

## data protection - legal changes published in February 2020

### 1 SUMMARY OF ANSPDCP'S ACTIVITY FOR 2019

According to the communiqué published on February 5, 2020, the National Supervisory Authority for the Processing of Personal Data (the "Authority" or ANSPDCP) released the summary of its activity for the year 2019. Thus, in 2019, the Authority received a total number of **6193 complaints, intimations and notifications concerning the personal data breaches**, based on which **912 investigations were opened**. As a result of the investigations, **28 fines** were imposed in a total amount of **RON 2,339,291.75**. Also, **134 warnings** were applied and **128 corrective measures** were ordered.

Regarding the **activity of handling the complaints**, the Authority received a total of **5808 complaints**, on the basis of which **527 investigations** were initiated.

The complaints received by the Authority in 2019 mainly focused on the following areas:

- the disclosure of personal data without the consent of the data subjects;
- violation of the rights and principles provided by the GDPR;
- reporting of data to the Credit Bureau;
- installation of video surveillance systems within various entities;
- receiving unsolicited marketing messages;
- breach of the security and confidentiality of the processing of personal data by failure of the controllers to adopt appropriate technical and organizational measures regarding the security of the processing;
- non-compliance with the conditions regarding online consent.

In 2019, regarding the **personal data breaches**, the controllers submitted, both under the GDPR and the Law no. 506/2004, **233 notifications**, and the complaints regarding possible non-conformities with the provisions of the GDPR **amounted to 152**.

As a result of the complaints received and the security breaches notified by the data controllers, during the year 2019, **385 ex-officio investigations** were opened.

At the same time, during the year 2019, a number of **1106 requests for the point of views** on various aspects regarding the interpretation and application of Regulation (EU) 679/2016, from controllers and processors acting in the public and private sector, from other entities, as well as from individuals. In addition, the controllers, the public and the data

subjects were also informed through **more than 80 responses provided to citizens and the media**, both from Romania and abroad, according to Law no. 544/2001.

Concerning the **activity of representation in court**, the Authority has managed a number of **207 files** that are pending in the courts in different procedural stages.

For more details regarding ANSPDCP activity for 2019, you can access the following link:

[https://www.dataprotection.ro/?page=Sinteza\\_activitatii\\_ANSPDCP\\_2019%20&lang=ro](https://www.dataprotection.ro/?page=Sinteza_activitatii_ANSPDCP_2019%20&lang=ro)

## 2 EUROPEAN DATA PROTECTION BOARD - THE 18<sup>TH</sup> PLENARY SESSION

During the plenary, which took place on 18 and 19 of February, 2020, the following main documents were adopted:

- **Contribution of the EDPB to the evaluation of the GDPR under Article 97;**

The EDPB is of the opinion that the application of the GDPR in the first 20 months has been successful. The EDPB is examining possible solutions to improve existing cooperation procedures and considers that, in the end, legislators may also have a role to play in ensuring further harmonization of data protection legislation. In its assessment, the EDPB also addresses issues such as international transfer tools, the impact on SMEs and the development of new technologies. The Board concludes that it is premature to revise the Regulation at this point in time.

- **Guidelines on Art. 46.2 (a) and 46.3 (b) of the GDPR for transfers of personal data between public authorities and bodies**

The articles address transfers of personal data from EEA public authorities or bodies to public bodies in third countries or to international organizations, where such transfers are not covered by an adequacy decision. The guidelines recommend which safeguards to implement in legally binding instruments in order to ensure the level of protection of natural persons under the GDPR.

For more details, you can access the following link:

[https://edpb.europa.eu/news/news/2020/eighteenth-plenary-session-adopted-documents\\_en](https://edpb.europa.eu/news/news/2020/eighteenth-plenary-session-adopted-documents_en)

## 3 GDPR ENFORCEMENT – NATIONAL AND EUROPEAN DEVELOPMENTS

### 3.1 Italy. EUR 27.8 million fine imposed on mobile telecom company TIM for violation of GDPR provisions

On **February 1, 2020**, the National Authority of Italy informed that it has completed an investigation with data controller TIM. Following the investigation, the Authority concluded that the controller violated the GDPR provisions by unlawful processing personal data for marketing purposes.

Between January 2017 and 2019, the Authority received hundreds of complaints, in particular, **unsolicited marketing calls** that had been performed **without any consent** or **in spite of the called parties**.

In one case, one person was contacted 155 times in one month. In about two hundred thousand cases, **"off-list" numbers were called - numbers that are not included in the TIM's list of marketing numbers.**

In the investigation, the Authority found that there **were no adequate implementation and management systems** in place regarding the personal data processing.

Thus, the Italian Authority imposed **twenty corrective measures** on TIM, including both prohibitions and injunctions. In particular, the Authority has banned the controller from using, for marketing purposes, the data of the users that had denied their consent to marketing calls when contacted by call centers, of the users included in blacklists and of the 'non-customers' that had not given their consent. The controller is not permitted to use any longer the customer data that were collected via the "MyTim", "TimPersonal" and "TimSmartKid" applications for purposes other than the provision of relevant services without the users' free, specific consent. The controller will have to implement technical and organizational measures in respect of data subject rights requests and enhance the measures to ensure quality, accuracy and timely updates of the personal data that are processed in their individual systems.

As a result of the findings, the controller received **a fine of 27.8 million euros** for unlawful processing user data for marketing purposes and the measures and implementing arrangements will have to be in place and notified to the Authority according to a specific timeline.

### **3.2 ANSPDCP: The consent of the authors of doctoral theses is not necessary for publishing them**

On Wednesday, February 19, 2020, the National Supervisory Authority for the Processing of Personal Data issued a notice following the analysis of the provisions of art. 168 paragraph (9) of Law no. 1/2022 of national education from the perspective of Regulation (EU) 679/2016.

Thus, considering art. 6 paragraph (1) c), "processing (including disclosure) is necessary for compliance with a legal obligation to which the controller (Ministry of Education and Research) is subject. At the same time, the National Supervisory Authority specified that, according to art. 12-14 of the GDPR, any data controller has the obligation to ensure the right to information of the data subject (the one whose data is disclosed), in a concise, transparent, intelligible and easily accessible form, using clear and simple language. As such, compared to the above, the **National Supervisory Authority made no reference to the need for the consent of the authors of the doctoral theses for the purpose of publishing them.**"

Therefore, according to the Authority, the publication of doctoral theses can be made by the Ministry of Education and Research based on the legal obligation established by art. 168 paragraph (9) of Law no. 1/2011 of the national education, with the subsequent amendments and additions.