

GDPR implementation in Romania



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Highlights of the project of Law for the amendment and completion of the Law regarding the setting, organization and functioning of the National Supervisory Authority for Personal Data Processing (hereinafter referred to as the Romanian Data Protection Authority or the Romanian DPA) and for the repealing of the Law 677/2001 (which implemented the Directive 95/46/EC)

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http://81.181.207.101/frontend/documente_transparenta/72_1511884221_Proiect_lege_Final_9_Noiembr.pdf

- The Romanian Data Protection Authority has been set up in 2005.
- The number of positions established through law in 2005 for the Romanian DPA was of 50, number which remained and still remains the same until the project of law will be adopted.
- Considering:
 - ✓ the population of Romania (approximately 20 millions people),
 - ✓ the growing functions of the authority since its establishment,
 - ✓ the growing number of the registered complaints (for ex. in 2013 there were received 877 complaints, in 2014 – 1243, in 2015 – 1335, 2016 - 2302), number which is expected to grow substantially after the implementation of the Regulation 2016/679 (the „GDPR”),
 - ✓ the fact that the Romanian DPA is a sole authority at national level without any local presence in the territory of Romania, other than Bucharest

- ✓ its investigation functions, especially at the locations of the data controllers, irrespective of the place in which such are, even in rural areas, from the public or private sector or even in other member states of the EU

it has been provided for the number of positions to grow to 85.

- The Romanian DPA has presented a comparative statistic to other countries of the EU in what concerns the number of positions existing in the respective DPAs:
 - ✓ Bulgaria currently has 87 employees for a population of approximately 7,5 millions;
 - ✓ Hungary currently had 75 employees for a population of approximately 10 milions and was supplemented with 30 more positions;

- ✓ The Czech Republic currently has 100 employees for a population of approximately 10,5 millions;
 - ✓ Greece currently has 50 employees for a population of approximately 11,5 millions;
 - ✓ Sweden currently has 50 employees for a population of approximately 10 millions;
 - ✓ The Netherlands had 94 employees and was supplemented with 45 more positions (139 in total) for a population of approximately 17 millions.
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- ✓ In case the number of positions is not supplemented, the activity of the Romanian DPO most probably will be blocked
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- ✓ Considering the amounts of the fines that might be inflicted for non compliance with the GDPR (which as a note will not go the budget of the Romanian DPA, but to the state budget) the supplementation of the positions is expected to be adopted

- ✓ The Romanian DPA is under the coordination of the Romanian Senate, its president and vicepresident being named by the Senate and being politically independent
- ✓ The personnel of the Romanian DPA will have the status of the Parliament public officers
- ✓ All of the above are intended to ensure the independence of the authority

• INVESTIGATION ACTIVITIES

- ✓ The control personnel can perform investigations even not announced ones
- ✓ It has the right to request and to obtain from the data controller / the data processor as well as from their representative during the investigation and/or up to an established deadline any information and documents irrespective of the support on which such are stored, to take copies of such, to have access to any of the locations of the data controller / data processor as well as to have access and to verify any equipment, mean, support necessary for the investigation
- ✓ In case the personnel is not allowed to perform any of the above actions, such can request an authorization from the Bucharest Court of Appeals

- **INVESTIGATION ACTIVITIES**

- ✓ The decision is taken within maximum 48 hours as of the registration of the request. Within maximum 48 hours such is communicated to the Romanian DPA.
- ✓ The decision can be contested in front of the High Court of Cassation and Justice, within 72 hours since its communication, but the contestation does not suspend the execution

- **CERTAIN POINTS REGARDING THE SANCTIONS TO BE APPLIED BY THE ROMANIAN DPA**

- ✓ the main sanctions to be applied by the Romanian DPA will be reprimands and fines. Other corrective measures can be applied as well as well as warnings, depending on the circumstances of each case
- ✓ the fines in EURO will be paid in LEI (Romanian currency) at the official exchange rate of the National Bank of Romania as of the day when such are applied
- ✓ in case the amount of the fine surpasses the amount of 300,000 EURO the authorization of the president of the Romanian DPA is necessary

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- ✓ the fines in EURO will be paid in LEI (Romanian currency) at the official exchange rate of the National Bank of Romania as of the day when such are applied
- ✓ in case the amount of the fine surpasses the amount of 300,000 EURO the authorization of the president of the Romanian DPA is necessary based on the minutes of the control and the report of the control personnel

- ✓ Some of the corrective measures can be applied either through the minutes of the control or through decision of the president of the Romanian DPA, such as:
 - to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation;
 - to order the controller or processor to bring processing operations into compliance with the applicable legal provisions;
 - to order the controller to communicate a personal data breach to the data subject.

- ✓ Other corrective measures can be applied only through decision of the president of the Romanian DPA, such as:
 - to impose a temporary or definitive limitation including a ban on processing;
 - to order the rectification or erasure of personal data or restriction of processing and the notification of such actions to recipients to whom the personal data have been disclosed;
 - to withdraw a certification or to order the certification body to withdraw a certification, or to order the certification body not to issue certification if the requirements for the certification are not or are no longer met;
 - to order the suspension of data flows to a recipient in a third country or to an international organization.

- ✓ In case of non compliance with the ordered measures or in case of refusal either express or tacit to provide the requested information and documents during the investigation procedure, the Romanian DPA can order through decision a fine of 3,000 RON (approximately 650 Euro) / per day of delay
- ✓ The project of law establishes also a statute of limitation for the infliction of sanctions – 3 years as of the day the deed has been committed / 4 years maximum as of the day the deed has been committed in case the statute of limitation is interrupted by any procedural act in the investigated case

- ✓The project of law contains also, among others, regarding the complaint procedure as well as judicial remedies

✓ On March 14th, 2018 the project for the implementation of the GDPR has been registered with the Romanian Senate for debate – <https://www.senat.ro/legis/PDF/2018/18b094FG.pdf>

✓ The project contains provisions regarding the processing of

➤ biometric data

➤ health data

➤ national identification number

➤ data in the context of employment

Also, it contains provisions regarding the accreditation bodies as well as sanctions in case of infringement of the GDPR provisions as well as of this law by the public authorities. The maximum fine is of 2000,000 Euro (approximately 43,000 Euro). The notion of public authority and body are defined in this project of law

- ✓ Aside from Law 677/2001, there are several decisions issued by the Romanian DPA which regulate certain specific aspects, e.g. video surveillance, in relation to which a decision is expected to be issued
- ✓ The Romanian DPA is currently revising code of conducts, e.g. the one drafted by the Romanian Association for Online Stores, drafts a list of the kind of processing operations which are subject to the requirement for a data protection impact assessment and has in view a possible list of minimum appropriate technical and organizational measures for data processing (currently there is the Order 52/2002 issued by the Romanian Ombudsman which regulates this aspect).



Thank you!

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