

Chapter 30

Data Protection

1. General

The legal issues of the processing of personal data have been approached at a legislative level, in a standardized frame, on the grounds of specific directives of the European Union, including Directive 2002/58/CE of the European Parliament and the Council regarding the processing of personal data and the protection of privacy in the electronic communications sector.

The legislator has adopted a general law in this matter, as well as one with special character, whose necessity derives from the impact of new communication technologies on the private sphere of citizens. Apart from these two pieces of legislation, Parliament also ratified an international convention in this field, hence strengthening the entire legal framework.

Two basic regulations in this matter also have a constitutional grounding in Article 26, paragraph 1 of the Romanian Constitution, a text that provides for the duty of public authorities to respect and protect the private, intimate and family life of citizens.

2. Main Regulations

- 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 ("**Law No. 677/2001**");
- Law No. 682/2001 regarding the ratification of the Convention for the protection of persons with respect to the automatized processing of personal data, adopted at Strasbourg on the 28th of January 1981 ("**Law No. 682/2001**");
- Law No. 506/2004 regarding the processing of personal data and the protection of privacy in the electronic communications sector ("**Law No. 506/2004**");
- Decision No. 200/2015 on determining the personal data processing activities for which a notification is not required, as well as for the modification and the repeal of other decisions ("**Decision No. 200/2015**").

3. Purpose of the regulations

According to Law No. 677/2001, processing of personal data means *„any operation or set of operations which is performed upon personal data, by automatic or non-automatic means, like the collection, recording, organization, storing, adaptation or modification, extraction, consulting, use, disclosure towards third parties by transmission, dissemination or in any other way the annexation or combination, the blocking, deletion or destruction.”*

The regulations are meant to guarantee and protect the fundamental rights and freedom of individuals, especially in the intimate, private and family life, relating to the processing of personal data.

4. General and special rules regarding the processing of personal data

4.1. General rules

Personal data designated to be subject to processing, must be:

- (i) processed in good faith and according to the legal provisions in force;
- (ii) collected for specific, explicit and legitimate purposes; subsequent processing of personal data for statistical purposes, historical or scientific research purposes is not considered incompatible with the purpose of collection, if it is performed under observance of the legal provisions, including those that concern the notification of the monitoring authority, as well as of the guarantees regarding the processing of personal data, provided by the norms that regulate statistical activity or historic/scientific research;
- (iii) adequate, pertinent and not excessive, by relating to the purpose to which it is collected and subsequently processed;
- (iv) precise and updated if necessary; to this end, the necessary measures will be taken for the deletion or rectification of inexact or incomplete data, which does not correspond to the set purpose;
- (v) stored in such a manner that allows the identification of the data subjects strictly in the time period necessary for achieving the purposes for which the data is collected and subsequently processed; the storage of data for statistical purposes, for historical or scientific research on a period longer than the one mentioned, is performed under the completion of guarantees regarding the processing of personal data, mentioned within the norms that regulate these fields, and only on the period necessary for achieving these purposes.

Moreover, the law disposes the express and unequivocal consent of the data subject regarding the processing of personal data for any kind of processing operations, except for the following situations:

- (i) when the processing is necessary in view of the performance of a contract or pre-contract to which the data subject is a party, or in view of undertaking some measures, at his/her request, before concluding a contract or pre-contract;
- (ii) if the processing is necessary for the protection of the life, physical integrity or health of the data subject or of another threatened person;
- (iii) when processing is necessary for compliance with a legal obligation to which the data controller is subject;
- (iv) when data processing is necessary in view of the accomplishment of some measures of public interest, or regarding the exercise of the attributes of public authority delegated to the data controller or third party to whom the data is disclosed;
- (v) when data processing is necessary for the accomplishment of a legitimate interest of the data controller, or of a third party to which the personal data is disclosed, provided that this

interest does not prejudice the interests or fundamental rights and freedoms of the data subject;

- (vi) when data processing involves data obtained from documents available for the public, according to the law;
- (vii) when processing is made exclusively for statistics, historical or scientific research, and the data remain anonymous during the entire processing period

4.2. Special rules

Basically, the processing of personal data related to racial or ethnical origin, the political, religious, philosophical beliefs or convictions of similar type, union membership, as well as the processing of personal data regarding the state of health or sexual life, is prohibited.

Yet, as an exception, such processing is also permitted, if, among others:

- (i) the data subject has expressly given his/her consent for such processing;
- (ii) the processing is necessary in view of the performance of the liabilities, or of the specific rights, of the data controller in the field of labor, under the observance of the guarantees provided for by law. A possible disclosure to a third party of the processed data may take place only if the data controller is legally required to do so, or if the data subject has expressly agreed to the disclosure;
- (iii) processing is necessary for the protection of the life, physical integrity or health of the data subject or of another person, if the data subject is physically or legally unable to give his/her consent;
- (iv) the processing refers to data expressly made public by the data subject;
- (v) the processing is necessary for the establishment, exercise or defense of certain rights in court;
- (vi) processing is necessary for purposes regarding preventive medicine, the establishment of medical diagnosis, the administration of medical treatment and care for the data subject, or for the management of medical services that serve the interests of the data subject, under the condition that the processing of the respective data is conducted by, or under, the surveillance of a physician subject to medical confidentiality, or under the surveillance of another person subject to an equivalent obligation of confidentiality.

5. Rights of the data subject, in the context of the processing of personal data

If personal data is obtained directly from the data subject, the data controller is compelled to provide at least the following information to the data subject, if he/she is not already aware of the respective information:

- (i) the identity of the data controller and of their representative, if necessary;
- (ii) the purpose for which the data processing is conducted;

- (iii) additional information, like the recipients or the category of recipients of the data; if the provision of all required data is compulsory, the consequences of a refusal to provide it; the existence of the rights provided by law for the data subject, especially the access and intervention rights upon the data and the debating rights, as well as the conditions under which they can be enforced;
- (iv) any other information whose delivery is imposed by provisions of the competent authority, considering the specific character of the processing.

If the data is not obtained directly from the data subject, the data controller is compelled to provide at least the following information to the data subject (if he/she is not already aware of the respective information), as of the data collection or, if it is designated to be disclosed to third parties, at the moment of the first disclosure:

- (i) the identity of the data controller and of their representative, if necessary;
- (ii) the purpose for which the data processing is conducted;
- (iii) additional information, like the recipients or the category of recipients of the data; the existence of the rights provisioned by law for the data subject, especially the access and intervention rights upon the data, and the debating rights, as well as the conditions under which they can be enforced;
- (iv) any other information whose delivery is imposed by provisions of the competent authority, considering the specific character of the processing.

These provisions do not apply when data processing is performed exclusively for media, literary or artistic purposes, if their application indicates the information sources.

Data subjects are entitled to obtain from the data controller, free of charge and upon request:

- (i) the rectification, updating, blocking or deletion of data whose processing is in violation of the law, especially of incomplete or imprecise data;
- (ii) transformation in anonymous data of the data whose processing disregards the law;
- (iii) notification to third parties, to which the disclosure was made, upon any operation performed according to the items (i) or (ii) above, if this notification does not prove to be impossible, or does not require an effort that does not match the legitimate interest which could be injured.

The data controller is compelled to communicate the disposed measures to the data subject and, as the case may be, the name of the third party to whom the respective data was disclosed, within 15 days from receipt of the application.

6. Oversight authority

The oversight prerogatives in the field of the processing of personal data belong to the National Supervisory Authority for Personal Data Processing (the “**National Authority**”), acting as an independent and autonomous public authority.

The National Authority monitors and controls, from a legal standpoint, personal data processing, according to detailed prerogatives outlined in Law No. 677/2001.

Starting from December 2015, when Decision No. 200/2015 was adopted by the president of the National Authority, the data controller is no longer compelled to notify the National Authority with respect to the data processing activities it performs. However, there are certain exceptions from this rule, consisting of a series of situations expressly provided for by Decision No. 200/2015 when such notification is mandatory, namely:

- (i) when personal data is processed related to racial or ethnic origin, to political, religious, philosophical or similar nature opinions, to trade union membership, as well as data concerning health and sex life;
- (ii) when genetic and biometric data is processed;
- (iii) when personal data which directly or indirectly permits the geographical location of individuals, is processed by using electronic communication means;
- (iv) when personal data related to crimes committed by the data subject or to criminal convictions of the latter and safety measures or administrative or contravention sanctions imposed to the data subject is processed by private entities;
- (v) when personal data is processed by using electronic means for the aim of monitoring and/or evaluating certain personality aspects, such as professional competence, credibility, behavior or other such aspects;
- (vi) when personal data is processed by electronic means in certain filing systems aimed at adopting automatic individual decisions in relation to analyzing the solvency, economic and financial situation, with the facts likely to fall within disciplinary, administrative or criminal liability of individuals by private entities;
- (vii) when processing minors’ personal data in direct marketing activities;
- (viii) when processing minors’ personal data by means of the internet or electronic messaging;
- (ix) the processing of personal data referred to at (i) above, relating to its own members, carried out by associations, foundations or any other non-patrimonial organizations exclusively for the purpose of achieving the specific activity of the company, to the extent to which the data is disclosed to some third parties without the consent of the data subject.

It should be mentioned that the notification is not mandatory when such processing is required by law.

Exceptions to the notification obligation do not exempt the data controller from fulfilling their other obligations provided for by the law, particularly those related to ensuring the rights of data subjects, as well as for the confidentiality and security of the data.

In case a notification is required such a notification will comprise, *inter alia*, at least the following information:

- (i) name and domicile or the headquarters of the data controller and of the representative assigned by the latter, as the case may be;
- (ii) purpose of the processing;
- (iii) description of the category/categories of data subjects and of the data/data categories to be processed;
- (iv) recipients/categories of recipients to which the data is meant to be disclosed;
- (v) guarantees which accompany the disclosure of data to third parties;
- (vi) data transfers designated towards other countries;
- (vii) specification of any evidence system of personal data related to the processing, as well as of the possible connections to other data processing or to other evidence systems of personal data, irrelevant of their performance on Romanian or foreign territory.

If the data to be processed will be transferred abroad, the notification also comprises the data categories subject to the transfer, as well as the target country for each data category.

The notification is free of charge. If the National Authority concludes, on the basis of the notification, that the processing operations are of potential special risk for the rights and freedoms of persons, it is compelled to trigger the performance of a control prior to the beginning of the respective processing, with the notification of the data controller.

If a prior control was initiated, the National Authority is liable for revealing to the data controller the result of the control conducted and the issued decision, within 30 days at most from the date of the notification.

7. Transfer of personal data abroad

A transfer abroad of personal data subject to a processing or designed to be processed after the transfer can be performed:

- (i) if the target country of the transfer ensures an appropriate protection level. The protection level is evaluated by the National Authority, considering all the circumstances in which the data transfer is performed (type of the data transmitted, purpose of the processing and the period assigned for the processing, the country of origin and the target country, the legislation of the applicant country.) If the National Authority establishes that the protection level provided by the target country is unsatisfactory, it can prohibit the data transfer;

- (ii) with the clearance of the National Authority, in case of transfer of personal data to a country whose legislation does not provide a protection level at least equal to that provided for by Romanian law, if the data controller submits sufficient guarantees regarding the protection of fundamental rights of persons. These guarantees have to be set up within contracts concluded between the data controllers and the legal or natural entities who initiated the transfer.

Data transfer is always allowed in the following situations:

- (i) when the data subject has explicitly given his/her consent for the conduct of the transfer;
- (ii) when it is required for the performance of a contract concluded between the data subject and the data controller, or for the enforcement of some pre-contractual measures enclosed at the request of the data subject;
- (iii) when it is necessary for the conclusion of a contract or for the performance of a contract already concluded, or expected to be concluded, in the interest of the data subject, between the data controller and a third party;
- (iv) when it is necessary for the accomplishment of some major public interest, as well as national defense, public order or national security, for the appropriate leading of a criminal litigation, or for the establishment, enforcement or defense of some right in justice, under the condition that the data is processed for this purpose only, and for no longer than is necessary;
- (v) when it is necessary for the protection of the life, physical integrity or health of the data subject;
- (vi) when it occurs as a result of a prior request to access official documents which are publicly available, or of a request for information which can be obtained from files or any other publicly available documents.

8. Processing of personal data in the electronic communications sector

The main framework regulating this aspect is Law No. 506/2004.

The law sets a protection frame for personal data specific to the electronic media of data transmission, provisioning a series of aspects like: security measures that a supplier of electronic communications services has to adopt in view of guaranteeing the security of the service and the network, the confidentiality of information, data regarding the traffic and the bill, as well as the audition, recording, and storing prohibition, including any other form of intercepting or monitoring communication.

By derogation from the above mentioned rule, the law allows the audition, recording, and storing including any other form of intercepting or monitoring communication in the following situations:

- (i) if the actions mentioned above are accomplished by the participants at the respective communication;

- (ii) if there is a prior written consent of the users who will participate in the respective communication, on the actions mentioned above;
- (iii) if the actions mentioned above are performed by virtue of the attributes of a public authority under the provisions of law.

Traffic data related to registered subscribers and users, processed and retained by a supplier of electronic communication networks designated for the public, must be deleted or made anonymous when they are no longer necessary for the transmission of a communication, but not later than three years from the completion of the communication, except for certain situations provided for by law.

Processing of traffic data performed with the purpose of drafting the bills of subscribers, or for the establishment of payments for interconnection, is allowed only within 3 years from the date due for the payment liable for the bill.

The law also contains special provisions with respect to unsolicited communications, disclosure and restriction of identity of the calling line and of the connected line, processing location data other than traffic data, and subscribers' registries.