statistic purposes or public interest archiving purposes

(1) The provisions of Arts. 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, in so far as such rights mentioned in these articles, by their nature, render impossible or seriously impair the achievement of the specific purposes and those derogations are required for the fulfilment of these purposes.

(2) The provisions of Art. 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, in so far as such rights mentioned in these articles, by their nature, render impossible or seriously impair the achievement of the specific purposes and those derogations are required for the fulfilment of these purposes.

(3) The derogations provided under paragraphs (1) and (2) are only applicable provided the appropriate safeguards for the rights and freedoms of the data subjects are in place, as provided under Art. 89 paragraph (1) of the General Data Protection Regulation.

(4) In case the processing mentioned under paragraphs (1) and (2) serves a different purpose at the same time, the derogations only apply to the processing for the purposes mentioned in those paragraphs.

Art. 9

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

- a) informing the data subject regarding personal data processing;
- b) safeguarding the transparency of information, communications and means of exercising the rights of the data subject;
- c) safeguarding the right to rectification and deletion.

(2) The processing of personal and special data is allowed for the political parties and the organizations of citizens belonging to national minorities, non-governmental organizations for the purposes of achieving their objectives, without the express consent of the data subject, under the condition that the corresponding safeguards are provided, as mentioned in the previous paragraph.

CHAPTER IV: Data protection officer

Art. 10:

Designation and tasks of the data protection officer

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

(2) In case the controller or the processor is a public authority or a public body, as defined by Art. 2 paragraph (1) item a), a sole data protection officer may be designated for several of these authorities or bodies, in accordance with their organisational structure and size.

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

CHAPTER V: Certification Bodies

Art. 11:

Accreditation of certification bodies

(1) The certification bodies provided under Art. 43 of the General Data Protection Regulation shall be accredited by the Romanian Accreditation Association – RENAR, as national accreditation body, in compliance with the Regulation (EU) No. 765/2008 of the European

Parliament and Council dated 09 July 2008, 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 the European Union, series L, No. 2018 dated 13 August 2008, as well as in compliance with the Government Ordinance No. 23/2009 on the accreditation activity of the conformity assessment bodies, as approved with amendments by the Law No. 256/2011, as further amended and supplemented.

(2) The certification bodies shall be accredited according to the applicable legal regulations, in compliance with the standard EN-ISO/IEC 17065 and the additional requirements set out by the National Supervisory Authority, also observing the provisions of Art. 43 of the General Data Protection Regulation.

CHAPTER VI: Corrective Measures and Penalties

Art. 12:

General provisions on corrective measures and penalties

(1) The breach of the provisions listed under Art. 83 paragraphs (4)-(6) of the General Data Protection Regulation represents an administrative offence.

(2) The main administrative offence penalties are the warning and the administrative fine.

(3) Any breach of the provisions of Art. 3-9 of the present law represents an administrative offence and shall be penalised according to the provisions of Art. 83 paragraph (5) of the General Data Protection Regulation.

(4) The ascertainment of the administrative offences provided by the present law and the application of the administrative penalties, as well as the other corrective measures stipulated by Art. 58 of the General Data Protection Regulation shall be done by the National Supervisory Authority, in compliance with the provisions of the General Data Protection Regulation, the Law No. 102/2005 on the establishment, organization and operation of the National Supervisory Authority for Personal Data Processing, as subsequently amended and supplemented, and the present law.

Art. 13:

Application of corrective measures to public authorities and bodies

(1) If a breach of the provisions of the General Data Protection Regulation and the present law by the public authorities/bodies is ascertained, the National Supervisory Authority shall issue a record of findings and penalties in regard to the administrative offence, by which the warning penalty is applied, and a remedial plan is attached thereto.

(2) The remedial period shall be established in accordance with the processing-related risks and the activities to be completed to ensure the conformity of the processing.

(3) Within 10 days from the expiry of the remedial term, the National Supervisory Authority may resume the investigation.

(4) The responsibility for fulfilling the remedial measures shall remain with the public authority/body who, according to the law, bears the administrative offence liability for the ascertained facts.

(5) The model of the remedial plan to be attached to the record of findings and penalties is provided in the *Remedial Plan* annex, which is an integral part of the present law.

Art. 14:

Determination of administrative offences and application of penalties to public authorities and bodies

(1) If, pursuant to the control provided under Art. 13 paragraph (3) it is determined that the public authorities/bodies failed to completely fulfil the measures provided in the Remedial Plan, the National Supervisory Authority may apply the fine penalty, according to the circumstances of each individual case, also taking into consideration the criteria provided by Art. 83 paragraph (2) of the General Data Protection Regulation.

(2) The breach, by the public authorities/bodies, of the following provisions of the General Data Protection Regulation represents an administrative offence:

- a) the obligations of the controller and processor under Art. 8, Art. 11, Arts. 25-39, Arts. 42 and 43;
- b) the obligations of the certification body pursuant to Arts. 42 and 43;
- c) the obligations of the monitoring body pursuant to Art. 41 paragraph (4);

(3) The breach, by the public authorities/bodies, of the provisions of Arts. 3-9 of the present law represents an administrative offence.

(4) The administrative offences provided under paragraphs (2) and (3) shall be penalised by an administrative fine ranging from 10.000 lei to 100.000 lei.

(5) The breach, by the public authorities/bodies, of the following provisions of the General Data Protection Regulation, represents an administrative offence:

- a) basic principles for processing, including conditions regarding consent, in compliance with Arts. 5-7 and Art. 9;
- b) rights of the data subjects, in compliance with Arts. 12-22;
- c) personal data transfers to an addressee from a third country or an international organization, in compliance with Arts. 44-49;
- d) any obligations according to the national laws adopted as per Chapter IX;
- e) failure to observe a temporary or definitive decision or limitation regarding the processing or suspension of data flows, issued by the National Supervisory Authority in compliance with Art. 58 paragraph (2), or non-granting of access, by breaching the provisions of Art. 58 paragraph (1).

(6) By derogation from the provisions of Art. 8 paragraph (2) item a) of the Government's Ordinance No. 2/2001 on the legal regime of administrative offences, approved with amendments and additions by the Law No. 180/2002, as subsequently amended and supplemented, the administrative offences provided under paragraph (5) shall be penalised by an administrative fine ranging from 10.000 lei to 200.000 lei.

(7) The breach, by the public authorities/bodies, of a decision issued by the National Supervisory Authority in compliance with Art. 58 paragraph (2) corroborated with Art. 83 paragraph (2) of the General Data Protection Regulation, represents an administrative offence.

(8) By derogation from the provisions of Art. 8 paragraph (2) item a) of the Government's Ordinance No. 2/2001, as subsequently amended and supplemented, the administrative offences

provided by paragraph (7) shall be penalised by administrative fine ranging from 10.000 lei to 200.000 lei.

Art. 15

In the application of the provisions of Art. 58 paragraph (2) item b) of the General Data Protection Regulation, Art. 14² paragraph (1) of the Law No. 102/2005 on the establishment, organization and operation of the National Supervisory Authority for Personal Data Processing, published in the Official Gazette of Romania, Part I, No. 391 dated 9th of May 2005, as subsequently amended and supplemented, is amended and shall have the following content:

“Art. 14²

(1) The main penalties in regard to administrative offences to be applied by the National Supervisory Authority as per Art. 58, paragraph (2) items (b) and (i) of the General Data Protection Regulation, are warning and the fine. The fine shall be applied in accordance with the provisions of Art. 83 of the General Data Protection Regulation.”

Art. 16

The present law comes into force after 5 days from its publication in the Official Gazette of Romania, Part. I.

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This law has been adopted by the Romanian Parliament, in compliance with the provisions of Art. 75 and Art. 76 paragraph (1) of the Constitution of Romania, republished.

ANNEX: Remedial Plan - day..... month year – Method of fulfilling the remedial measures

No.	Committed act	Remedial measures	Remedial period	Means of fulfilment

Other specifications

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Published in the Official Gazette number 651 dated 26th of July 2018.