

data protection - legal changes published in October 2018

Decision no. 161/2018 regarding the approval of the Investigation Procedure by the National Supervisory Authority for Personal Data Processing - ANSPDCP was published on October 23, 2018.

According to the Investigation Procedure, investigations can be carried out:

- a) **ex officio**: upon proposal of the departments with control responsibilities within ANSPDCP; upon proposal of the president or vice-president of the ANSPDCP - by a written resolution; upon proposal of the other departments within the ANSPDCP; as a result of personal data breach notices; for the verification of data and information on the processing of personal data obtained by ANSPDCP from sources other than those targeted by the complaint, including on the basis of notices or information received from another supervisory authority or from another public authority; or for international cooperation including with the supervisory authorities in other Member States in the field of personal data protection, including in the framework of joint operations and mutual assistance.
- b) **or upon a complaint** lodged according to the Procedure for receiving and solving complaints, approved by decision of the ANSPDCP president.

The procedure determines how to conduct investigations: field investigations; investigations at ANSPDCP headquarters; investigations in writing or investigations with public authorities / bodies.

Each type of investigation contains detailed procedures regarding the way it is deployed, the rights and obligations of the entities under scrutiny, and how to enforce sanctions for breaching the provisions governing data protection.

The main civil offence sanctions applied by ANSPDCP are warnings and fines.

Decision no. 161/2018 was published in the Official Gazette no. 892/23.10.2018 and entered into force on the date of its publication in the Official Gazette.

Decision no. 174/2018 on the list of operations for which a data protection impact assessment is mandatory was published on 31st October 2018.

Decision no. 174/2018 of the National Authority for the Supervision of Personal Data Processing (ANSPDCP) establishes the cases when it is mandatory for controllers to carry out the data protection impact assessment, namely:

- a) the processing of personal data in order to carry out a systematic and comprehensive assessment of personal aspects relating to individuals, which is based on automatic processing, including profiling, and which is the basis for decisions which produce legal effects on the individual or which similarly affects the individual to a significant extent;
- b) extensive processing of personal data on racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership, genetic data, biometric data, for the sole identification of an individual, health data, gender or sexual orientation of an individual or personal data relating to criminal convictions and offenses;
- c) the processing of personal data for the purpose of systematic large scale monitoring of an area accessible to the public, such as video surveillance in shopping centers, stadiums, markets, parks or other such spaces;
- d) large scale processing of personal data of vulnerable persons, especially minors and employees, by means of automatic monitoring and/or systematic recording of behavior, including for advertising and marketing activities;
- e) large-scale processing of personal data by innovative use or implementation of new technologies, in particular where such operations limit the ability of data subjects to exercise their rights, such as the use of facial recognition techniques to facilitate access to different spaces;
- f) large-scale processing of data generated by sensing devices transmitting data over the Internet or other means ("Internet of Things" applications such as smart TVs, connected vehicles, smart meters, smart toys, smart cities or other such applications);
- g) large-scale and/or systematic processing of traffic and/or location data of individuals (such as Wi-Fi monitoring, geographic location of passenger transport in public transport or other such situations) when processing is not required for providing a service requested by the data subject;

By way of exception to the above, the data protection impact assessment is not mandatory when processing carried out under Art. 6 par. (1) let. (c) or (e) GDPR has a legal basis in EU or national law and a data protection impact assessment has already been carried out as part of a general impact assessment in the context of the adoption of the relevant acts.

Decision no. 174/2018 was published in the Official Gazette no. 919/31.10.2018 and entered into force on the date of its publication in the Official Gazette.