

cover article

GDPR – One Year In: From the Perspective of the Supervisory Authority

by Vlad Irimia, Senior Associate Voicu & Filipescu

One year after the entry into force of the Data Protection Regulation 2016/679¹ (the "**Regulation**" or "**GDPR**"), the National Supervisory Authority for Personal Data Processing ("**ANSPDCP**" or "the **Supervisory Authority**") organized an anniversary Debate on May 24, also launching the *Guide of Questions and Answers on the application of Regulation (EU) 2016/679* (the "**Guide**"), a document that can be accessed [here](#).

On the same occasion, marking a year of application of the Regulation, at the end of May 2019, ANSPDCP published a series of statistical information meant to detail the activity of the Supervisory Authority during this period, which is accessible [here](#).

The ANSPDCP Guide

As stated in the ANSPDCP press release related to the Guide, the Supervisory Authority intends to provide punctual clarification to controllers, processors and individuals on the application of the provisions of the Regulation as well as the subsequent legislation/acts adopted in Romania for the application of the GDPR (namely: Law 190/2018² and Decisions issued by the Supervisory Authority).

Overall, the Guide provides, in the form of 85 questions and answers, a series of useful information to data subjects and to all the actors under the GDPR regulatory empire, detailing several key issues in the interpretation and application of the Regulation.

The document includes (i) both information on principle relating to the themes indicated and (ii) references to the relevant provisions of the Regulation or the various EU directives applicable in this field, (iii) references to

¹ Regulation (EU) 2016/679 of the European Parliament and Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, repealing Directive 95/46/EC.

² Law no. 190/2018 on implementation measures for Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals 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).

the applicable national law, (iv) relevant issues included in the Decisions passed by the ANSPDCP, and (iv) several aspects included in the various guidelines, opinions, working documents or recommendations formulated at European level by the European Data Protection Board (**EDPB**) or by the former Article 29 Working Party on Data Protection.

Thus, starting from the defining aspects related to the scope of the Regulation, the definitions and the main obligations of controllers, as set out in the GDPR, the Guide provides, *inter alia*, a number of responses on the following issues of interest:

- (a) the relation between controller and processor;
- (b) aspects relating to the designation of a Data Protection Officer (DPO) - including a series of references for the definition of relevant terms (such as: public authority and body or large-scale processing) and communication obligations to ANSPDCP;
- (c) processing conditions for different categories of data (including sensitive data);
- (d) issues concerning the granting and validity of consent as the basis of processing;
- (e) matters relating to the performance of data protection impact assessments (specifying the cases in which such assessments are required, based on the requirements of the ANSPDCP, as well as a number of relevant aspects relating to the content and actual performance of the assessments);
- (f) aspects on personal data breaches (including the period and manner of notification thereof);
- (g) details of the rights of the data subjects, the conditions for their exercise and the information to be provided to the data subject, based on the GDPR, including a number of practical aspects (such as: effective means of information or the format for providing the information);
- (h) matters relating to the transfer of data to a third country or to an international organization; and
- (i) measures to ensure the security of data processing and storage issues.

The Supervisory Authority considered it necessary to also include in the Guide a number of issues concerning the processing operations carried out by property owners' associations through (i) the use of video surveillance equipment based on legitimate interest (taking into account both the specific requirements of the legislation in the field of protection and security and on the organization and operation of owners' associations) and (ii) the publication of payment lists by the owners' associations.

As a practical approach, ANSPDCP also provided a clarification on the possibility for public institutions to publish, on their website, the personal data of the persons participating in the competitive examinations for filling in vacancies corresponding to the contractual functions.

The Guide also contains an indication of the guidelines and useful advice adopted by the EDPB as well as by the Supervisory Authority.

In addition, the document provided by ANSPDCP also contains a number of specific national aspects such as:

- (a) an indication of the new legal requirements brought by Law 190/2018, including: (i) special rules on the processing of certain categories of personal data, such as genetic data, biometric data or health data; (ii) the conditions for processing a national identification number (*e.g.* personal numeric code, serial and number of the identity card); and (iii) specific provisions on the processing of personal data in the context of employment relationships;
- (b) the measures that the Supervisory Authority can take in the private and public sectors, underlining the different sanctioning conditions applicable to public authorities and bodies (involving both the implementation of a remedial plan and capping fines at a different level);
- (c) the conditions for receiving and settling complaints addressed to ANSPDCP, including details on the drawing up, submission and admissibility of complaints, the response time of the Supervisory Authority and the possibility for the data subjects to address the courts; and
- (d) a number of key aspects of investigations performed by ANSPDCP.

ANSPDCP's assessments based on the statistical data

On the basis of the data for the period between 25 May 2018 - 24 May 2019, ANSPDCP made the following assessments of the applicability of the GDPR (as indicated in the Supervisory Authority's press release):

- (i) the number of complaints and referrals significantly increased (5260 complaints and referrals were received in 2018 compared to 3734 complaints and referrals which have been received in 2017), indicating that individuals have also become more aware of their rights brought by the Regulation; and
- (ii) from the recorded personal data breach notifications, it has been shown that controllers have been concerned with implementing the obligations laid down in the Regulation and taking appropriate actions in case of incidents.

A breakdown of the relevant information submitted by the Supervisory Authority, its corrective measures as well as the main subjects of the complaints and referrals received from the various data subjects can be found in the related section on personal data protection in this edition of the newsletter.

Conclusions

Taking into account both the positive aspects identified by ANSPDCP regarding the application of GDPR provisions, as detailed above, as well as the intention of the Supervisory Authority to give priority to the guidance of controllers in order to ensure adequate compliance with the new data protection rules (aspect emphasized by ANSPDCP in the press release issued on May 31, 2019, available at the website linked above), it can be appreciated that there is a significant concern, especially in the private sector, regarding the protection of personal data, a point underlined also through greater awareness of the rights that the data subjects have, according to the Regulation, as well as through the recommendations of the Supervisory Authority to the data subjects, to exercise their rights under the GDPR before the controllers.

Regarding the issuance of the Guide and taking into account the aspects which were publicly highlighted by ANSPDCP, we express our confidence that, as the provisions of the Regulation and subsequent national legislation will further apply, the recent Guide issued by ANSPDCP will be able to assimilate the necessary practical solutions and present, in possible future supplements, additional responses appropriate to the various issues of interest from the perspective of personal data protection.